CALIFORNIA LEGISLATURE

SENATE SELECT COMMITTEE ON MOBILEHOMES

SENATOR WILLIAM A. CRAVEN, CHAIRMAN

Transcript of Hearing on

EFFECT OF 1988 FEDERAL FAIR HOUSING AMENDMENTS ACT ON MOBILEHOME PARKS

February 14, 1989
State Capitol
Sacramento, California

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California Legislature

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TRANSCRIPT OF HEARING

ON

EFFECT OF 1988 FEDERAL FAIR HOUSING AMENDMENTS ACT

ON MOBILEHOME PARKS

February 14, 1989

STATE CAPITOL

Sacramento, California

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California Legislature

Senate Select Committee on Mobilehomes

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BACKGROUND PAPER

Hearing
Effect of 1988 Federal Fair Housing Amendments Act
on Mobilehome Parks

February 14, 1989, 10:00 a.m.
Room 113, State Capitol, Sacramento

Introduction

On September 13, 1988, President Reagan signed HR 1158, earlier passed by Congress to prohibit discrimination nationwide in the rental or sale of housing on the basis of handicap or familial status. This measure, known as the Fair Housing Amendments Act of 1988, amended existing federal civil rights laws relating to housing to give the federal Department of Housing and Urban Development (HUD) extensive power to establish regulations, take complaints, hold quasi judicial hearings and exact fines and penalties against those found by the department to have violated the new anti-discrimination law.

Between the date the new law became effective on September 13, 1988 and the date of its prospective enforcement, March 12, 1989, HUD has adopted proposed regulations to carry out the act. Proposed regulations were released on November 6, 1988, and there was a 30-day review period during which public comment on the proposed regulations was accepted. After the review period closed, HUD assembled the comments, made minor revisions in its proposed regulations, and drafted commentary in response to the major issues raised during the public review period. Final regulations were published on January 23, 1989.

In accordance with the HUD commentary (later referenced), mobilehome parks are included within the purview of the new federal law. Henceforth, mobilehome parks will not be able to establish residency rules excluding families with children unless

they can prove that they qualify for one of two exemptions under the federal law, either 62 and older or 55 and older.

62 and Older Exemption

A housing community may be restricted to 62 and older as long as no one moved into a unit within the complex after September 13, 1988 who is less than 62 years of age. Those already living in the complex prior to that time are grandfathered in. Even in the case of a married couple moving in after September 13, where only one spouse is younger than 62, the park could be disqualified from the 62 exemption.

55 and Older Exemption

The 55 and older provisions are more complex. In addition to publishing rules limiting the housing complex to senior persons 55 and older, the park owner must assure that no less than 80 percent of the residents are 55 and older. Twenty percent of the residents may be younger than 55, but the owner must maintain a minimum 80-20 ratio. HUD comments indicate, however, this is only a minimum and the management may require more than 80%--even 100%--of all residents to be 55 and older.

Most importantly, those housing complexes and mobilehome parks which restrict residency to 55 and older may have to put in "significant" services and facilities to meet the "needs" of seniors, as determined by HUD enforcement officials. A laundry list of such services may be found in Section 100.304(b)(1) of the HUD regulations and include emergency and preventive health care programs, congregate dining facilities, transportation to facilitate access to social services, and social and recreational programs, among others. This does not mean that every mobilehome park will have to install the list of facilities for seniors, but rather may have to install them, or some of them, depending upon a number of factors, at the discretion of HUD enforcement officials.

If a senior park is necessary to provide "important housing opportunities for older persons" and it is not "practicable" to provide such facilities and services, the park owner may not have to install them. However, the burden is on the park owner to prove through "credible and objective evidence" that having to install such facilities and services would result in "depriving older persons in the relevant geographic area of needed and desired housing." Claiming that such services and facilities are too "expensive" is not sufficient by itself to demonstrate that the installation of such services is not practicable. But the income of residents, the amount of rent charged, the demand for senior housing in the area, the availability of senior housing in the area and the availability of senior services and facilities

in the community are all factors which HUD may consider in determining practicability. If similarly priced housing for older persons with such significant facilities and services is available in the community, then the park would probably have to install the improvements in order to qualify for 55 status.

Relevant HUD Commentary and Response to Public Comments

HUD received virtually thousands of letters and comments relating to mobilehomes and the exemption for housing for senior citizens as referenced in the publication of its January 23rd regulations.

1) Mobilehome Parks Included

According to HUD, mobilehome advocates pointed out that mobilehome park living was unique, that mobilehome residents typically own their own homes, prefer to live in an all-adult only atmosphere, that they do not want or need special services or facilities for seniors and that they want to live in an environment with their own age group but remain independent and self sufficient. Nevertheless, the department concluded that they had no basis for exempting mobilehome parks from the coverage of the act and, on the contrary, found no basis to believe that mobilehome parks should be treated in any way differently from other forms of housing.

2) Significant Senior Services and Facilities

With regard to significant facilities and services, in reacting to comments that such might only be expected to be found in housing for disabled elderly persons, such as so-called "retirement homes," HUD responds that the list of proposed services is drawn from the federal Section 202 housing provisions, listing examples of facilities and services for older persons, originally enacted as part of such federally subsidized housing programs. HUD emphasizes that there is no inconsistency between having congregate dining facilities or other services and persons or seniors who live an independent and active lifestyle.

Regarding criticism that HUD's senior requirements are too vague--that there is no standard or benchmark with which owners and management can comply, HUD responds that it is not possible for the department to define precisely what services and facilities must be present before they are considered "significant." The services and facilities required will vary based on the geographic location and "needs" of the residents. However, according to HUD, it is clear that the installation of a ramp at the front entrance of a housing facility would not constitute a "significant facility designed to meet the physical needs of older persons."

Comments from park owners and others requesting some type of "pre-certification" procedure or list of what improvements would have to be installed in a senior park, to avoid lawsuits and arbitrary HUD enforcement, was met by the HUD argument that there is no "reasonable basis to conclude" that frivolous complaints would be filed and that HUD does not have "sufficient resources" to support an elaborate pre-certification procedure, at least at this time.

3) Notice

With regard to the issue of notice, HUD comments relating to its final regulations, cite an opinion of the HUD General Counsel that the federal act does not preempt or supersede 798.25 of the California Civil Code, which provides that a rule or regulation of a park may be amended, without homeowner consent, upon written notice to homeowners of not less than six months. The counsel based his opinion on the fact that 798.25 does not require or permit a discriminatory housing practice per se and therefore is not in conflict with the new federal law. Hence it would appear that state law with regard to notice requirements is still effective even if it relates to a change in residency limitations.

Complaints to the Committee

Since October, 1988, the Senate Select Committee on Mobilehomes has received numerous complaints in the form of phone calls, letters and personal visitations, mostly from mobilehome owners concerned about the impact of the federal act on their mobilehome lifestyle. Many of these complaints have been addressed to members of the Legislature who have referred them to the committee. These complaints can be categorized as follows:

1) Park resident complaints that the park owner is changing from an adult park to a family park, thus destroying the adult or senior "lifestyle" which the park contractually offered the residents when they moved in and which was, at least partially, the "enticement" to get them to move into the park in the first place.

2) Complaints about changing from adult only to senior, either 55 or 62 and older. These residents are concerned that the resale marketability of their mobilehomes will be limited when only persons 55 or 62 and older can qualify to move into the park. They would prefer to have a younger adult-only age--like 40--or open park, because it would be easier to sell the mobilehome at the price which they are asking;

3) Park resident complaints that park owners have given them little, if any, notice in changing either to family or to senior, and in some cases where a sale of a home was pending at the time

of the notice, or even in escrow, have prevented buyers who do not meet the new age criteria from moving in.

4) Complaints that in parks designated senior, 55 and older, that the cost of the facilities and services which may be required by HUD to qualify as a 55 park will be passed on in the form of higher rent increases--facilities and services which complainants claim are not needed or wanted, but will make their housing less affordable.

5) Complaints from both park owners and residents alike about the lack of understandable or certain HUD "guidelines" on what constitutes a senior park. Many feel this will leave decisions as to whether a park will qualify for 55 or older to, in some cases, the "arbitrary" discretion of HUD enforcement officials and bureaucrats. Some claim that a park may qualify one year by putting in certain facilities, but not the next when HUD may up the ante. Others contend that parks in one area of town may be required to put in facilities but not in another. Still others say that parks in smaller communities will be required to put in more facilities than those in major metropolitan areas.

Unfounded Expectations

Many from whom the Senate Select Committee on Mobilehomes have heard have a misunderstanding of the status of the law. Some believe the State Legislature has created the above-mentioned problems, and that the state should correct them. A number of mobilehome owners, with whom committee staff has spoken, want the State Legislature to return to "adult-only" limitations, allowing parks to limit residency to adults 18 and older.

By virtue of the enactment of HR 1158, the issue of discrimination against families with children in mobilehome parks has become pretty much a federal issue. The state is limited in what can be done to amend the federal act, and the state cannot now enact or reinforce provisions of law permitting adult-only residency limits. That is now a federal matter. Adult-only parks are a phenomenon of the past.

Senate Joint Resolution 1

SJR 1 has been introduced as a resolution in the State Legislature, requesting Congress to consider changes in the federal act as it relates to mobilehome parks, particularly as the federal act impacts the affordability of housing in parks for senior citizens. Obviously, this relates to the issue of parks having to potentially install special services and facilities for seniors, the cost of which will be passed on to those same seniors in the form of rent increases, and which, in some cases, will make it difficult for some seniors to continue to live in those parks.

Purpose of Hearing

The purpose of this hearing is to take testimony from interested parties related to HR 1158 issues affecting mobilehome parks in order to determine if there are areas or sub-issues with which the state should be concerned and about which it can act.

SECTION IV

TRANSCRIPT

OF

TESTIMONY

EFFECT OF 1988 FEDERAL FAIR HOUSING AMENDMENTS ACT
ON MOBILEHOME PARKS

Transcript of Hearing
February 14, 1989
State Capitol, Sacramento

SENATOR WILLIAM A. CRAVEN: Good morning, ladies and gentlemen. We call the meeting of the Senate Select Committee on Mobilehomes to order, and I am very, very happy to welcome you here this morning.

We convene this morning to discuss an important issue, perhaps one of the most important to ever face mobilehome parks in California. That is the impact of the new federal law, HR 1158, which effectively abolishes adult-only residency limits in all forms of housing, including parks.

First of all, I would like to begin by introducing the gentleman on my extreme right, who is perhaps one of the most distinguished Senators that we have in the Legislature here in California. He heads, and has for years, the very powerful and important Governmental Organization Committee. He is a man that we all look to for leadership; he runs the house. He does a variety of things, and he does them all exceedingly well. It's my pleasure to introduce my good friend and yours, Senator Ralph Dills of Gardena. Now, we will have with us some other members,

I'm sure, during the day, but since there are other committees meeting, they probably will be coming in and out. But here, with some degree of constancy, on my left is Marsha Conkey, who is the secretary of the committee, and on my right is John Tennyson, who is the Committee Consultant. Just arriving now is another very fine stalwart here in the Legislature. He's the man who is the chairman of the Appropriations Committee, and he does a magnificent job. He's the fellow we all like to stay rather close to because he controls the money. And he is also the Legislature's expert on the penology side of the issue--on prisons and incarcerations and so forth. He comes from a background of law enforcement, having served as undersheriff of the County of Riverside some years ago. He's been in the Senate for many years, and he is a very, very dear friend of all of us. This is Senator Bob Presley.

