

# Fair Housing Information Sheet # 3

## Neighbors Buying Property to Prevent the Establishment of a Group Home

Imagine the following scenario: A house in a residential neighborhood is for sale. A provider of residential services to persons with mental retardation believes that the house would be a great location for a group home for three women and submits a bid to purchase the house. Neighbors of the seller learn of the provider's interest in the home and meet to develop strategies for preventing the women from moving into the neighborhood. Eventually, the neighbors conclude that the only way to prevent the provider from purchasing the home is to submit a higher bid. The neighbors realize that none of them can afford to buy the home alone, so they pool their resources, give the money collected to one of the neighbors, and that person offers the seller \$5,000 more for the home than does the provider. The seller sells the home to the neighbor acting on behalf of the group. Do the actions of the seller or of the neighbors who purchased the home violate the Fair Housing Act?

The FHA makes it unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of

- (A) that buyer or renter;
- (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (C) any person associated with that buyer or renter.

42 U.S.C. § 3604(f)(1).

The FHA contains an exemption for single-family houses sold or rented by an owner, provided that the owner does not use the services of a real estate agent or broker, own more than three such single-family houses, and, if the owner is not a resident, has not completed more than one sale within a 24-month period. 42 U.S.C. § 3603(b). Thus, assuming the listed conditions are met, it is likely that the owner cannot be found liable under the § 3604(f)(1) of the FHA.

But what of the neighbors, who banded together to buy the home in order to prevent persons with disabilities from living there? Courts that have faced this and similar scenarios have answered the question in different ways. In *Michigan Protection and Advocacy Service, Inc. v. Babin*, 18 F.3d 337, 344 (6<sup>th</sup> Cir. 1994), the Sixth Circuit called action similar to that described above as "normal economic competition."

The *Babin* court analyzed the liability of the neighbors who contributed extra funds to make the purchase possible under § 3604(f)(1), specifically the "otherwise make unavailable" provision. The court explained that, in normal economic competition, every

purchase of a unique commodity affects availability to others. Thus, the court concluded, finding the neighbors liable would cause the statute's reach to be overbroad, and it affirmed the summary judgment entered by the court below.

A claim also was asserted against the seller and the neighbors pursuant to 42 U.S.C. § 3617, which makes illegal interfering with the exercise and enjoyment of the right to fair housing. The Sixth Circuit also rejected this argument, finding that the seller was motivated purely by economic considerations and that, while the purchase of the house disrupted the provider's negotiations, it did not prevent the provider from making an even higher bid on the property. *Babin*, then, stands for the proposition that actions related to the purchase of property — even when taken for the sole reason of preventing the use of that property by persons protected under the FHA — is "normal economic competition" and therefore is not a violation of the FHA.

Not every court that has considered the issue since the *Babin* decision has agreed with that proposition, however. In *United States v. Hughes*, 849 F. Supp. 685 (D. Neb. 1994), the court denied a motion to dismiss and found the *Babin* decision "plainly wrong" in suggesting that there is an economic competition exception to the FHA. In *Hughes*, the court determined that a lender, who agreed to finance the purchase of property knowing that the intention of the buyer was to prevent the establishment of a group home, could be liable under 42 U.S.C. § 3617. The court held that a bank violates the FHA by intentionally aiding buyers in keeping a home from other purchasers because those other purchasers are or are associated with persons with mental illness:

[T]rue 'economic competition' does not exist when the purpose of the competition is to deny a protected person access to housing, as opposed to securing housing for oneself or for investment purposes. In fact, it is irrational to spend money for the purpose of prohibiting someone else from living next to you, if the reason you do not wish to live next to that person is because he or she has a handicap protected by the Act.-- *Hughes* at 686 (emphasis in original).

A third opinion on this issue adopts the *Hughes* analysis. In *Step-by-Step v. Lazarus*, No. CV-97-1006 (M.D. Pa. Oct. 17, 1997), the court, in denying a motion to dismiss, held that the FHA "does apply to a buyer who purchases a property with the intention of preventing the purchase by an entity planning to use the property as a Group Home for members protected by the Act." *Id.*, slip op. at 1. In reaching this conclusion, the court agreed with the *Hughes* reasoning and stated that normal economic considerations do not exist where the underlying intent of the purchaser is to discriminate. The court found support for this proposition in 24 C.F.R. § 103.20(a), which allows the filing of a complaint against "any person" engaged in a discriminatory housing practice, and in 24 C.F.R. § 100.50(b)(3), which makes it unlawful to engage in "any conduct" that denies or makes housing unavailable to persons with disabilities.

As these cases demonstrate, determining the motives of a buyer, seller, or neighbors and whether such motives are legally relevant is a complex issue. On the one hand, Congress has clearly mandated an end to discrimination in housing, and a narrow interpretation of

the FHA, such as in *Babin*, allows persons with discriminatory intent to prevent individuals with disabilities from moving into a community. On the other hand, examining the private motives to all the various parties to a real estate transaction may be both unwieldy and burdensome.

Clearly, it is helpful to fair housing advocates that the reasoning in *Babin* — even though articulated by an appellate court — was not convincing to the next two courts to consider very similar situations. While it remains too soon to make any definitive pronouncements on the merits of the issues, it is apparent, given the holdings in *Hughes* and *Step-by-Step*, that the actions of neighbors who buy property to prevent the establishment of group homes remain subject to viable challenge under the FHA.

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