



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

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Acting County Attorney

MEMORANDUM

TO: James L. Stowe, Executive Director
Office of Human Rights

FROM: Edward B. Lattner *EBL*
Chief, Division of Human Resources & Appeals

DATE: March 24, 2010

RE: **Housing Discrimination Law and the Zoning Ordinance**

Statutes enacted by the same legislative body are to be interpreted to avoid conflict, but where a conflict exists, the more specific statute is usually viewed as an exception to the more general statute. A County landlord has refused to rent an apartment to a man, his fiancé, and her daughter because they constitute two families under the County's zoning ordinance and that ordinance prohibits more than one family from living in the same dwelling unit. The County's housing discrimination law prohibits discrimination based upon marital status, but does not require a person to violate laws restricting the occupancy of a dwelling unit to a maximum number of people. The housing discrimination law should not be read to require a landlord to rent an apartment in contravention of the County zoning ordinance. Accordingly, the Office of Human Rights should dismiss the Complaint because the landlord is complying with the zoning ordinance.

The Housing Discrimination Complaint

A person¹ has filed a Complaint against a County landlord alleging that the landlord would not rent him an apartment for himself, his fiancé, and his fiancé's daughter because of his marital status. But the landlord argues that it could not rent the apartment because doing so would violate the applicable zoning laws. According to the Complainant, the Respondent landlord provided him with a letter

where the basis for the denial of my application was explained. The Respondent cited Article 59-A of the Montgomery County Code Zoning Ordinance which

¹ The Complainant and Respondent will not be identified because their names are confidential unless and until the Executive Director certifies the Complaint to the Commission. § 27-7(e)(2).

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defines a “dwelling unit” and gives a definition of what the Code considers a “family” (an individual, 2 or more person related by blood or marriage or a group of not more than 5 persons not related by blood or marriage, living together as a single housekeeping group.) I was informed that each apartment . . . is a “dwelling unit” and can be occupied by only one “family,” [and] therefore could not be rented to me and my future wife.

The landlord has written to the Office of Human Rights and other County officials suggesting that the County amend the zoning ordinance so as not to be in conflict with the housing discrimination law.

The Housing Discrimination Law and the Zoning Ordinance

Section 27-12 of the County Code generally prohibits housing discrimination. Subsection (a)(1) provides that a person “must not, because of . . . marital status . . . refuse, or refuse to negotiate, to sell, broker, appraise, lease, sublease, rent, assign, or otherwise transfer the title, leasehold, or other interest in any housing.” Section 27-6 defines “housing” as “a dwelling or any vacant land intended for the construction or location of a dwelling” and defines a “dwelling” as “any building, facility or structure, or portion thereof, that is designed, intended or arranged for occupancy as a home, residence or sleeping place of one or more individuals. Dwelling includes that portion of a dwelling used for a home occupation.”

The zoning ordinance, with some exceptions, provides that only one family can live in a dwelling unit. Section 59-A-2.1 defines a “dwelling unit” as “a building or portion thereof providing complete living facilities for not more than one family, including, at a minimum, facilities for cooking, sanitation and sleeping” and a “family” as “an individual or 2 or more persons related by blood or marriage, or a group of not more than 5 persons, excluding servants, not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.” (Emphasis added.)

In this case, the Complainant, his fiancé, and her daughter are two separate families under the zoning ordinance. The fiancé and her daughter are one “family” under the zoning ordinance—they are “2 or more persons related by blood.” And because the Complainant is not married to his fiancé, he is also a family—he is “an individual.” The Respondent landlord argues that the zoning ordinance precludes it from leasing them an apartment. The Complainant argues that this constitutes marital discrimination because, if he and his fiancé were married, the Landlord could rent them a dwelling unit.

Analysis

A canon of statutory interpretation requires that statutes enacted by the same legislative

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body should be harmonized as much as possible to avoid potential conflict. *Harvey v. Marshall*, 389 Md. 243, 268, 884 A.2d 1171, 1186 (2005); *Smack v. Department of Health and Mental Hygiene*, 378 Md. 298, 306, 835 A.2d 1175, 1179 (2003).

The housing discrimination law specifically provides that it must not be read to require a landlord to rent an apartment in contravention of County zoning or other laws. Section 27-14(c)(1) states that the housing discrimination law does not require a person "to violate or contribute to the violation of laws restricting the occupancy of a dwelling unit to a maximum number of people." In my opinion, this represents a recognition that there may be other laws, such as housing or zoning laws, that govern a particular housing situation and that the housing discrimination law does not require a person to violate those other laws.² Thus, there is no conflict between the housing discrimination law and the zoning ordinance because the former is not to be read so as to require a person to violate the latter.

Even if these two laws are in conflict, another canon of statutory construction provides that the more specific statute is to be viewed as an exception to the more general statute. *Harvey v. Marshall*, 389 Md. 243, 270, 884 A.2d 1171, 1187 (2005); *Smack v. Department of Health and Mental Hygiene*, 378 Md. 298, 306, 835 A.2d 1175, 1179 (2003); *State v. Kennedy*, 320 Md. 749, 755, 580 A.2d 193, 196 (1990). In this case, the more general law, the housing discrimination law, would give way to the specific "exceptions" provided in the zoning ordinance.

Conclusion

The Office of Human Rights should dismiss the Complaint because the Respondent landlord is complying with the zoning ordinance. If you have any questions, please do not hesitate to contact me.

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cc: Marc P. Hansen, Acting County Attorney ✓

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² Elsewhere, the housing discrimination law states that its prohibitions against discriminating on account of age, the presence of children, or family responsibilities do not apply to any housing for the elderly that is required by federal, state, **county, or municipal law** to restrict occupancy to individuals of a minimum age and other members of their household over 18 years old. § 27-14(b)(1) (emphasis added).