Now, with regard to the issue at hand, the implementation of the new federal law has had a dramatic impact on California mobilehome parks.

According to a study by the state Department of Housing in 1986, approximately 60 percent of the 5,000-plus mobilehome parks in California have adult-only restrictions, meaning residency is limited to persons 18 years of age or older. Additionally, the state study pointed out that an even greater number, some 70 percent, of the people living in California mobilehome parks are 55 and older. Apparently, many of these so-called adult-only parks have really been primarily senior citizen parks.

The federal act, signed on September 13 and enforceable on March 12 of this year, will prevent discrimination against families with children in all forms of housing, including parks. The background paper and copies of the act and HUD regulations relating to senior housing are available at the hearing. They're probably over there on the left side of the rostrum. So you may have those as you wish.

But to summarize, parks will no longer be able to limit residency to adults unless they adopt restrictions for persons either 62 or 55 and older. The 62 and 55 year exceptions, particularly the 55 exception, is rather complex and controversial because of the requirement that, and I quote, "significant facilities and services to meet the physical or social needs of older persons," end quote, may be required to be installed in parks which are designated 55 and older. This has created consternation in many parks, particularly from residents who fear that the cost of these improvements, which they say they don't want and they don't need, will be passed on to them in the form of higher rent increases, thus possibly destroying the advantage which mobilehome parks have historically provided over other forms of housing--in terms of affordability.

My offices and those of many of my colleagues have received hundreds of complaints and questions regarding the new federal act. Many of these questions and calls have been referred to the Senate Select Committee on Mobilehomes. That is why we are

holding this hearing today. I am not sure how much the state can affect the federal law, since, to a great degree, we've been preempted. However, because of the enormous concern expressed by both park owners and park residents, as well as others in the mobilehome industry, we felt this hearing would be beneficial in helping to ferret out any issues or subissues with which the state may be able to deal in this regard.

Parenthetically, I should point out that I have already introduced a resolution, Senate Joint Resolution 1 in the California Legislature, requesting Congress to take another look at the federal act as it pertains to mobilehome parks, particularly the affordability aspect for senior citizens. The purpose of the resolution is to call the attention of Congress to some of the problems which this new law has created for us here in California as it pertains to mobilehomes with senior citizens.

We would not be so presumptuous as to tell Congress what to do--of course--but we do want to impress upon them the tremendous number of people who are concerned about the impact which the act has on senior citizens. Unfortunately so far, the reaction of Congress, at least individual Congressmen and staff with whom my offices have been in contact, has been most generally ambivalent. Staff in some of these congressional offices have even had the gall to claim that this is a state, not federal, issue. It is amazing to me that some of the federal people who have created this situation are in reality either apathetic or ignorant of it.

In any case, we have a number of people representing park owners, residents, and others, who have signed up to be heard today. We will take those persons in the order in which they contacted us. If there are others who wish to speak, then we'll add your name to the list as the time allows. If others do wish to speak, please give your name to the sergeant-at-arms in the back of the hall or Joe Kaney, who is up here in front--the sergeant-at-arms, and he will take it to the secretary.

Now, let me repeat some rules which we normally follow in these hearings. First of all, we'd like to limit the testimony of each individual to about five to seven minutes, so that with the addition of any questions which members of the panel may have, each person has an equal opportunity to be heard. We will alert you when your time has expired.

Secondly, as your name is called, please come forward to the table up here, state your name, who you represent, and your city, for the record. The hearing is being recorded for purposes of transcription, and the transcript will be published at a later date.

Lastly, I would advise all members of the audience to take their private conversations outside, as noise in the hearing room is disruptive to the audience, as well as to the committee members and those testifying, and often interferes with the recording of the tape.

Again, for those of you who have just recently arrived, we have copies of the background paper, the new federal act, HUD regulations pertaining to senior restrictions, and a copy of SJR 1 on the table for your information, all relating to this issue.

I don't know that I introduced the gentleman on my right, who is John Tennyson, who is, of course, the consultant for the Senate Select Committee.

So, without any further ado, I think we are ready to begin.

Joe, would it be possible to get some folding chairs--to bring some down here? We'll try. We had the option of moving, but I think, I thought moving up to the third floor into another room and then taking the sound equipment and moving that was going to be too much of an effort. I'm sorry that we don't have more space for you, but let us see what we may be able to do, and we might be able to bring some chairs in for you. So we'll try.

Here on our list, the first person we have is Marie Malone. Is Marie here? There she is, good morning colonel, nice to see you. Marie is, of course, the President of GSMOL.

MS. MARIE MALONE: Good morning, Chairman, members of the committee, my name is Marie Malone, and I am President of the Golden State Mobilehome Owners League.

It really is most difficult to address what has happened to the mobilehome parks. I do not believe that anything in the last ten years has been more disruptive to the lifestyle than the recent enactment of HR 1158.

If the Fair Housing Act had been enacted prior to the creation of mobilehome parks, this problem would not have existed today. But what our Congress has failed to understand is that in the states like California, the mobilehome lifestyle came into being because of the retired. Changing this over night because the date of enactment arrives on a calendar is not the way to go.

I have recently attended three separate briefings from representatives of HUD. I was in San Jose yesterday at a briefing by Mr. Pearl, who is the Director of Standards for HUD from Washington, D.C. We also, as the league, sent two representatives to Washington, along with our comments, seeking to have input during the 30-day period that was allowed for comment. They have reported back to me that our comments fell on rather deaf ears, and the final regulations bear out that statement.

Basically, what HUD said--what Mr. Pearl said yesterday--was that this was an election year law, passed in a hurry, with all elements of the housing not thoroughly understood. He went so far as to say that it did not even go to the Judiciary Committee in the Senate, and that the original agreements that they have in hand show that the mobilehomes were an after thought that was penciled in to the margin of the comments. Consequently, we have been squeezed to fit into the apartment mold, and once again we are treated as neither fish nor fowl.

The end result for the mobilehome parks is that there are many gray areas in the law and many blank areas in the

regulations pertaining to the mobilehome lifestyle. Even yesterday, after this long period of time and over 6,000 pieces of letters and comments from the mobilehome owners throughout the nation, when Mr. Pearl spoke and explained the regulations, it was obvious from his comments that he was still uncertain about the California mobilehome lifestyle.

What can be done at this moment? I have concurred with a proposal made by the president of the Western Mobilehome Association that to ease the fear, the panic and turmoil that the implementation of this law is causing throughout our parks, the representatives of the park owners, homeowners, government enforcement agencies and mobilehome dealers form a task force to develop guidelines that all elements can live with in implementing the law. Perhaps these guidelines, if they are suitable, could become the basis for the state legislation to implement the Fair Housing Act of 1988 in California.

In the meantime, Senator Craven, we appreciate your efforts on our behalf with Senate Joint Resolution 1 and a bill that you are sponsoring on a one-time waiver of the six-months notice in order to implement the act. But for now, we must all do our utmost to calm the park owners and the homeowners, encourage them all to work together towards a peaceful adoption of the Fair Housing Act. We face each individual problem--because they are all individual problems--and do our very best to try to cure them one by one until we have firm guidelines for the entire state.

Thank you.

SENATOR CRAVEN: Thank you very much, Marie. Marie, I'm not familiar with other states, and I presume most--if not all of them--have organizations which parallel the aim and resolution of the GSMOL in California. Does Nevada and Arizona--do they have organizations of a similar nature?

MS. MALONE: Yes, there are 17 states in the nation, and the largest being Florida and California.

SENATOR CRAVEN: Well, I was wondering if they had petitioned the Congress or made known their feelings on this particular piece of legislation.

MS. MALONE: Yes, they have. Florida was very, very verbal on it, a slightly different angle than what we were asking for. But they, too, are going through a very disruptive period of time.

Mr. Len Wehrman, who is here in the room, represents our national association and made the trip to Washington, D.C. There are 16 million people living in mobilehomes across the United States.

SENATOR CRAVEN: Very good. Well, we are going to hear from Len next, so he'll have something to say, I'm sure.

Thank you, Marie, very much.

Next is a gentleman we are all very familiar with. He's been very active in mobilehome activities for many, many years, and he's supplied the committee with a great deal of very interesting

and important information. And I'm happy to welcome Mr. Len Wehrman. Len, nice to see you.

MR. LEONARD WEHRMAN: Good morning, Senator. Thank you very much. Mr. Chairman and members, my name is Leonard Wehrman. I am a homeowner, although I serve in many capacities in California and across the nation.

I'm really here as a private citizen trying to relate to you, I think, my activities for the past 21 months, having followed this literally from the time it's been introduced in Congress as HR 1158 on the House side and as Senate Bill 558 on the Senate side. Part of my activity in this, Mr. Chairman, is to coordinate or at least evaluate and try to assist the various state organizations around the country, and I would echo what President Marie Malone just said relative, not only to Florida but some of the other states--particularly Arizona, Nevada, Washington, Oregon, New York and most of the New England states, as well.

It has created furor in the mobilehome affairs all across the country. It is correct that if you look at what Congress attempted to do in the 1600 pages of testimony before Don Edwards' and Ted Kennedy's committees back in Washington, D.C. before Congress, is that only one mention was ever made of mobilehome parks. Only one mention was made of condominium-type associations, particularly those in the sunbelt areas of the country.

Mobilehome parks were at one point in time considered as single-family housing to the extent that we have a same kind of certificate of ownership as for regular conventional housing. And I still feel that that's the bigger issue, and frankly the issue that ultimately will prevail--whether it's on a federal basis or on a state basis.

I too was at the meeting yesterday in San Jose, and one of the disturbing things that Mr. Larry Pearl said was that the management does not have to provide, as a housing provider, some of these facilities if indeed they maybe have those facilities and so forth available somewhere in the geographical area. I think that if that is the position of HUD, quite frankly, we're even in further trouble.

As we speak, some parks are taking out tables as I have in front of me here and putting brochures out saying to qualify for the 55 housing facilities and services, if you go to here, this is a senior citizens club, if you go here, they have bowling alleys, if you went here, you could go to adult education, or if you want to pick up this brochure, you can do something else. In other words, that's all they fully intend to have as the facilities and services requirements.

You know, the thing that is extremely disturbing in this is that you get back to this so-called 80-20 rule that everybody, I think, is familiar with, that is, that you must maintain at least, in the 55 age category, at least a 80 percent, one person

in a household. HUD says that you can be even more stringent than that, and some parks have taken that and saying that we want compliance with all persons being 55 and above. Not only are we talking about the residents, we are talking about guests that may be staying with the homeowners. Even for those persons who may be infirmed to some extent, if a daughter or son wants to come over and stay for a couple of months to convalesce for somebody, frankly their rules and regulations would preclude them from doing this. And I don't think that that's what fair housing is all about.

I have, too, talked to the staffers in Washington, and they told me the same thing, that this is really a state issue, that it's not a federal issue. All they really intended to do was to preempt the age category, not the procedural type of element. So what we need to do here in the State of California has been said numerous times and previously by Marie Malone, we're going to have to work out what we can do in California. Get the California law certified by HUD, which is not that big of a project, and then take on from there.

