



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

January 9, 2008

Ms. Bailey deLongh
Manager
King County Office of Civil Rights
400 Yesler Way, Room 260
Seattle, WA 98104-2628

Dear Ms. deLongh:

As you know, following review of recent amendments to the King County fair housing ordinance, officials of the U.S. Department of Housing and Urban Development (the Department) expressed concerns related to the ordinance's substantial equivalence to the federal Fair Housing Act (the FHA). This letter sets forth the course of action necessary to ensure King County's continued substantial equivalence and participation in the Fair Housing Assistance Program (FHAP).

Background

On June 20, 2006, King County Office of Civil Rights (KCOCR) submitted amendments to its civil rights ordinance to the Department's Office of Fair Housing and Equal Opportunity (FHEO) for review and certification of substantial equivalence with the FHA. The Department's Regional Counsel and Office of General Counsel reviewed the ordinance. In a memorandum dated September 17, 2006, the Department's Office of General Counsel (OGC) identified provisions in the King County ordinance that raised substantial equivalence concerns. FHEO provided a redacted version of that memorandum to KCOCR.

Myron Newry, Acting Director of the FHAP Division, and Deputy Assistant General Counsel Joseph Pelletier had subsequent discussions with King County counsel and you regarding issues identified in the memorandum. Ultimately, the FHEO regional office was directed not to pay KCOCR under its 2007 Cooperative Agreement and did not execute a new Cooperative Agreement with KCOCR. In addition, the FHEO regional office reactivated existing complaints being processed by KCOCR, and stopped referring newly filed complaints with KCOCR.

Course of Action for Continued FHAP Participation

My understanding is that KCOCR fully processed certain dual-filed complaints during FY 2007 for which the Department has not reimbursed KCOCR. FHEO headquarters has advised the FHEO regional office to review and, as appropriate, reimburse KCOCR for such cases in accordance with the 2007 FHAP payment guidance.

Additionally, FHEO has determined that it will resume referring to KCOCR and accepting for dual-filing from KCOCR certain new complaints. However, the continued referral and dual-filing of cases is conditioned on KCOCR amending certain provisions of its fair housing law within 180 days of the date of this letter. To maintain substantial equivalence certification and FHAP participation, KCOCR must amend two provisions.

1. **Section 53(B).** This section broadens the FHA’s 42 U.S.C. §3603(b)(2) exemption. Specifically, as written, §53(B) exempts a single-family or duplex dwelling unit when the owner or person otherwise entitled to possession maintains the unit as his/her permanent residence. In contrast, 42 U.S.C. §3603(b)(2) exempts a dwelling only when the owner maintains or occupies it as his/her residence. In order to limit the §53(B) exemption in a manner consistent with the FHA, KCOCR should eliminate “*or person entitled to possession of the dwelling unit*” from §53(B).
2. **Section 42(E)(1).** This section allows a landlord to condition permission for a modification to the interior or exterior of a property on the tenant agreeing to restore the property to its original condition. The FHA, on the other hand, provides that a landlord may condition permission for a reasonable modification on the restoration of the interior of the unit (but not on restoration of the exterior of the unit). Section 42(E)(1) is not substantially equivalent to the FHA, and should be amended accordingly.

Please note that until KCOCR makes these changes, FHEO will not refer or accept for dual-filing KCOCR cases that involve complaints of housing discrimination against respondents who may claim an exemption of a non-owner occupied single family or duplex property under § 53(B) and cases that involve exterior modifications for individuals with disabilities. In addition, we recognize that FHEO’s Memorandum of Understanding (MOU) with KCOCR expired on July 12, 2005. When the necessary changes to KCOCR’s fair housing law are made, FHEO will begin the process of executing a new MOU.¹

¹ While not critical to continued substantial equivalence, FHEO also recommends that KCOCR amend Section 42(D)(1) and (3) of its ordinance. The FHA makes it unlawful to impose discriminatory terms and conditions against any person because of a disability of “that person” or “any person associated with that person”. See, 42 U.S.C. §3604(f)(2)(A),(C). KCOCR’s ordinance, as amended, applies this prohibition to any “buyer or renter” or “any person associated with that buyer or renter.” This difference has the potential to narrow the protections for persons with disabilities, as some federal courts have held that “buyer or renter” (the term used in 42 U.S.C. §3604(f)(1)) means bona fide buyer or renter and therefore may not include testers and fair housing organizations. While we recognize that the King County ordinance has never been interpreted in this way, as a precautionary measure FHEO encourages KCOCR to amend Section 42(D)(1) and (3) accordingly.

Within 180 days, please send enacted amendments that KCOCR makes to its fair housing law in accordance with this letter to:

Kenneth J. Carroll
Director, Fair Housing Assistance Program Division
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 5222
Washington, DC 20410

We appreciate KCOCR's commitment to enforcing its fair housing ordinance and hope for a continuing relationship with KCOCR. If you have any questions, please contact Mr. Carroll at (202) 402-7044.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn M. Grosso", written in a cursive style.

Lynn M. Grosso
Director
Office of Enforcement

cc: Carl Brown, FHEO Region X Acting Director