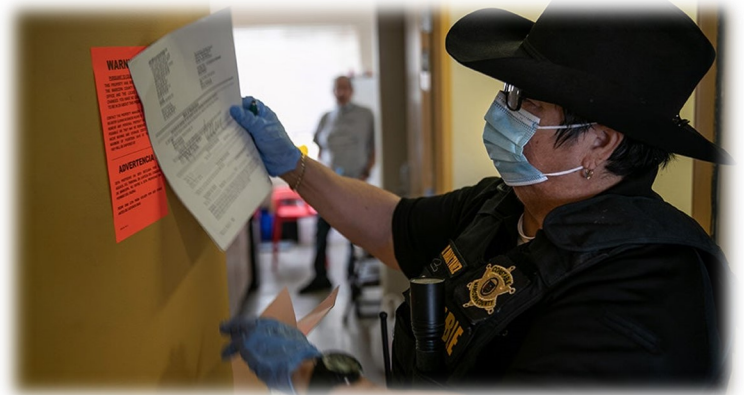


Federal judge rules eviction moratorium is unconstitutional

By Konstantin Toropin and Paul LeBlanc, CNN

A federal judge in Texas on Thursday ruled that the federal moratorium on evictions is unconstitutional, according to court documents.

US District Judge John Barker, who was appointed by then-President Donald Trump to the court in the Eastern District of Texas, stopped short of issuing a preliminary injunction, but said he expected the US Centers for Disease Control and Prevention to respect his ruling and withdraw the moratorium.



"The federal government cannot say that it has ever before invoked its power over interstate commerce to impose a residential eviction moratorium. It did not do so during the deadly Spanish Flu pandemic. Nor did it invoke such a power during the exigencies of the Great Depression. The federal government has not claimed such a power at any point during our Nation's history until last year," Barker wrote.

Although the Covid-19 pandemic persists, he said, "so does the Constitution."

The ruling punctuates a legal effort that began when a group of Texas landlords and property owners sued the CDC and the Department of Health and Human Services in October over the Eviction Moratorium Order that was issued by the Trump administration in September.

The order, citing the fact that "COVID-19 presents a historic threat to public health," put a temporary halt on residential evictions.

But the property owners argued in their lawsuit that the federal government didn't have the power to stop evictions. Barker sided with that argument, writing in his ruling that Congress also lacked the authority to grant the CDC the power to halt evictions nationwide, and noted that the moratorium threatened to encroach on landlords' rights under state law.

The plaintiffs were represented by two conservative legal groups, the Texas Public Policy Foundation and Southeastern Legal Foundation, which hailed the decision as a win.

"The CDC attempted to use COVID-19 as an opportunity to grab power and the court rightfully corrected this egregious overreach," Robert Henneke, one of the lawyers in the case and general counsel for the Texas Public Policy Foundation, said in a statement.

The Department of Justice declined to comment when reached by CNN. It is not clear if the agency plans to appeal the case.

Federal judge rules eviction moratorium is unconstitutional *Continued*

Initially, the CDC order was set to expire at the end of December, but it was extended through January by a provision in the second stimulus package. One of President Joe Biden's first acts in office was to seek to extend the moratorium again, until the end of March.

The order is invoked when a tenant gives their landlord a signed declaration asserting that they meet specific requirements -- including that they earn less than \$100,000 a year, have experienced a significant loss of income and have made their best effort to find rental assistance and pay their rent.

Under the order, rent is not canceled or forgiven and landlords can evict tenants after the moratorium ends if they are not able to pay the back rent.

In some jurisdictions, existing tenant protections might be greater than what is offered in the CDC's moratorium.

An estimated 10 million renters were behind on their rent and at risk of eviction in the middle of January, according to a Census Bureau survey. And an estimated 16 million renters had little to no confidence they could pay their rent in February.

There will likely be an appeal by the CDC which could stay this decision. NAA is reviewing the decision in detail for its implications for rental housing owners and operators. Look for more information on that in the coming weeks.

Fair Housing Advertising – Guidelines To Compliance *By Fair Housing Institute*



Fair Housing advertising guidelines are a must when developing your marketing and advertising content. Fair Housing issues and violations are more common than you may think. HUD provides advertising guidelines for compliance which this article covers.

In case you're asking yourself why you should read this particular article, the fact is that if you work in the housing industry, you need to know your responsibilities under the Fair Housing Act, because regardless of your position, you are probably "advertising" every day. Fair Housing advertising involves every member of your team.

Fair Housing Advertising Media

Advertising under the Fair Housing Act doesn't just mean ads in newspapers. The law says you can't "make, print, or publish. . . any notice, statement, or advertisement . . . that indicates any preference, limitation, or discrimination based on a person's race, color, religion, sex, handicap, familial status, or national origin." That includes such things as applications, flyers, brochures, deeds, signs, banners, posters, billboards, and even pictures in your office.

Fair Housing Advertising – Guidelines To Compliance *Continued*

It also means that the things you say about your property in writing, over the phone or in person are covered. Expressing an illegal preference or limitation to one of your fellow agents, brokers, employees, prospective sellers, renters, or to any other person in connection with the sale or rental of your property is illegal. Here are two examples of illegal advertising that you may not have realized were violations of the Fair Housing Act.

