

Background Paper 81-1

DISCRIMINATION AGAINST FAMILIES WITH CHILDREN
IN RENTAL HOUSING

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WITH CHILDREN IN RENTAL HOUSING

I

INTRODUCTION

Question: Do you like children?

Answer: If they're properly cooked!

- W. C. Fields in the 1940 movie,
My Little Chickadee.

Much of the W. C. Fields humor was developed by his portrayal of himself as a composite of all human faults. It is not surprising that his characters were invariable child haters at a time when motherhood was the epitome of cherished American institutions.

Times have changed. Today, a family with children seeking rental housing and seeing ads similar to the following might be led to believe that the whole world, or at least those controlling the housing rental market, have become disciples of the W. C. Fields philosophy:

* * * Large 1 and 2 bedroom apartments.
Near Park Lane Mall and bus lines.
\$275 and up. \$150 Security. Adults only,
no pets * * *

- Taken from the December
9, 1980 Nevada State
Journal

In recent years, families with children - especially those with many children - have been finding it increasingly difficult to secure housing. There are several reasons.

First. The price of owning a home has risen dramatically and gone beyond the reach of many families. These families have been forced to turn to the rental market. But, finding suitable rental housing can be very difficult.

Second. The concept of the family, for many, has changed.

This has affected the market for rental housing which has also changed to meet the needs of these "new" families and their lifestyles. More and more young people are postponing marriage or are planning not to get married. Married couples are having fewer children and waiting longer to begin their families. Many married women have full time careers and plan not to have children.

For many childless families, the presence of children in the living area is an undesired distraction and inconvenience. Many young couples and single people prefer to live among others with similar lifestyles. A rapidly growing number of retirement age persons also prefer to avoid the noise and disruptions normally associated with children living nearby. This desire of a growing number of adults, at both ends of the age spectrum, to live apart from children is reflected in the skyrocketing number of apartments and to a lesser degree condominiums, mobile home parks and housing developments designated and built for "singles" and "senior citizens".

Third. Economic decisions by landlords and investors are affecting the nature and availability of rental housing. Apartment housing complexes which prohibit children are usually composed of 1 or 2 bedroom and studio units -- the units generally providing the greatest return on investment in urban areas. It is said that it costs more, in many instances, to run and maintain an apartment complex where children are present. For example, it is generally recognized that a landlord is held legally to a higher standard of care in maintaining his premises when he knows children will be present. He could, otherwise, be liable for injury occurring to children. It is also recognized that childless apartment complexes have lower insurance payments and refurbishing expenses. There is less need in adult only apartments for landlords to provide extra safety equipment and services, such as gates and fences and the services of a lifeguard if the complex has a pool.

Fourth. Certain local governments have attempted to limit the number of school aged or potential school aged children in their communities in order to contain costs associated with educational and other child related services by controlling housing unit size and encouraging or legislating adult only projects.

Fifth. The growing use of restrictive covenants and owners agreements has affected the availability of rental housing for families with children. The greater capital investment and the small potential market among childless families,* however, places a greater risk on the developer if he decides to restrict the presence of children.**

For this reason almost all such developments are retirement communities and a majority are condominium operations. The continued demand for single family homes among families with children appear to indicate that economic considerations will tend to preclude widespread discrimination against children in this segment of the housing market for the foreseeable future.

II

THE PROBLEM

National Data

Discrimination against families with children is beginning to receive national attention as shown on the recently published reports listed in the suggested reading section of this background paper. In one report,*** Robert W. Marans and Mary Ellen Colten state that over one-fourth of the nation's rental units bar children under 18. Marans and Colten found, in their national survey of 1,007 tenants and 629 managers, that one-third of the rental units

*While a landlord, by restricting children, excludes only one-third of his potential market, the subdivision or condominium developer excludes almost half. Annual Housing Survey: 1974, General Housing Characteristics (1976).

**Because a developer usually has no continuing duty to maintain the unit, the insurance and operation factors discussed earlier give him no added incentive to exclude children.

***See Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey prepared for The Office of Policy Development and Research, U.S. Department of Housing and Urban Development, by Robert W. Marans and Mary Ellen Colten in July, 1980.

built since 1970 bar children and that one-half of the national rental supply has restrictive policies that regulate the circumstances under which households with children may rent. Other findings contained in the report are summarized in the appendix of this background paper.