How we got into this dilemma was that it was, this is an inside the beltway issue. They got 180 of the lobbying groups in Washington, D.C., frankly, to agree with this. It started out not only from the Reagan Administration, Justice Department and Secretary of HUD, but it also started with National Association of Home Builders, realtors, NAACP, churches, credit unions, and

everybody else. When that sign off came on the middle of June of 1988, everything broke loose.

Back to the other issue that really is at hand, here, in so far as the state law is concerned, there are some great questions about how of much this preempts, or did it preempt anything except age and some of the handicapped provisions?

Now, let me give you some of the controversial ones, at least as far as I'm concerned, and there are others who are going to follow on this, and I hope they follow and give a thorough explanation, once and for all. Because it is in my opinion that there has not, there is no such designation in the state of California as a "senior mobilehome park." I find it absolutely no where in the literature, absolutely at all. If you look at the Civil Code 25.1 passed by this Legislature in 1972 and been on the books since then and not been modified or changed, the definition of an adult is a person 18 years of age and older. It does not say or older, it says 18 and older. Therefore, a person who is 35 does not fall within the range of 18 and over. In addition to that, Health and Safety Code 18300 which authorizes the mobilehome parks to be built in California only gives two classifications of mobilehome parks, that is, family and adult mobilehome parks.

The Legislature and the regulations proposed for this have never addressed the issue that there are, indeed, senior mobilehome parks. In addition to that, when developers came before the local governments to get those parks built, most of

the conditional use permits that were issued as a result of this specified that it would be an adult with a certain age category or it would be a family mobilehome park. I would be hard pressed to tell you that I have seen one conditional use permit that gave a 55 age criteria as far as the construction codes and standards for the development of that mobilehome park. It would appear to me that the local governments are going to have a lot to say about people who have converted from senior parks, excuse me, from adult parks to senior parks, when in reality, they were probably developed originally as family mobilehome parks. I think local government has a great stake in this and should be coordinated as a part of this activity.

If you look at the Mobilehome Residency Law 798.76, there is the impression that that has been totally preempted. In my opinion that's not true. The only preemption comes from the 18 to 54 category if they preempt it. Now we come back to what is a definition of adult. We think we did clarify that.

Further if you look at the Unruh Civil Rights Act in California, specifically code section 51, the first paragraph, which is a take off of the California Constitution and quotes it verbatim. It says basically that thou shall not discriminate on any, no business establishment shall discriminate in any sense whatsoever. It goes on to describe what those conditions are. Our California Supreme Court has said on repeated occasions that those are illustrative and they are not specified--they are not exclusive--there are other things included.

If you then examine the section 51.2 of the Unruh Civil Rights Act, it goes on to say that thou shall not have no age discrimination in--age discrimination period. It also goes on to then say, however, that you may have certain senior accommodations. But then if you look down at 51.3, as most of us in this room know, it preempts mobilehomes from that senior category. Therefore, I would conclude from that since this Legislature preempted mobilehomes from that portion of the Unruh Civil Rights Act, that senior services as, or senior housing in this state of California, as it pertains to mobilehome parks, is totally invalid.

Let me also go to say that there are currently three cases before the California Supreme Court. In brief, the Dubriel, the Zipp and the Schmidt cases. It has been lingering in the Supreme Court for about two years. They've had a re-hearing scheduled. They had one in Los Angeles. But the California Supreme Court has done nothing about the issue, and I think that's the one issue that we have to get resolved. We cannot let that Supreme Court, frankly, continue this whole process of just sitting on something so much of a dynamite issue.

So in conclusion of this whole thing, I quite agree that we have to sit down and resolve all these issues in California. I do agree with Senator Kennedy and Senator Spectors and Don Edwards, Congressman Don Edwards' staff members, by saying that this really is an issue that can be resolved mostly here in

California. We do not necessarily have to comply with what they do in other states. What we need to do is to tailor our actions within the framework of what the HR 1158 and the fair housing laws require, have HUD certify that as an equivalency, therefore we could pretty will shed ourselves from the HR 1158 provisions and enact something in California that is certified as the equivalent and then go about our business here in California.

SENATOR CRAVEN: Len, do you get the impression that the HUD's regional bureaucracy is pretty much in the driver's seat as it relates to the various areas, the various states or the areas within the states?

MR. WEHRMAN: Yes and no. The regions will tell you yes, the Washington, D.C. HUD people will tell you no. But let me give you a little explanation why, why I say that, is that when a, any person files a complaint with HUD or HUD initiates on their own authority an investigation process, they then sit down, they set with the complainants with the respondent only those two issues, and they try to address this on a personal reconciliation type basis. If that is successful, that's the end of the issue. If it's not successful, however, there is a bundling-up process that goes with this. It then has to go to Washington, D.C. to the office of General Counsel, where all of this is looked at in sort of an abstract manner.

And I think that's, that's my personal fear because I know the people on the other end that's going to look at these issues.

Frankly, those who wrote the regulations in some sense are going to be the same people who are going to look at what criteria we have for the mobilehome communities. So we're going to be judged like condominiums where you have a homeowner vote and association. We're going to be judged in the same way as apartment people. We're not going to be judged in the same manner as single family residences. However, if you look at the complaint form that HUD has, one of the little boxes that you must fill out says is this four or more units or less than four et cetera, or is it a single-family home. All of us are going to mark "single family home." When it gets back to Washington, I don't know what they're going to do.

But the answer to your question is that HUD regional offices only will go through the informal conciliation process.

SENATOR CRAVEN: Well, in my reading of the legislation to this time, it gives me the impression that mobilehome activity, and I think that both you and Marie said this, perhaps not in these words, but it became sort of an after thought. They said, "Oh yes, include mobilehomes." Well, it wasn't drafted with the thought of mobilehomes in mind.

MR. WEHRMAN: Not at all.

SENATOR CRAVEN: Because if it was, they were absolutely abject in their failure to recognize some of the nuances of mobilehome operation as well as living. And I'm just in the position now where I feel that a regional personage in HUD with their usual omniscience is going to say, you know, "This is it."

I don't know how we can control them. I would think that that could vary from region to region. I don't think that that's good law, personally. I think that there ought to be one law, it should be definitive and explicit and specific enough as to say, "this is it," and it's a common denominator.

But I think what they're trying to do is to take, you know, a 44 regular and stuff it into a 39 long, see? And I have a little problem with that.

But I have no problem with your testimony, Len, it was excellent, and I appreciate it.

MR. WEHRMAN: If I could just add one more comment to this, that I think the mobilehome parks, one survey that was done, it was presented to HUD, said that of all the former adult mobilehome parks, that 86 percent of those went from adult to senior and 14 percent went family. And, Senator, under the guise of civil rights and fair housing, even though I might not like to say this comment, is that if the law of the land is familial status with exemptions of the, the housing for older persons, I see this tied up in the court systems if California and such places don't act very quickly, including your own Supreme Court.

SENATOR CRAVEN: I understand. Thank you, Len, very much.

We have had another Senator join us, and he is, I guess at least to this time, he's the Northern California representative here today. He is headquartered in Roseville, he is a Senator who has within his constituency and boundaries, I think, nine

counties, is that right, John? Thirteen, excuse me, thirteen counties. I think a couple of them are in Oregon, actually.

But this is Senator John Doolittle, who is a very fine, outstanding representative of the people here in Northern California, who has expressed over a period of years a great interest in the mobilehome resident, as well as the mobilehome problems. And John was just recently reelected. We are very happy to have him back again, and it's nice to have you here this morning, John.

Next we have Mr. Justin DuCray.

Oh, fine. We have your paper, Mr. DuCray. We'll put this as a part of the record, and you can go ahead.

MR. JUSTIN DUCRAY: Thank you, thank you, Senator.

SENATOR CRAVEN: You're welcome.

MR. DUCRAY: I am Justin DuCray, Vice President, Sacramento Chapter 525, Golden State Mobilehome Owners League.

Chairman and Members, I appreciate this opportunity to present our views. I'm just a little fellow living in a mobilehome park that's had a 55-year age limit arbitrarily put on us for three years, and we've developed some problems.

In 1969 the Southgate Mobile Estates in Sacramento was established as an adult only (18 years and over) park. For 16 years this was an outstanding place to live with minimal difficulties. Prior to moving into this park, all the residents signed legal agreements concurring with this adult-only resident status.

Then in January, 1986, the park owner unilaterally established a 55-year age and older limit for incoming park residents. This arbitrarily-established age discrimination is seriously damaging the constitutional rights and property values of the mobilehome owners, and for the past three years, we've been trying to get somebody to do something. It's a long story. Your staff has been very helpful in giving advice.

SENATOR CRAVEN: Thank you.

MR. DUCRAY: It must be emphasized that we own our homes--the federal legislation misses that--and merely rent the space. We rent the ground. We own our house.

This illegal age discrimination raises these serious issues. Now, we've lived with this for three years.

Rights of family members to live in our home has been taken away. As the attachment to this material you have, gentlemen, will prove that. It does not permit our adult family members who are under 55 years of age to live in our homes. Because our park owner says you're, if you're under 55, a son, a daughter, brother or sister, cannot live in our homes. In our, in our opinion, this violates the intent of the United States Constitution and is illegal. This also violates equity and good conscience.

Two doors from my mobilehome the lady's son was 39, he was out of work, he had to give child support. For about nine months, he lived with his mother while he found another job. The park owner, because I was there at the meeting, asked him when

was he going to leave. The lady told him to take him, take her to court, which, of course, he didn't do.

The right to inherit property has been taken away. If our adult children inherit our property and they are under 55 years of age, they are forced to sell the property, usually at a much lower value, while paying space rent during the time needed to sell.

It decreases the value of mobilehomes. This 55-year age limit just reduces the number of people available to purchase a home, and it's just dropped the market right out. And this is three years of experience.

It limits the availability of affordable housing. Adult-only families that are under 55 years of age that are looking for housing are denied the opportunity to purchase an affordable mobilehome.

The one next door to me has been vacant for six months. A man died across the street; it's been vacant for 14 months. They're asking reasonable prices in my opinion; I think that's a good price.

After living for three years with a 55 year minimum age limit, we have learned that a seniors-only mobilehome park has resulted in a pandora's box of problems for mobilehome owners.

Apparently the federal government is trying to apply multiple-family, apartment house rental rules to homeowners. Renters and homeowners in my opinion are in separate legal categories.

In our opinion, applying a 55-year minimum age limit to an existing homeowner's residence is discriminatory and violates our constitutional rights. This age discrimination will eventually be overturned by a Federal Appellate Court if the issue is not solved now.

And I hoping the gentlemen on this committee can help to solve this problem.

Thank you for the opportunity to present our views. I'd be happy to try to answer any questions.

SENATOR CRAVEN: Thank you very much, Mr. DuCray.

Do any of the Senators have any questions? Apparently none.

Thank you very much, sir.

MR. DUCRAY: Thank you.

SENATOR CRAVEN: Next is a presentation by the Western Mobilehome Association known as WMA, and I suppose acting as the interlocutor here this morning is Mr. Craig Biddle, who is their outstanding advocate here in the capitol.

Craig.

MR. CRAIG BIDDLE: Mr. Chairman and members of the committee, Craig Biddle, representing the Western Mobilehome Association. As you know, our association represents the owners and developers of mobilehome parks throughout the State of California.

