

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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QUID PRO QUO AND HOSTILE ENVIRONMENT HARASSMENT; WHAT ARE THESE?

FINAL RULE ISSUED

HUD issued its Final Rule amending HUD's fair housing regulations to formalize standards for use in investigations and adjudications involving allegations of discrimination through harassment, on the basis of race, color, religion, national origin, sex, familial status, or disability. The Rule sets standards to measure quid pro quo ("this for that") harassment and hostile environment harassment under the Fair Housing Act. Definitions of "quid pro quo" and "hostile environment harassment," are set forth along with examples of discriminatory practices that constitute such conduct. The entire HUD announcement may be found at:

<https://www.federalregister.gov/documents/2016/09/14/2016-21868/quid-pro-quo-and-hostile-environment-harassment-and-liability-for-discriminatory-housing-practices>

The publication is lengthy and as is customary, includes comments from the stakeholders and HUD's responses. To you give you some idea as to the breadth and significance of the Rule we want to provide you with highlights as they relate to employees and lending.

The Rule provides:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

§ 100.7

(a) Direct liability. (1) A person is directly liable for:

(i) The person's own conduct that results in a discriminatory housing practice.

(ii) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct.

(iii) Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person's control or any other legal responsibility the person may have with respect to the conduct of such third-party.

(2) For purposes of determining liability under paragraphs (a)(1)(ii) and (iii) of this section, prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person, such as eviction of the aggrieved person.

(b) Vicarious liability. A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law. [Emphasis added]

Discrimination in the terms and conditions for making available loans or other financial assistance.

(b) ***

(4) Conditioning an aspect of a loan or other financial assistance to be provided with respect to a dwelling, or the terms or conditions thereof, on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that has the effect of imposing different terms or conditions for the availability of such loans or other financial assistance.

§ 100.135

Unlawful practices in the selling, brokering, or appraising of residential real property.

(d) Practices which are unlawful under this section include, but are not limited to:

(1) Using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

(2) Conditioning the terms of an appraisal of residential real property in connection with the sale, rental, or financing of a dwelling on a person's

response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

Quid Pro Quo and Hostile Environment Harassment

§ 100.600

Quid pro quo and hostile environment harassment.

(a) General. Quid pro quo and hostile environment harassment because of race, color, religion, sex, familial status, national origin or handicap may violate of the Act, depending on the conduct. The same conduct may violate one or more of these provisions.

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to: The sale, rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.

(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.

(i) Totality of the circumstances. Whether hostile environment harassment exists depends upon the totality of the circumstances.

(A) Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.

(B) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damages to which an aggrieved person may be entitled.

(C) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person's position.

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(b) Type of conduct. Harassment can be written, verbal, or other conduct, and does not require physical contact.

(c) Number of incidents. A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidences a quid pro quo.

For those interested, and it's a little hard not to be, the HUD response to comments from the industry brings some more clarity to these new rules. These may be found at the site referenced above.

Alt & Associates publishes the Lenders Update via e-mail as a complimentary service to our friends and clients in the financial industry throughout California and the United States. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their business operations. Legal counsel provided to the mortgage industry includes, but is not limited to:

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- ✚ Transactional work
- ✚ Agreements such as Loan Officer Compensation Agreements etc.
- ✚ Various forms of employee, officer, and/or manager contracts
- ✚ Litigation representation

You may direct any questions or comments directly to:

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