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FAIR HOUSING LAWS MAY IMPACT ASSOCIATIONS IN NEW, UNEXPECTED WAYS

The Federal Fair Housing Act (FHA) makes it unlawful for associations to discriminate against any person concerning the sale or rental of a dwelling or in the provisions of services or facilities because of race, color, religion, sex, handicap, familial status, or national origin (these are sometimes called "protected characteristics"). 2013 FHA regulations as well as the U.S. Supreme Court's decision this past June in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507 (2015) have ushered in changes to the law which make it easier for persons having these protected characteristics to bring legal claims for discrimination. The U.S. Supreme Court decided that the FHA's text "looks to results" and can be violated by seemingly neutral practices that have an unjustified, discriminatory impact.

It is important for associations to understand that their rules, practices, and policies can become the basis for discrimination claims, and, to the extent that there had been doubt before, it is now clear that a discrimination claimant is not required to prove discriminatory intent. Accordingly, rules, practices, and policies regarding sales and leasing, use of facilities, vehicles, household size, parental supervision, parking, and perhaps even pets need to be carefully reviewed to make sure that their enforcement will not result in an unlawfully discriminatory impact.

Once a discriminatory impact claim is made, it is evaluated based upon a burden-shifting framework developed by the Federal Department of Housing and Urban Development (HUD). Pursuant to this framework, the initial burden is on the charging party to challenge a particular practice and to show that it has a discriminatory impact. Thereafter, the burden shifts to the respondent or defendant who must then show that the challenged practice is necessary to achieve one or more legitimate, nondiscriminatory interests. If this is done, then the burden shifts back to the charging party who must show that the nondiscriminatory interests can be achieved by other, less discriminatory practices. As such, if an association is found to have a rule, practice, or policy that has a discriminatory impact, the association may still prevail if its rule, practice, or policy is necessary to further a legitimate objective which cannot be achieved through less discriminatory means.

This is a rapidly evolving area of FHA law, and we are awaiting new case decisions to give us guidance as to how certain seemingly neutral association practices will fare when they are challenged by allegations claiming discriminatory impact. Associations are encouraged to consult with their attorneys concerning possible exposure to discrimination claims based upon their rules, practices, and policies. While it is not easy to predict when, where, and in what form FHA discrimination challenges may arise, we are nonetheless

confident predicting that the recent changes in the law will result in an increase in discrimination complaint filings against associations.

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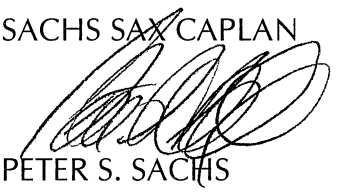

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