Nevada Data

In November 1980, the Research Division of the Legislative Counsel Bureau requested data from Clark and Washoe Counties concerning the nature and extent of discrimination against families with children in rental housing in those localities. In response to the division's request, staff of the Clark County Manager's office performed a telephone survey of the 259 apartment complexes advertised in the Clark County area Central Telephone Directory. The respondents indicated that: 142 or 54.8 percent of the complexes rented to adults only, 62 complexes or 23.9 percent had family areas or other restrictions for families with minor children (such as not permitting any children under the age of 2), 38 of the complexes, or 14.7 percent had no restrictions against children and there was no data available for 17 of the complexes. It should be noted that the Clark County findings relate to apartment complexes only and do not reflect the total number of apartment units available to families with children in the Clark County area.

Washoe County data about apartment vacancy factors, average rents, and units which accept children, are collected monthly by the community development department of the City of Reno. During November 1979, the department surveyed 13,529 apartment units and found that 6,172 or 45.6 percent accepted families with children. That same month, however, only 276 or 4.47 percent of those units were available for rent. The vacancy factor for all apartments in Washoe County during the month of November was 5.8 percent (3.3 percent in Sparks and 6.6 percent in Reno).

During the 1979-81 legislative interim, several witnesses who appeared before the legislative commission's subcommittee to study the problems of owners and renters of mobile homes expressed concern about discrimination against children in mobile home parks. The opinion was expressed that there is a growing trend away from "family parks" to "adult only parks" and that this is causing a serious shortage of mobile home spaces, especially in Clark County, for

families with young children or young married couples of child rearing age.*

III

LEGISLATION

Nevada

Nevada's statutes appear to be silent on the matter of discrimination against families with minor children in the renting of housing accommodations. Existing statutory provisions relating to the rental of housing seem to address discrimination on account of race, religious creed, color, national origin, ancestry or sex (See NRS 111.237, 118.020, 118.100, 207.300 and 645.635).

The first section of chapter 233 of NRS, which deals with the Nevada equal rights commission, also addresses discrimination on account of age and physical or visual handicap in its declaration of public policy. NRS 233.010 declares it is the public policy of the State of Nevada to:

Protect the welfare, prosperity, health and peace of all the people of the state, and to foster the right of all persons reasonably to seek, obtain and hold employment and housing accommodations, and reasonably to seek and be granted services in places of public accommodation without discrimination, distinction or restriction because of race, religious creed, color, age, sex, physical or visual handicap, national origin or ancestry.

*It is expected that a survey of Nevada's mobile home park landlord and tenants being performed by Clark County Community College at North Las Vegas, Nevada, will provide information about how serious the trend away from family mobile homes parks is becoming. A report discussing this survey is expected to be completed during the early part of the 1981 legislative session.

The Washoe and Clark County district attorneys' offices advise that those localities have no ordinances which prohibit landlords from discriminating against families with children in the renting of housing. Section 27.06.055 of Title 27 of the Clark County Code does, however, speak to discrimination because of age in rental transactions in mobile home parks.

Other States and Local Governments

The first prohibition on housing discrimination against children was passed in 1898 by the State of New Jersey. Now, nine states (Arizona, Connecticut, Delaware, Illinois, Massachusetts, Michigan, Minnesota, New Jersey and New York) and the District of Columbia* have laws prohibiting such discrimination.

Generally, the prohibition in the laws applies only to leased units and extends to families with children and in certain states bars the termination of a lease because of the birth of a child. Arizona and Minnesota prohibit advertising the discrimination against families. Massachusetts and Delaware provide a private remedy for parents who have been victims of discrimination in trying to find rental housing.

Two of the states' statutes were amended in recent years to permit exemptions where adults and elderly persons are involved. In Massachusetts, the statute exempts a project that has "three apartments or less," one of which is occupied by elderly or infirm persons for whom the presence of children would constitute a hardship.

In 1975, Arizona amended its law to permit the refusal to rent or sell to a family with children where it violates a valid covenant against such sale or rental of the unit "in a subdivision which is used, designed, and advertised as an exclusive adult subdivision."