On many issues when we have appeared before your committee in the past, our association and the tenants' association, here represented by Marie Malone this morning, have disagreed on some

issues. On this issue, though, I can say that we are not in disagreement. We are both in agreement on this issue.

SENATOR CRAVEN: That's good to hear.

MR. BIDDLE: And we have, as she indicated in her testimony, met with their representatives recently on more than one occasion on this issue, trying to at least clarify what's going to happen. I think that this is the major area, problem in this area is the confusion both as to the tenants and the management in the mobilehome parks.

Let me first indicate to you that I have passed out some written testimony from Mr. Brent Swanson, who you recall has testified before your committee in the past. He is one of the attorneys that practices in our area and gives some explanation of some of the problems, and a unique problem he talks about in one of the areas he has in San Jose.

Let me ask Mr. Lynn Blaylock next to testify--he's a manager of a park here in Sacramento, to give you exactly what happened in that park and to show you the type of confusion and the catch 22 situation that the park owners and the residents of our parks find themselves in. Let him describe the situation that happened here in Sacramento.

SENATOR CRAVEN: Fine, proceed, Mr. Blaylock.

MR. LYNN BLAYLOCK: Senator Craven, distinguished committee members, I'm Lynn Blaylock. I manage Hillsdale Mobilehome Park here in Sacramento, and I want to address a particular issue in HR 1158, and this is the issue of dual-purpose mobilehome parks.

Now, several parks, either formally or informally, operate facilities which have sections designed to satisfy the needs of senior-adult community and also for your family communities.

SENATOR CRAVEN: When you refer to dual-purpose, you mean a so-called adult-type park as well as a family park?

MR. BLAYLOCK: Yes, yes.

SENATOR CRAVEN: Are they separated, or are they just aggregate or...

MR. BLAYLOCK: Well, in a lot of cases, they are separated, but most frequently, there is a pretty good blend, you know where...

SENATOR CRAVEN: I see. Sort of a mixture...

MR. BLAYLOCK: There is, there is no big fence or anything of this nature because this would sort of be detrimental to a community life to put a up between people. But they are designed to where they have facilities and the hours are designed, like for the use of the facilities, so that each group can have, you know, satisfactory access...

SENATOR CRAVEN: I see.

MR. BLAYLOCK: ...to pools, recreation hall...

SENATOR CRAVEN: Fine.

MR. BLAYLOCK: ...things of this nature.

These environmental considerations are an important thing, and the park operators in this area feel that it is very important.

In my own facility, we have 94 family units and we have 117 adult units. And, in either case, whichever direction that we took under HR 1158, we were going to make someone very unhappy. And, this, in our case, the population trends in our facility dictated that we would go to the senior-type of facility because we had a larger majority by quite a ways that were in this group. But this did nothing for the people in the family section.

The six-month transition seems particularly onerous because there is no time for a person to uproot their family within a six-months' period if the complexion of the community is going to be changing, and it doesn't, you know, particularly meet their needs.

The grandfathering section of this does not cover the fact that in a certain period of time there are not going to be that many children for the youngsters to play with--things of this nature. So that at this, we ran into some particular problems in people being very unhappy because they felt that the sales of their homes, their property values, would be down--things of this nature.

We, as a park, we will continue to operate, and we will survive in this type of situation, but this is going to be a very difficult situation for many homeowners. And in our case--for the homeowners in the family section of the park. They are going to suffer the ill effects of this particular law.

SENATOR CRAVEN: May I ask, is your park going 62 or 55 and older?

MR. BLAYLOCK: No, we're going to the 55 and older?

SENATOR CRAVEN: 55 and older, okay, fine. Okay.

MR. BIDDLE: Let me describe to you, Senator Craven, the problem that you have on the 62, which is different than the 55. In Mr. Blaylock's park--he went to the 55-year rule. Mr. Evans was going to testify this morning, was unable to be here, on the 62 change, and he did the 62 change, and you may have heard of that one, because there was a lawsuit. In that park, in Southlake, he went to the age 62.

SENATOR CRAVEN: Yes.

MR. BIDDLE: And went back in September to 62. And under the provisions of 1158, when you go to 62, after the date of enactment, which is September 13, 1988, there is an absolute rule you can't let anyone in under 62.

SENATOR CRAVEN: Even a spouse that's less than 62.

MR. BIDDLE: Right, and that's what it says. So he applied that rule, and he said, "Okay, in that park in Southlake, we'll go to age 62," and he started enforcing that on September 13, the date of enactment.

A lawsuit was brought against him in Santa Cruz County and asked the court to set aside his policy and his rule of going to 62. And the judge said, "Correct, you can't go to 62 because of the six-months provision in the California law. He said that the

California was not preempted by the federal law, and therefore your rule going to 62 was ineffective, because it won't take effect for six months.

Now what happened in that case, and it's interesting--therefore, he had to go to 55. So you have virtually lost the option of going to 62 in California because of the six-months provision that you have in the law.

And I think this is the major area, and as Marie Malone indicated, this is the major area, I think, where we can, we the state, can give some relief to the federal law. Because what's happened under the federal law--and the seminar yesterday in San Jose, which I also attended--Mr. Larry Pearl from, from the federal government clearly stated the six months' provision is going to be recognized in California.

So we have to give six-months' notice.

SENATOR CRAVEN: Right.

MR. BIDDLE: So what happens is this: If a park, and it's our, from our association I can tell you, about 80 percent of the parks in the Western Mobilehome Association have not done anything.

SENATOR CRAVEN: Have not what, Craig?

MR. BIDDLE: Have done nothing.

SENATOR CRAVEN: Done nothing?

MR. BIDDLE: Nothing, Senator Craven. They've been waiting. They were waiting to see what the final HUD rules were going to

be, which just came out on January 23rd. They were waiting to see what kind of facilities and services were going to be required, and they didn't know what to do, so they just kind of did nothing.

SENATOR CRAVEN: Is it, Craig, is it a situation that if you don't qualify for senior, then you have to give the residents six months' notice?

MR. BIDDLE: No, you only have to give residents six-months' notice if you make a rule change.

SENATOR CRAVEN: Okay.

MR. BIDDLE: So, if you were a park, let's say, that already had a 55-year rule, you don't have to do anything. You just, you just stay that way. If you were a park that, say, had a 50-year rule, you have to change that to 55 and give six-months' notice.

SENATOR CRAVEN: Yes.

MR. BIDDLE: If you were an adults-only park which had an 18-year rule, which is most of the parks that have done nothing, you now have to give a six-months' notice, and if you don't, on March 13th of this year, that park will become a family park because you've done nothing. You had an 18-year rule, the federal law now says you cannot have an 18-year rule...

SENATOR CRAVEN: Yes.

MR. BIDDLE: ...so you will become a family park. So on March 13th, you will become a family park. If, on the following day, March 14th, you give a six-months' notice that we're now

going to go to 55, it won't take effect for six months, so during that six-months' window period, you will be a family park--families can move into the park, but then at the end of the six months, families can't move into the park. And you're going to have this dilemma, you're going to have this confusion. What we believe...

SENATOR CRAVEN: That almost sounds like an initiative.

MR. BIDDLE: Well, you can, you can solve the problem. The State Legislature can solve the problem by passing an urgency bill which says that the six-months' notice doesn't apply to a notice under 1158. And I think that, that's at least, that's the first solution to the problem.

SENATOR CRAVEN: Yes, sir.

MR. BIDDLE: It doesn't solve it all. You're still caught with this 80-20 rule and the percentages and what the denominator is, and we asked questions yesterday of Mr. Pearl in San Jose, and none of these have come crystal clear.

We're going to have litigation, I think, in connection with it. But we're going to try to clarify it. As Marie Malone indicated, our association wants to work with them and get a task force and see if we can at least clarify this issue.

But I think the one thing you can do as far as urgency now, the state can do, is--the feds have really taken over this whole area--is at least give us some relief on this notice provision so we don't have this...

SENATOR CRAVEN: Craig, when you spoke to, or listened to this gentleman speak, Mr. Pearl--he's the head man?

MR. BIDDLE: Well, he is the high eagle from Washington, I think.

SENATOR CRAVEN: Just in a very frank sense, did you get the impression that he understood what the hell our problem is?

MR. BIDDLE: No. I did not. Because I asked him, I asked him one specific question on the 80-20, "What is the denominator?" And he didn't really answer the question, because I'm trying to figure what 80 percent of what.

SENATOR CRAVEN: Yes.

MR. BIDDLE: When you grandfather these people in, do you not count the people who are grandfathered in, and what's the 80 percent of it. I don't think he did. He spent most of his comments yesterday before the question and answer period talking about enforcement.

SENATOR CRAVEN: Yes.

MR. BIDDLE: And that's what he was more concerned with--enforcement and conciliation and so forth. And that's, I think, is what he was doing.

You read the law, quite in contrast to prior testimony, the word "mobilehome" or "mobilehome park" is nowhere to be found, nowhere to be found in the law or the regulations. This is written for housing.

SENATOR CRAVEN: This is 1158?

MR. BIDDLE: Yes, I'm referring to that and the regulations for 1158. They do not accommodate...

SENATOR CRAVEN: Well, I think Marie, Marie said it first, and perhaps best, when she said it was sort of a marginal note. Oh, yeah, throw in the mobilehomes.

MR. BIDDLE: Yes. They were just talking about housing, and they didn't concern themselves with mobilehomes.

SENATOR CRAVEN: Yes.

MR. BIDDLE: And they didn't concern themselves with mobilehome parks in California--which are unique to the whole state, to the whole country.

SENATOR CRAVEN: Yes. Do, let me ask you, Craig, this similar question that I've asked before. WMA, I understand, represents western people. Do you have a Rocky Mountain, Central and East Coast version of the same thing?

MR. BIDDLE: Most of the states, I don't know the number, have a similar association. But most of the associations, though, it's not made up just of the park owners, it's made up of the park owners, the manufacturers, the dealers--it's the whole industry because it's on a smaller scale.

SENATOR CRAVEN: Yes, well, of course, that's even stronger, I suppose.

MR. BIDDLE: In this area, though, there were only two states that were primarily concerned with 1158, and it was Florida and California. We worked with the, whatever is the association of Florida.

SENATOR CRAVEN: Yes.

MR. BIDDLE: I don't remember the name of it, now, like WMA. But that was the only one that was really interested. The rest of them were so small, it was insignificant. They don't really care about it.

SENATOR CRAVEN: Yes. The reason I asked that, I just wondered if any lobbying was conducted by any of the organizations with members of Congress.

MR. BIDDLE: We hired a lobbyist.

SENATOR CRAVEN: Did you?

MR. BIDDLE: The Western Mobilehome Association hired a lobbyist--but late in the game. We hired him around the first week in July, last summer.

SENATOR CRAVEN: Yes.

MR. BIDDLE: We still have him on board as far as representing us. But that was after the bill had passed the House and was over in the Senate.

SENATOR CRAVEN: Yes.

MR. BIDDLE: And then it didn't even go to the Senate Committee. It was just taken up on the floor immediately and popped out.

SENATOR CRAVEN: Yes.

MR. BIDDLE: So it was a little late. We were able to get this exemption and some language changes in as far as the exemption is concerned, but it's a very narrow exemption for the older housing.

SENATOR CRAVEN: Well, they are. And in reading that portion, I find that they are somewhat ambiguous as well, or let's say lacking in specificity.

