



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

MAY 19 2006

OFFICE OF GENERAL COUNSEL

FACSIMILE TRANSMISSION
919-787-1894

Ms. Jenny C. Petri
Vice President
Heritage Court Associates
Frederick Investment Corp., General Partner
4700 Homewood Court, Suite 220
Raleigh, N.C. 27609

Dear Ms. Petri:

This is in response to some questions that you raised in a letter, dated May 10, 2006, to the Representative Bob Inglis. I understand that you became concerned about how to comply with the Fair Housing Act after reading materials published by a private consulting and law firm that is not affiliated with or funded by the Department of Housing and Urban Development. We have had three subsequent telephone conversations in which you provided additional information about the property and the services offered at the Heritage Court Apartments in Spartanburg, South Carolina, and about monthly religious services at another property owned by the Frederick Investment Corp.

I understand that both properties are privately owned, project-based section 8 properties. You stated that the properties were built with insured loans from HUD and are operating under HAP contracts. The residents are predominantly elderly at both sites. My division has reviewed HUD's records and has not identified any pending Fair Housing Act complaints against Heritage Court Apartments in Spartanburg, S.C. or the Frederick Investment Corp.

The Fair Housing Act

In part, section 804 of the Fair Housing Act makes it unlawful to make housing unavailable to any person or discriminate in the terms, conditions, privileges, services or facilities of a rental because of religion. 42 U.S.C. §§ 3604(a) and (b). Additionally, in part, section 804 of the Fair Housing Act makes it unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to a rental that indicates any preference, limitation, or discrimination based on religion. 42 U.S.C. § 3604(c).

The Department of Housing and Urban Development's regulations prohibit housing providers from limiting the use of facilities associated with a dwelling because of the religion of the tenant. 24 C.F.R. § 100.65(b)(4). The Department of Justice has taken the position that if a housing

provider makes its facilities available for residents to use for secular activities, it must make its facilities available for residents to use for religious activities.¹

The Second Circuit found that unlike Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e(j) and 2000e-2, the Fair Housing Act does not contain provisions that require a housing provider to reasonably accommodate an applicant's religion. *Hack v. President and Fellows of Yale College*, 237 F.3d 81, 88, *cert. denied*, 534 U.S. 888 (2001). Yale College required all unmarried freshman and sophomores to reside in dormitories that were all co-educational. In *Hack*, the plaintiffs were devout Orthodox Jews whose religious convictions prevented them from residing in co-educational dormitories and sought an exemption from Yale's housing requirement. The plaintiffs argued that Yale's housing requirement made the housing unavailable to them because of their religion and discriminated against them in the terms, conditions, or privileges of the rental of a dwelling or the provision of services or facilities in connection with that rental because of their religion. The Second Circuit rejected this argument and found that because the plaintiffs sought an exclusion from housing and not inclusion, they did not state a Fair Housing Act claim. *Id.* at 90.

Bible Study and Religious Concerts in the Community Room

At the Heritage Court Apartments, the residents initiated a bible study that regularly meets on Monday nights in the community room. The project management publicizes the bible study in its newsletter and its calendar of events along with the monthly bingo game; health-related programs sponsored by the American Red Cross and others; movie night; game night; and aerobics.

At the Heritage Court Apartments, most of the ideas for activities come from the residents. Some ideas for activities may come from groups in the community such as children's choirs seeking venues in which to perform. Given the age and health of the residents, the staff generally sets up the events. The staff has scheduled various vocal groups, such as jazz singers, gospel groups, or children choirs to perform for the residents. One famous religious singer, who has a relative who lives at the property, performs free of charge once or twice a year.

As long as resident participation in the religious programs is strictly voluntary and the staff entertains and schedules requests from residents without regard to their religions, the bible study and religious concerts are permissible under the Fair Housing Act. If a housing provider opens access to community facilities to residents of one religion, the housing provider must provide that access on a non-discriminatory basis to residents of other religions.

The religious activities, along with the other secular activities, may be publicized in the community newsletter and calendar of events. We recommend that the newsletter and calendar include an affirmative statement that the housing provider does not discriminate on the basis of religion (for example, "[t]he Heritage Court does not discriminate on the bases of race, color, religion, sex, handicap, familial status, or national origin").

¹ This position is articulated in a Department of Justice pamphlet available at <http://www.usdoj.gov/crt/religdisc/religionpamp.htm>.

Display of the Nativity in the Common Areas during Christmas

At the Heritage Court, the residents' association owns a nativity scene that it would like to display in the foyer or the community room during the Christmas season. If a housing provider permits residents to have seasonal displays without regard to their religion origins, then these seasonal displays by residents will not violate the Fair Housing Act. Seasonal displays may include, but are not limited to, door decorations for Halloween, Thanksgiving, Hanukah and Christmas; the display of Christmas trees, menorahs, or a nativity scene in the foyer or community room; and the disbursement of Easter eggs throughout a property.

Again, as a cautionary note, we recommend that a housing provider notify in-person applicants for housing that the housing provider does not discriminate on the basis of religion (and other bases protected by the Fair Housing Act) so that the applicants will not be chilled from applying for housing by a particular seasonal religious display by the residents.

Religious Services/Ceremonies in the Dining Room

The Heritage Court does not have regularly scheduled religious services. However, there is another elderly property affiliated with your company where a church comes on the third Tuesday of every month to hold a religious service in the dining hall. The church has been providing these services for years and the activity predates the current manager who does not have knowledge of how it started.

The dining room can be closed off from the rest of the property. Given the health of many members of the predominantly elderly population, many residents are not able to attend a religious service off-site. The dining room is also available for residents to hold birthday parties and family reunions, although this practice is rare. The residents have bingo games and covered dish events in the dining room. Meals-on-Wheels distributes hot meals on Mondays through Fridays and a church comes in once a month to distribute bags of groceries to the residents.

The dining room is also available for rental by non-residents. It is rented for weddings, receptions, rehearsal dinners, school banquets, and tea parties for seniors. The church that provides the monthly religious services does not pay a rental.

As long as resident participation in the religious service is strictly voluntary and the housing provider provides equal access to other religious groups to hold services for residents, the monthly religious service will not violate the Fair Housing Act.

Because the foregoing matters were raised within the context of the Fair Housing Act, these responses above fall within that framework. In addition, for adherence to the principles of the First Amendment and section 8 program rules, HUD's section 8 program counsel advises that the general HUD policy is that community space may be made available for purposes of interest, including religious purposes, to residents, so long as the space is made available to all residents in the same manner.

Conclusion

The Fair Housing Act does not prohibit religious expression; it requires that applicants and tenants for housing be treated equally without regard to their particular religion. The Heritage Court Apartments and the other property owned by the Frederick Investment Corp. may allow religious activities in the community areas of these properties. We recommend that the two communities clearly communicate that participation in the religious activities in the common areas is strictly voluntary and that the communities do not discriminate on the basis of religion.

I hope that this information is useful to you. Thank you for your interest in the Fair Housing Act.

Sincerely,

A handwritten signature in cursive script that reads "Linda M. Cruciani". The signature is written in black ink on a white background. There is a small yellow rectangular mark or stamp over the middle of the signature.

Linda M. Cruciani
Assistant General Counsel for Fair Housing
Enforcement

cc: The Honorable Bob Inglis