*In an advisory opinion (Memorandum from Louis P. Robins, Principal Deputy Corporation Counsel, District of Columbia to James Baldwin, Office of Human Rights, February 9, 1978) the D. C. Corporation Counsel found that none of the provisions of the law prohibits leasing an apartment or house to adults only.

Minnesota's law contains several exemptions including certain condominiums in which a majority of the units are occupied by the elderly. It also specifies that it should not be construed to defeat the applicability of any local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling unit.

New York's law (see Real Property Law Section 236 and 237) says:

Any person, firm or corporation owning or having in charge any apartment house, tenement house or other building used for dwelling purposes who shall refuse to rent any or part of any such building to any person or family solely on the ground that such person or family has or have a child or children shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty nor more than one hundred dollars for each offense; provided, however, the prohibition against discrimination against children in dwelling houses contained in this section shall not apply to housing units for senior citizens subsidized, insured, or guaranteed by the federal government.

Any person, firm or corporation owning or having in charge any apartment house, tenement house or other building used for dwelling purposes who shall, in any lease of any or part of any such building, have a clause therein providing that during the term thereof the tenants shall remain childless or shall not bear children, shall be guilty of a violation.

Recent legislation introduced in the California legislature (See A.B. 359 of the 1977-78 regular session, A.B. 3000 of the 1977-78 regular session, and A.B. 3409 and S.B. 2024 of the 1979-80 regular session) address unlawful discrimination on account of age or the fact that the prospective tenant has a minor child in the sale or rental of housing. None of these measures has become law.

Several local governments have adopted ordinances prohibiting discrimination against children in rental housing. Communities recently adopting ordinances include Berkeley, Davis, Kansas City, Los Angeles, New Haven, Oakland, Philadelphia, San Francisco, Santa Clara, Santa Monica and Seattle.

Federal Law

It appears that federal law does not prohibit housing discrimination against families with children except in certain federally subsidized apartment complexes. Title VIII of the 1968 Civil Rights Act covers discrimination on the basis of race, color, religion, sex or national origin. Discrimination based on parental status or family composition is not prohibited by Title VIII, nor has any court, according to the leadership conference on civil rights, construed Title VIII to protect this class.

Case Law

The selected readings listed at the end of this report contain several law review articles* dealing with the subject. Legislators wishing interpretation of those articles or of any statute or case dealing with discrimination against families with children should consult the legislative counsel.

*The conclusion of one law review article - (Retirement Communities: The Nature and Enforceability of Residential Segregation by Ages), says, in part:

Several recent cases, including decisions from the New York Court of Appeals and the New Jersey Supreme Court, have sustained the validity of age-restrictive zoning ordinances against attack on statutory and constitutional grounds. Although brought by residents and taxpayers who own property near the area designated in the ordinance as a retirement district, the cases have turned on the personal rights of young persons excluded from (Footnote continues on next page)

IV

CONCLUSION

Balancing the rights and needs of families seeking rental housing against the rights and desires of other segments of the population is a difficult policy matter to be considered. Besides families with children, adults who wish to live in retirement or adult-only housing developments, as well as landlords who wish to avoid the added burdens and costs associated with the presence of children in rental housing, also have constitutional and statutory rights which should be considered.

*(Continuation of footnote from previous page)
occupancy. The cases show that age-restrictive zoning can withstand challenge by or on behalf of young excludees on equal protection and due process grounds. Young-agers do not constitute a suspect class and cannot assert fundamental privacy, association, or travel rights sufficient to invoke the court's strict scrutiny and the suspension of the presumption of legislative validity. As applied to young excludees, age-restrictive zoning provisions have been justified as measures designed to increase the supply of housing for the elderly.***

***As for privately imposed residential age limitations, the threshold validity question is whether constitutional strictures can be applied to bar their enforcement, at least against older excludees. None of the theories of state action seems to support application of the fourteenth amendment to private age restrictions. Thus, unless facts are present giving rise to one of the traditional equitable defenses, it appears that private age restrictions are legally enforceable.

One major practical argument against statutes or ordinances which prohibit discrimination in rental housing against families with children relates to the economic law of supply and demand. It is argued that any statute or ordinance restricting the rights of landlords to rent to whom they want and at the price they want makes rental housing less attractive to investors. Such laws and ordinances, it is said, could slow the growth of rental housing and thereby make it even more difficult for families with children, or any other renters, to find adequate housing.