MR. BIDDLE: Absolutely. We would agree with that.

SENATOR CRAVEN: Yes.

MR. BIDDLE: And from that, we've got to work out and at least clarify what the situation is.

SENATOR CRAVEN: Fine. Well, I think we're, we're all walking or marching at the same cadence here in California, even those organizations that have been somewhat disparate, one to another, in times past, have joined in, and I think together we are going to solve the problem. At least that's what I hope we can do.

Well, thank you both very much.

MR. BIDDLE: Thank you.

SENATOR CRAVEN: Next is Ms. Barbara Nordstrom. Mrs. Nordstrom. There she is.

MS. BARBARA NORDSTROM: Good day, William Craven and committee. I'm a mobilehome owner.

SENATOR CRAVEN: Tell us where you're from, dear.

MS. NORDSTROM: From San Jose, and I'm here representing my husband and some of the other people in our park as far as the things that I bring forth.

SENATOR CRAVEN: Fine.

MS. NORDSTROM: A lot of them have already been stated, but I will go ahead and reenact what everybody else has already brought up.

SENATOR CRAVEN: Well...

MS. NORDSTROM: And maybe a few more things.

SENATOR CRAVEN: Well, if I have an option, I'm going to ask you to defer repetitious comment. Tell us what you have in mind, obviously, but don't stress or dwell on something that we've really discussed heretofore.

MS. NORDSTROM: I feel that your bill, SJR 1 is a very necessary piece of legislation after HR 1158, and there is definite need for more time to draw up and define guidelines for the mobilehome parks.

It seems like that from the city government on up to the federal now that the mobilehome owner is always grouped in with renters, and the result is always a time of anxiety and frustration until the legislation is reworked to accommodate the mobilehome communities. We definitely are owners first who are in a special rental situation.

SENATOR CRAVEN: Yes.

MS. NORDSTROM: And some of the issues that pertain to the particular area of the park in which I live...our area is know as Silicon Valley, and the cost of mobiles and space rents are much higher than in normal areas. And the real estate statistics, they show in our area that 78 percent of the qualified buyers for

our homes are in the young to mid-age double income bracket group. Which, if we go 55 or older, that puts us with 22 percent of the buying market to resell our homes. And there's a lot of us that have triple-wides and mobiles. We have a lot of money invested that, if it goes this way, we're probably not going to get back out.

SENATOR CRAVEN: You think they're kind of foreclosing the opportunity for you to have a greater marketing effect, right?

MS. NORDSTROM: Right. Right.

We also have another problem. If we change from adult to a family status in our park, it's laid out in such a way that there's no space already there to create a play area necessary for the children.

SENATOR CRAVEN: Yes.

MS. NORDSTROM: We live in a small park. It's only about 121 spaces. The streets are narrow; they're considered fire lanes. So it's really not a place to put children without creating space for them.

SENATOR CRAVEN: Yes.

MS. NORDSTROM: And in order to create this space, the owners have already told us that they would have to remove four to six mobiles that are already existing in the park.

SENATOR CRAVEN: In order to provide the recreation area?

MS. NORDSTROM: In order to provide this recreation area. Now, my question is what's going to happen to the owners of these

four to six mobiles? We live in an area where it's very seldom that you find an empty space in a park to relocate your mobile.

SENATOR CRAVEN: Yes.

MS. NORDSTROM: And it has to be within certain lines of newness and so forth, plus the fact that it's very costly to move a mobile and relocate it. And who's going to be in charge of saying whose mobile gets moved. You know, I mean, that's one of the things that's facing us if we go family.

Everybody has already expressed concerns in the respect of the family people and the senior people. But there is this center core of people who, we are not family and we are not seniors.

SENATOR CRAVEN: Yes, I understand. You kind of fall between the cracks.

MS. NORDSTROM: And as it's already been brought up, the question of inheritance. You know, if I were to die.

SENATOR CRAVEN: God forbid.

MS. NORDSTROM: The people who would take, yes. The people who would take my mobile would not be 55 or older because I am not at that age bracket, and I would...

SENATOR CRAVEN: I understand that. Obviously.

MS. NORDSTROM: And they would have now no longer a legacy. They would have a burden.

SENATOR CRAVEN: Yes, that point was brought up by a prior speaker. That's very valid.

MS. NORDSTROM: And when we purchased our mobilehomes, we had the option of buying in a family park or into an adult park. The only park we did not qualify for was a senior park, which the adult park covered in age range, so it didn't matter.

SENATOR CRAVEN: Sure.

MS. NORDSTROM: So we didn't feel like we were discriminated against in any way.

SENATOR CRAVEN: So you went into an adult park?

MS. NORDSTROM: So we went into an adult park because it fit our needs.

SENATOR CRAVEN: Sure.

MS. NORDSTROM: Okay.

SENATOR CRAVEN: Did you, when you moved into the park, were you with children or without children?

MS. NORDSTROM: No, no children.

SENATOR CRAVEN: I see, okay.

MS. NORDSTROM: So, we felt that we chose what we wanted to live in for our lifestyle, and we invested our money. And now in the middle of the stream, the horses want to be changed, and it just doesn't work out very well.

SENATOR CRAVEN: Yes.

MS. NORDSTROM: Because our money's already invested, and we no longer now have a choice. We're told all of a sudden this is the way it's going to be.

SENATOR CRAVEN: Yes.

MS. NORDSTROM: I don't think that HR 1158 was meant to create discrimination, but to remove it.

SENATOR CRAVEN: Yes, that's the intent, I think.

MS. NORDSTROM: And I don't think that, I think it was meant to be, to make housing more fair, to open up the housing market for everyone.

SENATOR CRAVEN: Yes.

MS. NORDSTROM: But in the way that it's dealing with us, it has become discriminatory to the mobilehome owner, and I'm only speaking for my park, but I have heard from other people in other parks that some of the owners are using this particular piece of legislation as a negotiating tool to get what they want from the tenants.

And, in other words, if you will do this for us, then we'll make this a family park instead of 55 and older. We'll give you the park status that you want if you'll do what we want.

SENATOR CRAVEN: Yes.

MS. NORDSTROM: Let's make a deal, so therefore we...

SENATOR CRAVEN: We have a word for that here or a phrase.

MS. NORDSTROM: Yes, so therefore we feel, really, that we're like pawns in a never-ending chess game between legislatures and park owners.

SENATOR CRAVEN: Yes. Very good analogy.

MS. NORDSTROM: And it's, it really, it really gives us kind of a hopeless feeling--that we're just kind of stuck.

SENATOR CRAVEN: You know, you mention the fact that the owner or the manager of the park had said that they're going to have to take four units out and so forth. What gave him the impression that he's going have to provide anything different for children than he's had heretofore.

MS. NORDSTROM: I really don't know. That's the way he was interpreting what he already knows, I guess, or what they don't know. It's, it's the confusion that everybody is having over this.

SENATOR CRAVEN: I think this act or law is interpreted more than the Bible, really, because it's just absolutely...

MS. NORDSTROM: Well, these are the kind of things we're told, though, at our clubhouse, which is making, making us feel very uncertain of our futures.

SENATOR CRAVEN: Yes. Well, you know, I agree that it's well to have room for children to play. There's no argument about that, but I don't know where in anything that we have to this time says that.

MS. NORDSTROM: I don't know if it's a local, local legislation that, that says...

SENATOR CRAVEN: Yes.

MS. NORDSTROM: ...that you, if you operate a family park, you must have so much space or you must have, provide so much facility or whatever, I thought you'd...

SENATOR CRAVEN: Well, when you're, when you're sort of retrofitting parks, which is kind of, we're going backwards to do something, I don't know whether you could invoke that sort of thing. Seemingly, it would create some problems--may tend to solve some but create some too.

MS. NORDSTROM: Right.

SENATOR CRAVEN: And, well, I...

MS. NORDSTROM: I think that the main thing...

SENATOR CRAVEN: Well, John said that you could do it on a new development, but not retroactively. So...

MS. NORDSTROM: Right. The thing that I really feel that I want to stress the most is that people do have to realize there are a lot of us in mobilehomes now; it's not like it used to be. And we pay county tax rolls; we're on the county tax roll. We have an investment--initial investment from 50,000 up for our home.

SENATOR CRAVEN: Sure.

MS. NORDSTROM: And it, and it actually is our home. And we are in a forced situation. I could not buy a lot in my area and if I brought it up...

SENATOR CRAVEN: Did you say the Silicon Valley Area?

MS. NORDSTROM: Yes. If I, if I was to buy a lot, it would cost me $185,000 and bring my coach up to status for the neighborhood it was in, I mean I might as well go out and buy a conventional house.

The reason I am in a mobilehome is because we could not qualify for conventional housing. And that's the way it is with most of the people who are in parks in our area because the housing is so high. The only way they could qualify is for, and to get a start to build equity for their future and for their retirement years, is to buy into a mobilehome and start building equity, which they hope at some point they will be able to get at least their initial money back out of it when they sell so they can put it into something for retirement--a retirement home out of the area.

SENATOR CRAVEN: Very good. I understand.

MS. NORDSTROM: So, I just feel that, that if the shoe was on the other foot, the people who own conventional housing were affected by laws like this, I, I'm quite sure the shoes would pinch a lot. It's...

And as far as the seniors go, we do, I do have a letter for you from one of the seniors in our park, and I have a copy of what I wrote. And they have just retired, and they are also concerned, even though they're seniors and they're retired and they plan to stay in the area, they're also concerned that with the change of 55 or older, that some of their people can't inherit their coach, or if they're going to sell it, they will have a problem selling it.

SENATOR CRAVEN: Very good. Well, I thank you very much.

MS. NORDSTROM: Thank you very much for your time.

SENATOR CRAVEN: And when I see your husband, I'll tell him what a fine job you did.

MS. NORDSTROM: Thank you.

SENATOR CRAVEN: Next, Mr. Tom Woods.

Hi, Tom.

MR. TOM WOODS: Hi. Good morning. I'm Tom Woods; I represent approximately 100 members, residents of the Rancho Verde Mobilehome Park in Rohnert Park.

SENATOR CRAVEN: Rohnert Park.

MR. WOODS: I'm afraid I'm in the minority today. I represent the families.

SENATOR CRAVEN: Well, fine. Well, it's nice to have you here.

MR. WOODS: I purchased a mobilehome in 1980 because it was the only way I was going to avoid renting for the rest of my life, okay. I'm a journeyman electrician; I make a good wage, but I do not qualify to buy a home.

SENATOR CRAVEN: Yes. Tom, get a little closer to the mike or pull it closer to you.

MR. WOODS: I don't qualify to buy standard housing because of my income.

SENATOR CRAVEN: I see.

MR. WOODS: This is a tremendous affordable opportunity for moderate and low-income people, and it's being taken away from them.

The owner of my park issued retroactively a notice converting the park to age 62 on September 23rd. He broke six escrows, including mine, when he did this.

SENATOR CRAVEN: Then in other words, he was going to go from family to 62.

MR. WOODS: They actually claimed there was a small adult section in the park. They had allowed families to buy and sell in that section for several years.

So, at this time, the park is basically 80 percent family, 20 percent adult or senior citizen. It is his, he has absolutely no intent to provide facilities. He has established his intent to discriminate in the original notice. He said one of the reasons he was changing it was as a result of the problems children cause to us all, and he has absolutely refused to let anybody mitigate their damages.

