

# Chicago Daily Law Bulletin®

Volume 163, No. 69

Serving Chicago's legal community for 162 years

## Home sharing: A new frontier for housing discrimination

**A**pril is Fair Housing Month, making it a particularly appropriate time to consider new issues relating to housing discrimination.

An emerging issue in housing discrimination is the applicability of the fair housing laws to home sharing, which has become increasingly popular since 2008 when Airbnb entered the market.

The concept has changed the way we obtain short-term housing, expanded housing choices and provided new income opportunities. This is good for fair housing and good for communities.

However, last year, there were several reported instances of Airbnb hosts rejecting African-American guests. One rejected guest filed a lawsuit alleging racial discrimination under the federal Fair Housing Act. *Gregory Seldon vs Airbnb Inc.*, 2016 WL 6476934 (D.D.C. Nov. 1, 2016).

Without ruling on the merits, the court in *Seldon* found the arbitration clause in the terms of service contract barred the suit. Airbnb has since made a number of policy changes and directs hosts to comply with all federal and local housing discrimination laws.

But, does the FHA apply to these transactions? Do the public accommodation laws, which prohibit discrimination in hotels/motels, apply as well? Are other discrimination laws applicable? What difference does it make? What should hosts do to limit liability? What advice should their lawyers provide?

While the FHA is typically understood to cover traditional home and apartment rentals, it has been applied to vacation homes, time shares, migrant hous-

ing, dormitories and other temporary lodging.

Other potentially applicable federal laws include Title II of the Civil Rights of 1964, which prohibits discrimination in places of public accommodation such as hotels and motels; the Americans with Disabilities Act, which requires certain accommodations for persons with disabilities; and Sections 1981 and 1982 of the Civil Rights Act of 1866, which prohibit race discrimination in making and enforcing contracts.

Additionally, most states and many local governments have their own anti-discrimination laws and they often provide more protections than the federal laws. Illinois' Condominium Property Act also contains anti-discrimination provisions relating to persons with disabilities.

Which laws are applicable is significant because it impacts liability, damages and enforcement. For example, there are a few exemptions to the FHA that may apply to some home-sharing

*For example, there are a few exemptions to the FHA that may apply to some home-sharing transactions. But, these exemptions may not exist in state and local laws or may be more limited.*

transactions. But, these exemptions may not exist in state and local laws or may be more limited.

An example is the exemption under the FHA relating to owner occupied small buildings. Known as the "Mrs. Murphy Exemption," this exception applies to buildings with four or fewer units provided the owner is in residence. However, the city of Chicago Fair Housing Ordinance does not con-



**ALLISON  
K. BETHEL**

*Allison K. Bethel is the director of the Fair Housing Legal Clinic at The John Marshall Law School. She also teaches housing discrimination law. As the former director of civil rights for the state of Florida, she has extensive experience in civil rights from both a private and public perspective, particularly in fair housing.*

tain a Mrs. Murphy type exemption, the Cook County ordinance has a more limited version and the Illinois Human Rights Act tracks the federal law.

The exemption for shared rooms also varies. The Chicago and Cook County ordinances limit it to sex, but the FHA may be broader, at least in the online market. See *Fair*

Some of these claims may be actionable in court or the applicable administrative venue notwithstanding the *Seldon* decision. The government and/or a private fair housing organization may not be bound by the terms of service contract if they were not parties to it.

Also, government entities are authorized to file actions on their own initiative even without a formal complaint. Thus, under the FHA, a discriminating host could find herself defending a court action and an arbitration proceeding.

While arbitration is less expensive and contentious than a trip to court, it is still stressful and can result in monetary sanctions and other penalties. Remedies available under the fair housing laws include tangible and intangible damages, punitive damages, civil penalties, injunctive relief, attorney's fees and costs.

Relief under other laws is more limited, but there is nonetheless significant exposure for defendants.

While the law is still evolving, hosts, online providers and their counsel would be well advised to familiarize themselves with the applicable laws prior to rejecting guests or setting overly restrictive policies adversely impacting protected classes.

They should also carefully consider the language used in listings to avoid violating the advertising prohibitions.

Certainly the best course of action is to offer lodging without regard to protected characteristics and to make reasonable accommodations for persons with disabilities.