On the other hand, in these times of concern about the demise of the family, there is increasing recognition that the forces which serve to erode the family structure are far-reaching. One force that has received increasing attention is the changing nature of the housing market and its impact on families. As home ownership becomes less financially possible for young families, and as there are ever increasing numbers of divorced, widowed and elderly persons, and of voluntarily childless couples--all of whom have altered the nature of the demand for housing--the availability of rental housing for those families who do have children has become an issue of concern to policy makers.

SUGGESTED READING*

"Adults Only." Time. (July 3, 1978), 67.

Ashford, Dora and Perla Eston. The Extent and Effects of Discrimination against Children in Rental Housing - A Study of Five California Cities, The Fair Housing Project, (December, 1979).

Barnett, Larry. "Child Exclusion Policies in Housing." Kentucky Law Journal, (Vol. 67, 1978-79), 967-986.

Collins, Alf. "Kids are no longer anathema in Seattle's renting game." Seattle Times. (February 7, 1980).

"Discrimination Against Children." PAS Memo. October 1980.

Doyle, Mary. "Retirement Communities: The Nature and Enforceability of Residential Segregation by Age." Michigan Law Review, (November 1977), 64-107.

Dunaway, Baxter and Timothy J. Blied, "Discrimination Against Children in Rental Housing: A California Perspective." Santa Clara Law Review (Vol. 19, 1979), 21-51.

February 9, 1978 Memorandum from Louis P. Robbins, Principal Deputy Corporation Counsel, D.C. to James W. Baldwin, Director, Office of Human Rights, "Whether Landlords may restrict 'For Adults Only,' the rental or lease of apartments or dwelling places in the District of Columbia." CCO No. 3689.

Greene, Jane G. and Glenda P. Blake. A Study of How Restrictive Rental Practices Affect Families with Children. U. S. Department of Housing and Urban Development, Office of Policy Development and Research, (1980).

"Housing Restrictions Hard on Women Raising Families." Cincinnati Enquirer, (February 24, 1980).

Katz, Sheryl. "Costs, Litigation's Length Deter Suits Over Housing Discrimination." Hartford Courant, (June 20, 1980).

King, Warren, "Families with children still face rental bias despite ordinance." The Seattle Times, (February 24, 1980).

Lee, Felicia. "Tenants With Kids Called Main Victim of Housing Bias." The Cincinnati Enquirer, (February 24, 1980).

Mahrle, Richard K. "Neither Seen Nor Heard: Keeping Children Out of Arizona's Adult Communities Under Arizona Revised Statutes Section 33-1317(B)." Arizona State Law Journal, (Volume 1975, No. 1), 813-840.

"Many Apartment Complexes Exclude Families with Children." The Youngstown Vindicator, (November 2, 1980).

Marans, Robert W., Mary Ellen Colten and others. A Report on Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey. U. S. Department of Housing and Urban Development, Office of Policy Development and Research, (July 1980).

Memorandum for Senator Mathias concerning "'Adults-Only' Housing Practices" from The Leadership Conference on Civil Rights, (1980).

"'No Children Allowed' Has Become a More Frequent Policy in Rental Housing Market." ISR Newsletter, (Autumn, 1980), 7-8.

O'Brien, James M. and Frank J. Fitzgerald. "Apartment for Rent - Children Not Allowed: The Illinois Children in Housing Statute - Its Viability and a Proposal for its Comprehensive Amendment." DePaul Law Review, (Vol 25:64-1975), 64-100.

"Property Rights vs. Personal Rights and the resulting impact on housing opportunities for children." Fair Housing Forum, (October 1978).

Shaw, Dennis H. "Housing Discrimination Against Children: The Legal Status of a Growing Social Problem." Journal of Family Law, (Vol. 16:3 - 1977-78) The University of Louisville School of Law, 559-607.

Shipp, Randy. "Opening apartment doors closed to kids." The Christian Science Monitor, (August 12, 1980), B1.

Travalio, Gregory M. "Suffer the Little Children - But Not in My Neighborhood: A Constitutional View of Age-Restrictive Housing." Ohio State Law Journal, (Vol. 40:2. 1979), 295-339.

* These and other publications pertaining to discrimination against families with children in rental housing are available for review in the research division's Library. Also available are copies of relevant state statutes, local ordinances and court cases.