I've been making, I, my home was in escrow, and I had moved. I've been making two house payments for six months, and next month I will have to give the house back to the bank. There have been two sales in that park since September 23. Prior to that, there were 18, and there were six in escrow in September alone. They have destroyed the market, they have eliminated the value of my mobilehome, and they are breaking economic backs of every family in the park.

SENATOR CRAVEN: Tom, do you presently own the home?

MR. WOODS: I own it.

SENATOR CRAVEN: Are you...

MR. WOODS: I'm paying on it.

SENATOR CRAVEN: Are you in the park?

MR. WOODS: No, I moved.

SENATOR CRAVEN: You've moved.

MR. WOODS: Because we were in escrow; I had a sale.

SENATOR CRAVEN: Oh, I see.

MR. WOODS: Okay. The day before they made their announcement, they told my buyer they no longer qualified to live in the park.

SENATOR CRAVEN: I see.

MR. WOODS: They...

SENATOR CRAVEN: Because of their age...

MR. WOODS: That's right.

SENATOR CRAVEN: ...Presumably. They are a young person like yourself.

MR. WOODS: Two children.

SENATOR CRAVEN: Oh, I see. Okay.

MR. WOODS: Okay. And they did that to six other people in the park--have not sold their homes.

SENATOR CRAVEN: I see.

MR. WOODS: This situation exists for the senior people in the park, too. A young, a lady named Marjorie B., crippled with arthritis, lives alone, had made arrangements to move to a facility that provided her with the care she needed. She needs to

draw the equity from her home to afford to live there. She has not had one buyer look at her house since September 23rd, and she's a hostage in that park, going down her steps is a life or death proposition for her because of her arthritis, and she can't get out. She has to wait for her grandchild to come help her go to the store. The park will not allow her to sell her home.

And they provided no notice. They claimed the day they did it that they were not obligated under any part of the California Mobilehome Residency Law because HR 1158 preempts it. And that is their stand to this day.

SENATOR CRAVEN: When you say that she is not allowed to sell her home, or has had nobody look at the home, "presumably" is what you meant?

MR. WOODS: Real estate agents will not list homes in that park, now. It is impossible to qualify a buyer. The park also requires a $22,000 a year income and also requires that every person living in that park will be 62 years of age.

SENATOR CRAVEN: I see.

MR. WOODS: They have set up a situation that makes it virtually impossible to qualify a buyer.

SENATOR CRAVEN: I see.

MR. WOODS: All right. The homes aren't being shown. There is a person in our park, who has entered bankruptcy as a result of this, had a sale broken. He went to his bankruptcy hearing with his lawyer, and the bank didn't even show up. They don't

want the homes. They had the home assessed a week before the hearing, and it was worth $15,000 less than he was in escrow for. The bank will not take control of that house because they have it on the note for $40,000 and they'd be lucky to get 25 for it right now if they could find someone to buy it.

Okay. My argument with this is there is for a practical matter no state agency that enforces the Mobilehome Residency Law in this state--as a practical matter. There are bureaucracies that are charged with it, but they don't, they don't work.

Okay. And we have tried over the, since September to get the DFEH involved, to get HCD involved, they do not want to. The City of Rohnert Park has told us to get an attorney and fight our own battles. The District Attorney in the County of Sonoma will not talk to us--refuses to answer the phone. We have no where to go but to litigate. And that's costly, time consuming.

The WMA is organized and funded, and they're dying to meet us in court because they have more money than we do, they can delay it.

I'm about to lose my home. There are five other people in the park in the same way. Elderly people in the park are scared to death because they've made an investment they can no longer recover. And the situation is ugly at best.

The park refuses to allow me to rent the house, and it sits there vacant, and it's going to break my back.

SENATOR CRAVEN: Now, all of this has taken place as a result of the federal law?

MR. WOODS: Of the park's interpretation of the federal law. Okay. They have told me on numerous occasions in front of witnesses that they have no obligation under state law any more. They aren't required to notify me of a rule change. They, they have the, they claim that they can change the residency rules any time they want now without notification.

SENATOR CRAVEN: Really.

MR. WOODS: They have written that in the letter. They have set me in a situation where if I sign an escrow, if I were to find someone 62 years of age with a $22,000 income who wanted to maintain a mobilehome on his own, I would be in jeopardy the second I signed it because they tell me that they are going to arbitrarily change the rules of residency whenever they want, and I can no longer disclose to a potential buyer what the situation that park is going to be six months from now. And I am potentially liable under disclosure laws for that.

I am in a situation where I cannot sell my home.

SENATOR CRAVEN: May I ask you, Tom, are you represented by counsel?

MR. WOODS: We are suing the park right now. We filed the lawsuit on December 30.

But I believe the implementation of HR 1158 as it is written totally undercuts their legal position and would give us some relief. And that's all we are asking.

SENATOR CRAVEN: Yes.

MR. WOODS: Okay, is the proper notification. We make no, we allege no federal cause of action in our complaint. They are claiming federal jurisdiction in this matter because it's a federal law. The law hasn't taken effect, but basically, their stand is that's too bad; that's the way we interpret the law, and if you don't like it, you have to take us to court. Period. And that is approximately the only answer we have gotten from them in four months.

And I believe that the implementation of this law with HUD's new enforcement powers would grant us some relief from this. Because there is no relief for us any other place other than the courts.

SENATOR CRAVEN: It would seem appropriate to me. I'm not an attorney. Senator Dills is an attorney and former judge, but like other attorney members of the Senate, they can listen and make judgments in their own mind, but they never give legal advice.

MR. WOODS: I'm not asking for legal advice. I'm here to say that SJR 1 or anything that prevents the implementation of HR 1158 is going to break the back of thousands of people in this state.

SENATOR CRAVEN: Oh, yes, I think you've made the point. It's a very untenable situation under which you are living. There is no question in my mind about that. I think the fact

that you have retained counsel to represent you in an action against the owner, management, of the park is the appropriate thing to do.

And we certainly take into consideration everything you've said. We're aware of some of those things happening in other places, particularly the interpretative part.

It's amazing how some people manage to reach down under the sink and come up with a crystal ball, clean it off and put it on the dining room table and then make all kinds of projections like it's gospel. It's very, very difficult for us to understand how they have gained such, you know, omniscience, but obviously lack of experience has not in anyway inhibited them.

MR. WOODS: Well, their attorney is Mr. Swanson, who claims to have vast experience in mobilehome law.

SENATOR CRAVEN: Well, that, that's entirely possible. But it, not necessarily as it relates to 1158, I don't think.

MR. WOODS: Okay. Thank you very much.

SENATOR CRAVEN: You're entirely welcome, Tom. Thank you very much.

Next is Mr. Richard Weiner.

MR. RICHARD WEINER: Good morning, Mr. Chairman, members of the committee. My name is Richard Weiner. I'm an attorney from Los Angeles. I'm here representing, first of all, California Multiple Listing, whose able legislative advocate is Sharon Hilke, who is well known to the committee. CML has over 75

members who are mobilehome dealers and more than 400 salespersons who work for those dealers, almost all of them in Orange County, but basically over Southern California. I also have many clients who are mobilehome dealers and mobilehome parks, and I represent consumers.

I have seen the effect of 1158 on all of them over these last several months, and for many of them it has been devastating. I think, quite frankly, it's been worse in Northern California than it has been in Southern California. Many of the parks in Southern California, I think, as Craig Biddle said, probably all over the state, have taken a wait and see attitude.

Unfortunately, the regulations that HUD issued this past two weeks did very little to clarify the situation.

The problem as Mr. Woods, from my prospective, that Mr. Woods presented, is the same problem that many mobilehome dealers have. They aren't able to effectuate sales of mobilehomes because the price has literally dropped out of the market in those parks that have converted from either family to senior or from adult-only to senior. Now, there are not that many parks, quite frankly that have converted from family to senior. I think those parks, Mr. Woods, obviously has, hopefully he has capable counsel because I think that kind of action is a real bad violation of the Mobilehome Residency Law, and one I think he should be able to recover substantial damages and not just the loss of his home.

Be that as it may, it seems to me unfortunately, and I say unfortunately, this law that has been described as a full employment for attorneys act will probably, in fact, be that. I've advised even the mobilehome parks that I represent that I think there is so much uncertainty, including the interpretation by HUD, that they are best off staying, becoming, remaining, whatever you would call it, family, no age limitation parks. I think the displacement for that, after all the law, itself, obviously was intended to offer, as it says, new housing opportunities for families and for families with children. That, it seems to me, is the major object.

And I think parks that have converted to senior parks, without having established already a senior citizen clientele, I think have done a disservice.

Most of the people who've spoken have given you the major problems, so I'm not going to reiterate that, but let me say that, in looking at your proposal, SJR 1, I'm afraid, in speaking to Mr. Pearl as I have several times over the last several months--I do think he has the knowledge, by the way, of what the law is. I think he feels that it is politically impossible for Washington to do anything about delaying the enforcement of this law, and I, unfortunately, do not think that they're going to make an exception for mobilehomes and mobilehome parks.

Their feeling was this is housing, an important element of housing, even though they mentioned it, important, at least in

saying it's housing, but not important enough for them to come up with legislation that would delay enactment or enforcement of the law. Possibly they would consider that for mobilehome parks, but I have some real doubts about it.

SENATOR CRAVEN: Well, Mr. Weiner, well, I just am sort of way beyond the point where I think the feds are going to do anything to give us an exemption. But the thing that I wish someone would do, and I don't know other than the federal government who it may be, that they have to give us some degree of specificity.

MR. WEINER: I would, I would have hoped quite frankly, in fact when I spoke with Mr. Pearl in November, at the end of November and beginning of December, and he told me that these comments were coming in fast and furious, that there would be some specificity. It's my opinion, in looking at the final regulations, that they are less specific than even the temporary regulations were when they were issued in October.

SENATOR CRAVEN: Yes.

MR. WEINER: You got the feeling in the temporary regulations that there were going to be some specific guidelines. Now, they rearranged the order of things, but I think they were more concerned, less concerned about the findings. And I have some suggestions that, as opposed to SJR 1, that I would humbly think might be helpful.

One is that there be some certification process, if possible, on the state level. I know that the Department of Housing is not

interested in new jobs for itself. It can barely do the ones that it has now. Yet I think it is important that there be some kind of certification process. I know Craig Biddle had suggested that as part of what the HUD regulations might come up with. They didn't dismiss it out of hand, but they said, "We don't have any, any way to deal with that right now." It seems to me, maybe perhaps, the state can have a certification process that says, "Yes, this is a senior facility. No, this is not a senior facility."

I think, secondly, it's important that, as several of the speakers have mentioned, that there be elimination of the six-months notice provision of Civil Code Section, of the Civil Code with regard to implementation of 1158.

Thirdly, I think there should be some kind of standardization of the definition of significant facilities. Perhaps that falls under the same thing as a certification process; maybe it doesn't. But since those are the words that the, HR 1158 uses, it seems to me there ought to be some kind of definition, perhaps it can come on a state level.