A maintenance man tells a passer-by that “only real Americans” lived in the apartment complex where he worked.

A rental office is decorated with many large pictures of the residents participating in the community’s facilities and amenities such as exercising in the weight room, swimming, and playing volley ball and tennis. However, all of the pictures are of white, young, “yuppies;” none of the pictures shows children, or persons of differing races or nationalities.

As you can see it does not take much for a statement to be taken out of context or representation to be misinterpreted.

Policies and Procedures

Condominiums, apartment complexes and mobile home parks that have written rules and regulations have always been fertile breeding grounds for Fair Housing advertising violations. (How many condominium documents still prohibit anyone under 16 years of age from living there, although that kind of “statement” has been illegal for many years?)

The lesson here? Wipe the dust off of your policies and procedures and make sure they are up to date with current Fair Housing advertising regulations.

Phrases and Words To Avoid

The law says you can’t use “words, phrases, photographs, illustrations, symbols or forms of any kind” which tend to give the impression that your property is available (or not available) only to certain types of people. Believe it or not, it is still fairly common to see a “no children, no pets” ad. “No pets” is okay; “no children” is not. It is also illegal to advertise for a “Christian roommate,” or to indicate any other type of religious preference.



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Fair Housing Advertising – Guidelines To Compliance Continued

HUD provides Fair Housing advertising guidelines as to what is acceptable in Fair Housing advertising. While advertisements cannot state a preference or limitation based on race or color, statements such as “master bedroom” and “desirable neighborhood” are not illegal. And while religious discrimination is illegal, using words like “kosher meals served on the premises,” or including phrases such as “Merry Christmas” or “Happy Easter” in an ad is not discriminatory either.



There are even words that are restricted when it comes to people with disabilities. Obviously statements such as “no wheelchairs” are illegal. However, using phrases such as “great view,” “walk-in closets” or “walk to bus stop” is acceptable. There are certain “buzz” words you should still avoid. These are words or phrases that have been associated with discriminatory practices in the past. They include such words as “restricted,” “exclusive,” “limited,” and so forth.

The “good news” is that HUD will consider your use of certain kinds of advertising words and slogans to be evidence of your compliance with the Fair Housing Act. For example, using HUD’s “Equal Housing Opportunity” or fair housing logo in your ads will be viewed with approval. Displaying a fair housing poster in your office is another way to advertise in a positive manner. Incidentally, to put one more rumor to rest – use of the logo is not required.

Another way to produce positive advertisements is to vary the use of human models in your ads so that both majority and minority groups in your community, both sexes, persons with disabilities and, when appropriate, children of all ages are represented.

Fair Housing Advertising – The Bottom Line

Fair housing advertising need not be a scenario that causes you unnecessary anxiety. Education and Fair Housing training are an absolute must. Reinforce this training with regular reminders via your weekly calls, company newsletter or something similar. The more interactions that your team members have with residents and prospective residents, the more you want to provide them with positive reminders. You can easily make Fair Housing so scary that it can turn your team into cold robots. Allow them to be human and friendly but with clear and concise direction.

Marcia Fudge’s HUD-Secretary Bid Moves Forward *By Daily Dose*

The Senate Committee on Banking, Housing, and Urban Affairs voted 17-7 in favor of Marcia Fudge's nomination as Secretary of Housing and Urban Development (HUD).

The committee held Fudge's confirmation hearing last month, on January 28, 2021. Committee Chair Senator Sherrod Brown (D-OH) said Fudge will help lead the department to “a brighter future.” From his new elevated post, he used the hearing as an opportunity to say the Committee on Banking, Housing, and Urban Affairs has too long been almost solely about banking and too little about housing. “The days of this committee doing the bidding of Wall Street are over,” he said.

Marcia Fudge's HUD-Secretary Bid Moves Forward *By Daily Dose*

Fudge, at her nomination hearing, said, "We need to make the dream of homeownership and the security and wealth creation that comes with it a reality for more Americans. That will require us to end discriminatory practices in the housing market."

Following Fudge's hearing last week housing advocates called on the Senate to swiftly confirm. Industry insiders generally seem optimistic about Fudge's ability and determination to make changes that will benefit segments of the population struggling with housing. "After [the] nomination hearing, it is clear that she is the ideal candidate to serve as HUD Secretary at this moment in history, Lisa Rice, President and CEO of the National Fair Housing Alliance (NFHA) said. "With over four million instances of housing discrimination each year and increases in housing-related hate crimes over the past several years, we are eager to work with the Biden-Harris Administration and Secretary-designate Fudge to make fair housing a reality for everyone and advance racial equity."



For the Up for Growth foundation, Mike Kingsella noted following the hearing that Fudge is "the person who will have the most impact on President Biden's housing plan."

Up for Growth applauded Fudge's denunciation, during her hearing, of NIMBY-ism (she said, "We have to get rid of this notion of Not in My Backyard").

Senator Brian Schatz, the Senate Democratic lead on the Yes In My Backyard (YIMBY) Act, during his questioning, drew a clear line from the redlining practices of the early 20th Century to the widespread use of exclusionary zoning laws today. Fudge said educating Americans on the negative impact of exclusionary zoning could be a role for HUD.

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