VI

APPENDIX

The Marans and Colten study* explored the extent to which families feel that they have experienced discrimination or difficulty in finding suitable rental housing because they have children. It also examined: (1) factors associated with different landlord policies; (2) attitudes and preferences of tenants and managers; (3) the extent to which renters without children demand rental housing that excludes or limits children; (4) how managers justify restrictive policies; and (5) the degree to which housing opportunities are limited for families with children.

Besides those noted earlier in the body of the report, other major findings contained in the Marans and Colten report are:

- . Policies and restrictions on renting to families with children vary according to the size of rental units. Efficiencies and one-bedroom units are more likely than units of two or more bedrooms to be affected by no-children policies.
- . A large proportion of two bedroom units throughout the nation are closed to families with children. Nearly one-fourth are unavailable to families with one child, one-third would exclude families with two children and six in 10 are closed to families with three children.
- . Nearly one in five (18 percent) managers of single family detached rental housing do not rent to families with children. As the size of the single family rental home increases, the proportion of units excluding children decreases.

*See Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey prepared for The Office of Policy Development and Research, U. S. Department of Housing and Urban Development, (July 1980).

- . The vacancy rates of apartment buildings and complexes have no bearing on policies and restrictions affecting children. Buildings and complexes with vacancy rates of more than 10 percent are just as likely to have no-children policies as places which are fully occupied.
- . The extent to which restrictive policies are found in apartment buildings or complexes varies depending on the racial composition of the neighborhood within which the buildings and complexes are located. The proportion of units excluding families with children in buildings located in predominantly white neighborhoods is two-thirds greater than the proportion in predominantly black neighborhoods (29 percent versus 18 percent).
- . High rents are associated with restrictive practices imposed on families with children. One and two bedroom units renting for more than \$200 monthly are most likely to accept children with limitations on where they can live in a building or complex. The proportion of two-bedroom units with age limitations on children increases as the monthly rent increases.
- . The age of apartment buildings and complexes is associated with the presence of exclusionary practices and restrictive policies. No-children practices are most likely to be found among units built during the 1970's.
- . Exclusionary policies appear to be increasing over time. Whereas one in four units in 1980 do not allow children, one in six units in buildings or apartment complexes built prior to 1975 excluded children at that time.
- . Although the size of the apartment building or complex has no bearing on the extent to which no-children policies exist, size is related to the proportion of units in buildings which accept families with children but with limitations imposed upon them. The larger the building or complex, the more likely that some limitation is in effect.
- . Nearly half of the families with children reported difficulties in finding a place to live because of policies imposed on rental units. More than four in 10 who were frustrated in the search for rental housing had to settle for less desirable units while a somewhat larger proportion had to settle for less desirable locations.

This situation is most acute for families with three or more children and those in the lower income brackets.

- . Nearly one-fourth of renters without children in the household said they prefer not to live near children. Most frequently mentioned (55 percent) were reasons related to noise while less than one in five reasons had to do with the destructiveness of property.
- . Among people living in buildings without children, one in five said they moved there because there were no children. When asked whether they would leave if families with children were allowed to move in the building, more than four in five said they would stay.
- . Managers believe that increased maintenance costs are the biggest problem faced when renting to families with children. Four in five managers view maintenance costs as problematical whereas three-quarters report unsupervised children as a potential problem in renting to families with children.
- . Managers of apartment buildings and complexes not accepting children are most likely to say that renting to children creates problems. Least likely to say that there are problems in renting to families with children are managers who accept children without limitations.
- . Over one-half of the managers believe families without children are bothered by their neighbors who do have children. This proportion is higher than the proportion of renters living near children who said they were bothered by their presence.
- . The feelings of managers toward children are often associated with the policies and restrictions they impose. Nearly three-quarters of the individuals managing places with a no-children policy believe that families are bothered by children living nearby. This belief is expressed by less than half of the managers who accept children but with restrictions.

The conclusion of the report says:

Nevertheless, the study has demonstrated that, in general, families with children are limited

in their choice of housing. For such families, exclusionary policies and the various restrictive practices no doubt lead to frustration, longer searches and higher costs in their attempts to find decent housing in a suitable living environment. Clearly, the issue confronts many American families and warrants closer scrutiny and public policy debate.