I think that there should be elimination of the adult-only provisions of the Mobilehome Residency Law. I think it's confusing at this point. The State Legislature, the State Supreme Court has been quite frankly remiss in the Schmidt Case in not completing the definition of adult-only regulations. It seemed, I think, when this whole process of 1158 came on board, to, to

figure that this was going to do something for it. But it is not, and the State Supreme Court, somehow, I think should be urged to complete that one case.

There's also ambiguity in the Civil Code Section 798.25 in terms of defining what kind of regulations are applicable to new tenants coming in. Now, the process of amending rules and regulations, six-month notice regulation, is supposed to give existing tenants time to adjust. Unfortunately, there is ambiguity in the interpretation of 798.25 is to new tenants--whether it's applicable to them on the first day when they come into the park, or if the six months must have passed already. And the difference in the interpretation of that, I think, has caused some substantial problems. I would hope that perhaps 798.25 could be amended to do that, to clarify it.

And also a couple of other problems that have arisen that have not been mentioned too much today. One, one person did mention the fact that the HUD took the interpretation that a park could say that everyone has to be 55 years of age or older. The conventional wisdom before these final regulations was that if they said it's a 55-year-old park, that one person was 55 and that there could be no age limitation on the other persons coming in. But it seems to me perhaps that legislation could, would also, should also be drafted to say that the second, or subsequent person, if you're going to have a 55-year park rule, can, can be any age.

Also, unfortunately, a point that hasn't been mentioned yet. There are no regulations with regard to a 62-year age park regarding significant facilities. If a park said, "We are a 62-year age limitation effective September 13," they don't have to have any significant facilities at all. When we mentioned that issue to Mr. Pearl. You know, it was that's the way it is.

SENATOR CRAVEN: Mr. Pearl has no idea what constitutes significance as it relates to a person 62?

MR. WEINER: Apparently, the feeling was that if you're going to say you're a 62 year of age park, you will have to have those facilities, and yet it's not defined in there at all.

SENATOR CRAVEN: Yes. But, we...

MR. WEINER: Anyway, I appreciate...

SENATOR CRAVEN: ...I don't know, I know you're going to find this hard to believe, but I'm 62. Only kidding, of course. But I don't know what would be significant. You know, are you going to raise the drinking fountains, or...

MR. WEINER: Well, admittedly it's somewhat, it's a somewhat difficult area, and in mobilehome parks, it's not like a facility that typically caters to senior citizens, and therefore it was suggested that a mobilehome park has to do very little in order to qualify. It's a significant facility.

SENATOR CRAVEN: Well, see, the thing that they've done or failed to do, I guess, Mr. Weiner, is--you know, I had a park ownership in my district, which is in San Diego County, of people

putting in ramps, railings and things like that. And it's all their interpretation. And no one, you know, whispered in their ear. I just, I just wonder how they are going off on these tangents, because to me there may be some significance to having some of these amenities, but they are not spelled out anywhere. And if Mr. Pearl and/or his minions can come up with something that's workable, fine.

MR. WEINER: I think it's going to be up to the State Legislature. I think they have washed their hands of the whole process.

SENATOR CRAVEN: Well, what I'm hoping that, that we can do is to kind of take the lead in the situation and perhaps through, in other words, our good example, we will show them and then maybe convince them that we know what we are talking about by virtue of considerable experience on the part of the Legislature. All of us have to deal with mobilehome people--park owners, park residents, whatever, and we are bound to garner a great deal of experience that a lot of these people who are way up in the bureaucratic levels, they don't have to contend with.

MR. WEINER: Right.

SENATOR CRAVEN: And I think that experience would help us come up with, we can't, we're not perfect; we don't profess to be. But I think we're perhaps a little bit more perfect than some of them.

MR. WEINER: I think, I think the Legislature's going to have to take the bull by the horns, because they see it as a political issue. At least, HUD and the federal legislature, also, the Senate and the House, both see it as a Civil Rights Act. You're not going to mess around with the Civil Rights Act. And therefore, I think, the getting down to the brass tacks, that the finding of how to implement, it seems to me, should come from the state legislature. Because I don't think HUD's going to do it for us, anyway.

SENATOR CRAVEN: Well, you know, who could be against the Civil Rights Act? Every member of the Legislature is in favor of civil rights.

But, you know, what they've done is that they've thrown out a gigantic seine to catch a lot of fish, and they pull it in, but they caught a hell of a lot of dolphins, and they're not fish. And that's what we're dealing with right now.

We've just, with a thought of altruism, we've gone too far, and we have failed to recognize the nuances of the problems. They say, well as I said earlier, it's like an initiative, you know, 50 percent emotion, 50 percent bad writing. There it is.

Thank you, Mr. Weiner.

MR. WEINER: Thank you very much.

SENATOR CRAVEN: Are you going to leave us, Senator Presley?

SENATOR PRESLEY: (Unable to hear response.)

SENATOR CRAVEN: That's perfectly all right, sir. We appreciate your being with us.

SENATOR PRESLEY: (Unable to hear.)

SENATOR CRAVEN: Next is Mr. Howard Foulds. Howard.

(Pause)

I thought for a minute you were going to mail it in, Howard.

MR. HOWARD FOULDS: I haven't got shot, yet.

SENATOR CRAVEN: No. Well, it's good to see you as always, and once again, we're happy to welcome Howard who has been a very, very strong supporter of the mobilehome people and who has made most all of our meetings and supplied us with a lot of very interesting and informative knowledge.

MR. FOULDS: My name is Howard Foulds; I live in Lake Oaks up in the Mother Lode country. Incidentally, we haven't had to shoot our manager. We did change since last time, and we're getting along very well with him.

SENATOR CRAVEN: Really.

MR. FOULDS: And he asked me to tell you in so many words that he pretty well agrees with my letter.

SENATOR CRAVEN: Oh, well, that's nice of him. Now you can take the rope from around his neck.

MR. FOULDS: Well, I just want to read it in to you. It's very short.

SENATOR CRAVEN: Great.

MR. Foulds: Stupidity is forever, but ignorance can be cured. The latter is my reason for being here. Hopefully, by admission of guilt, some knowledge will rub off on me.

We live in Lake Oaks Mobilehome Park. We are co-investors. This we should emphasize. If, without our money, the park wouldn't be there, or it would be vacant--one or the other. So we want to make a little emphasis that we have money invested there, too.

To many, their mobilehome is one of the largest investments. We also have a right for a fair return on our investment, which in many cases is 2½ to 3 times as much as the landlord has invested in our plot for land and improvements and for our share of clubhouse and so forth.

We are a single senior park. This investment like ours is not made by apartment or single-family homeowners. That is a portion of it. We must make this clear at any hearings that we get the floor and in our written communications.

Further, we resent being lumped with renters of apartments and single-family homes, as apparently has been done in HR 1158 through ignorance or deliberately. We also resent a threat of having to spend more money to revamp our improvements to accommodate the seniors as the park owner does also.

Seven or eight years ago we tried to get the federal government to take some interest in mobilehome park law and regulations and of no avail. Now that they have consideration that be given

to our California laws on the subject, we are not coolie labor to be pushed around. Our votes do count, and maybe we'll have to cast them so as to make it more felt in Washington than we have at the present time.

I wish to thank you and the others who have taken an interest in our way of life. We have earned the right to a way to life in the Mother Lode Gold Country.

Howard Foulds, Vice President, Lake Oak Chapter 1331, Legislative Advocate and a long-time member of GSMOL.

I hope that was short enough.

SENATOR CRAVEN: That was very fine, Howard. I thank you very much.

Next is...

MR. FOULDS: (Unable to hear.) I thank you very much.

SENATOR CRAVEN: You're entirely welcome, sir.

Next is Cynthia Book. Cynthia.

Cynthia, after hearing all of this testimony, I know that there's very little that has been left unsaid. And that's exactly what you're going to dwell on, isn't it?

MS. CYNTHIA BOOK: Actually, no, I have it very short.

SENATOR CRAVEN: Oh, you can take your time.

MS. BOOK: Okay, my name is Cindy Book; I live in Rancho-Yolo Mobilehome Park in Davis.

SENATOR CRAVEN: In Davis, all right.

MS. BOOK: And originally I came here to represent my husband and I, but have since been asked to represent at least 15 of my neighbors who couldn't come here today because they have to work or whatever.

SENATOR CRAVEN: Yes. Well, you're a fine representative.

MS. BOOK: My primary concern with what's going on here is, I do not feel there should be any leniency in the designation of a senior park. Primarily because I feel that HR 1158 was written to decrease discrimination, and they left in an exception for bona fide parks with some kind of facilities.

SENATOR CRAVEN: Yes.

MS. BOOK: And I don't see that saying that you bought into something because it was a certain community gives you the right to discriminate. I see that no different than saying, "I bought into a white neighborhood, and I don't think that an African-American should be able to move in." I see no difference in that kind of discrimination.

And for the issue of affordable housing, I've seen figures that 25 percent of the people in this state can't afford to buy a medium priced home. That's a problem for everybody, not just senior citizens.

As I stated before, my husband and I bought into the park because we cannot qualify for other housing, and this is our entry into the park, into the real estate.

Davis is very high priced for Yolo County, and that is not an exception, Silicon Valley et cetera.

Especially it affects us in Davis as far as marketability of our housing, when the median age from the county of records is 24.8 years old. We don't have a large senior section, and my park is changing to senior status from being adult only to 55 and older regulations, and they have no, no special facilities. We have a clubhouse. It's up a very high, rickety flight of stairs, and in having meetings and stuff, many senior citizens in our park will not go to that clubhouse because they are afraid of falling down the stairs. I've fallen down the stairs in the rain.

And as somebody else mentioned, so far what the park has done to do their little senior bit is just tell us what the city provides.

SENATOR CRAVEN: Yes.

MS. BOOK: And it, it's very plain that the city provides this kind of senior citizens center and this and that. And they have provided nothing from the park. And the few things the park residents have done, they've had to fight the management of the park just to be able to do. For example, we have a monthly pot-luck. They had to fight for months to be able to eat in our clubhouse.

So then, and they'd say, well you, now, now all of a sudden, we can kind of have meals if somebody else will do them. And if somebody else can organize them.

That is not a senior park. That's providing nothing special for senior citizens.

SENATOR CRAVEN: I see.

MS. BOOK: And they have stated repeatedly the only reason they are changing to a senior park is to avoid having children in that park. They, they've given no other reason.

And we had a meeting, organized by myself and some other people in the park, just to find out how the park feels. One thing we found out is that we are about 50/50 above 55 and under 55, and that it's been moving towards the younger ages in the last few years. That's staff from the University and stuff like that; people can't afford housing in Davis.

At that meeting, which we finally got the management to agree to attend, they would not even take a vote to see how the people in the park felt. They said if we could somehow organize it and do it, then maybe they would listen to us.

SENATOR CRAVEN: Yes.

MS. BOOK: There are 263 spaces in that park. It is very hard to get people to do, to organize.

SENATOR CRAVEN: I understand.

MS. BOOK: So, in conclusion, I feel that we need to make HR 1158 as tight as possible. It is an anti-discrimination law, and as such, people, there should be something, if you're going to discriminate, there should be a special reason.

SENATOR CRAVEN: Yes.

MS. BOOK: I'd like to see some kind of legislation that allows residents to have more say in, in the running of their parks. When we came in, the management told us that the residents had a fair number, amount, of input into the park. It was only later that we find out that that's what the management says, and nobody else agrees.

And in conclusion, I'd like to say that we should live to the spirit of law, not just the letter of the law.

SENATOR CRAVEN: Very good. Very good ending, too. Thank you very much, Cindy.

MS. BOOK: Thank you.

SENATOR CRAVEN: Next is Mary Palieschesky.

MS. MARY PALIESCHESKY: My names is Mary Palieschesky. I also live in Rancho-Yolo in Davis, so...

SENATOR CRAVEN: The same, same park?

MS. PALIESCHESKY: The same park as Cindy.

SENATOR CRAVEN: I see, fine. You say you endorse what she said?

MS. PALIESCHESKY: Yeah, I endorse what she said. I also feel that the park is not having a valid reason for changing to senior citizens as they had children facilities and allowed families in the past. They only changed to adult only about eight years ago.

SENATOR CRAVEN: Yes.

MS. PALIESCHESKY: Now, I gotta kind of skip a lot of things.

The park has no interest in difficulties faced in selling the home.

SENATOR CRAVEN: Would you put that mike a little closer to you, if you could? That's good.

MS. PALIESCHESKY: Okay.

The park has no interest in difficulties faced in selling the home. Both seniors who need to sell and people like myself have to pay the space rent until the house sells, and since the age-rent median in Davis is 25, I expected to sell my home to a professional student or a staff member, but that is no longer possible.

And I spoke to my real estate agent when we were told of the change by the park, and she says her sales office had sales that were always under, to people under the age of 50 years old, and a substantial portion of those people were under 35 to our park.

And I have no objection to parks which are already senior. My objection is to equating adults only with senior status. And I don't agree with the arbitrary nature of the park being able to decide that they're doing this to you when you have a financial stake in the situation.

And that's about all.

SENATOR CRAVEN: Very well. Thank you very much, Mary.

Next is Mr. Scott Carter. Scott, you've stood up there through the whole bloody mess, and I'm sorry that we didn't have a place for you to be seated, but now's your chance, I guess.

MR. SCOTT CARTER: Thank you very much. My name is Scott Carter. I'm a licensed real estate broker doing business as Suburban Management and Brokerage, specializing in property management for mobilehome parks in northern California. I serve as president of the Western Mobilehome Association's Contra Costa unit and as a member of the Contra Costa County's Mobilehome Advisory Committee.

In this capacity, I was recently appointed to survey the mobilehome parks in Contra Costa County having 20 or more spaces.

Of the 57 parks surveyed, 16 were family parks prior to the enactment of HR 1158 and 41 were adult parks. Of the 41 adult parks, 5 of those were for seniors aged 55 and over.

In response to the enactment of HR 1158, 12 of the adult parks are converting to family parks for a total of 28 family parks. Twenty parks are converting to parks for older persons, with at least one person age 55 and older required, for a total of 25 parks now for seniors. Four parks have not yet decided because of their confusion over HR 1158.

As president of the Contra Costa unit of WMA, I've heard from dozens of park owners and managers and as property manager, from dozens of residents over their concern with the implementation of HR 1158 in both Contra Costa and Sonoma counties. Of the parks that chose to convert to family, most did so because they felt the expense, government restrictions and regulations and in some cases, the resident response would be less burdensome than if they were to convert to the older person park.

Of those choosing to convert to older persons' parks, most seriously doubt, or at least remain confused about, HR 1158's benefits to the public as it concerns these parks. They seriously fear the extent of the burden they may yet have to bear as a result of the facilities' requirements.

A couple of very important points we need to keep in mind when evaluating the impact of HR 1158 on mobilehome parks are:

1) Many of these older parks were designed for adult or senior living. More often than not, the electrical, water and sewer services were installed with minimal standards for the limited occupancy expected in such an adult environment. Compounding the significance of this fact are the increasing electrical requirements due to the many labor-saving appliances and new environmental conditioning equipment and other electrical conveniences modern society has brought to us since the 50s and the 60s.

2) Most of the parks designed for adult and senior living in the years past were designed for economical living. This means that the streets were narrow; the spaces for the mobilehomes were small; the facilities minimal. And the parks were located more often on less expensive land in industrial or suburban areas, sometimes temporarily zoned for the purpose.

With these two points in mind, please consider the three problems I present.

When parks could be adult-only parks, the occupancy of mobilehomes was usually one, two or in a few cases, three persons per space. The average was usually less than two per space. Even though this represents no change if they switch to a senior park in the original intent of occupancy, the increasing electrical requirements have been taxing the electrical service in many parks to the extent of causing failures, which repair costs must necessarily be passed on to the residents.

Converting such a park to a family park over time would likely result in a much greater average occupancy of the parks and a much greater burden on the limited electrical service. Obviously, for some of the older parks, the only choice will be that of converting to an older persons' park.

There are no facilities for children, problem two, in many of these parks, but that alone does not create a problem. Many of these parks are located in industrial or other areas remote from residential neighborhoods where there exists no playgrounds or schools in the immediate area. This forces the children to play in the streets of the mobilehome park. This can be a problem and here's why.

This often occurs in a family designated park. Young, adult drivers or visitors occasionally ignore posted speed limits and speed bumps in the park. Because the mobilehome homes in these economically designed parks are located close together on small lots, often with only minor, or in some cases no, setback at all

from the street, a child could easily be killed running out into the street from between two mobilehomes. This is not likely to happen in an adult or senior park because mature adults don't run out into the streets, and therefore the size of the lot and the orientation of the mobilehome are not so critical. Some parks by their design are just not safe for children.

Number three, because many of the parks were economically produced for adults and older persons, owners have been able to keep the rents at a level consistent with the needs of this important sector of society. HR 1158, by forcing parks to either choose family or older person status, threatens to impose unrealistic expenses and unnecessary requirements on parks, which, if enforced even moderately, will take away from many of the people now enjoying mobilehome living numerous benefits which attracted them to this lifestyle.

Among these benefits are the opportunity to share in the American dream of home ownership, while utilizing money not needed for housing for other needs or pursuits such as recreation, investment and a better standard of living.

The close proximity of the homes in these economically produced parks was not a problem absent the noise that would be generated by children who would have no other place to play but in the streets of such a park. By living in a nearly vandalism- and crime-free environment, these homeowners could be assured of the conservation of their limited assets. In light of the

limited and fixed incomes of many of these residents, these benefits would not be possible without the availability of an economically produced mobilehome park.

Imposing additional facilities' requirements on these kinds of parks would hurt and not help the older person's HR 1158 was designed to protect. If HR 1158 is to be made to work in the existing mobilehome park industry, we need to at least minimize the ill effects of the requirements that will be made on existing mobilehome parks not designed to modern standards or increased occupancy. Certain parks, such as those built to minimal standards, prior to January 1, 1982 and especially those parks having less than 125 spaces, should be exempted from the facilities requirements mandated by regulations pursuant to HR 1158.

Failure to exempt these older parks will severely impact the availability of economic housing opportunities for older persons who so desperately need inexpensive housing.

In summary, for some parks it is not economically feasible or safe to convert to family status. For many of these same parks, we have little choice but to go senior, and even many of the parks who were already being operated as senior parks, the facilities requirements are not economically feasible for either the park owner or the residents. In many cases, the residents don't need or want the additional facilities. The additional cost those facilities would bring, will bring, will create a hardship, an undue hardship.

I hope you will do what you can to relieve park owners and residents alike of unnecessary and overburdensome costs in regulations.

SENATOR CRAVEN: Fine. Thank you very much. Those were very interesting statistics, and the points that you bring to our attention are very, very valid and obviously very, very professional in their delivery, and we appreciate it.

MR. CARTER: Thank you, Senator.

SENATOR CRAVEN: Senator Dills, is there any comment that you would care to make, sir?

SENATOR RALPH DILLS: Thank you very much, and thank the witnesses because they have presented the, perhaps the two sides of this thing, if there are not more than a hundred sides. But anyway, I think I am confused on a higher level. Thank you very much.

SENATOR CRAVEN: Thank you, sir. I'd like to be confused as you're confused. I'd feel very, very happy about that.

MR. WEHRMAN: (Unable to hear.)

SENATOR CRAVEN: That's all right. Just call me Alan.

MR. WEHRMAN: (Unable to hear.)...I'd like to comment on.

SENATOR CRAVEN: That's got me into a lot of restaurants, Len, I'll tell you. They keep telling me that I have more hair than they thought I had.

MR. WEHRMAN: So were my, several of them...

SENATOR CRAVEN: This is Len Wehrman back for what we say in the business, reprise. Is that right, Ralph.

SENATOR DILLS: Yes.

SENATOR CRAVEN: Yes, okay.

MR. WEHRMAN: In fairness to HUD in these whole regulations, frankly, they were backed into a corner by what Congress did to them. Not only what the Congress did to them, but the testimony on the floor of the Senate and the floor of the house, all the reports that were done and outside influences, quite frankly.

I have been privileged to read most of the 6,400 letters, having spent a lot of time there, and I can tell you, I would even have a very difficult problem sorting those out.

SENATOR CRAVEN: Yes.

MR. WEHRMAN: So that is one of the reasons why they discounted so many of those, because the spectrum went from A to Z. And there was no middle ground anywhere in this whole translation.

You also have to consider that this is really an east coast, civil rights, apartment house problem. It all emanated from the New Yorks, the Washington, D.C.s, the Chicagos, the Philadelphias, et cetera, and had nothing to do with apartment houses, per se, or anything else. It was a big city phenomena on the east coast. Let me also mention...

SENATOR CRAVEN: You'd better watch those east-coast people, I guess.

MR. WEHRMAN: Yes. The comment on, that somebody previously made, if you do nothing, I want to reinforce this, that after March 12 of 1989, the wisdom is by default you went to family whether you liked it or not.

SENATOR CRAVEN: Yes. Okay.

MR. WEHRMAN: However, there is a caveat to that. Once you go family, it is virtually impossible to go back to any other classification because that would be classified as discriminating. So any park that thinks that they've gone family and think that they could flip-flop, I think is in a, is going to have some real shocks to them.

The problem lies in this whole thing, however, if you declare yourself 55 and you don't qualify or you don't maintain an 80 level, 80 percent level, and by default you go family, it's going to be virtually impossible to move back from family to any, anything other, any other designation. Whether you're in an old park, a new park, doesn't make an ounce of difference.

In response to what Craig said about the 80 percent.--It pertains to new residents coming in since September 13th, an 80% factor thereof. In particular in California, with a six-month transition rule, if you didn't start complying with, on September 13 and maintain an 80 percent level, at least in theory, you have already defaulted. Even though you may have said you are a 55 park, if you haven't complied with the 80 percent rule since September 13th or on date of enactment, most wisdom says you have already defaulted whether you like it or not.

How do we get into this area? If you draw a little curve up here and put single-family houses on one side and apartment houses on the other, it's relatively clear as to where we set. The gray matter in the middle is the condominium people, subdivisions, town houses and mobilehome parks. In other words, in that middle ground, anybody who has the ability to set a rule for housing for others is in this catch-22. Anybody who is able to set a rule for the environment of others sets the rule.

You can even be so ridiculous to say that if I'm a single-family homeowner on a conventional street, build seven houses out here that will not sell the land, but will lease only the house or allow you to put a home on there, I, then, as that homeowner, can set the rule for those other persons out there because I can then restrict their sale to any person that I so designate, including a 55-age category.

The reason we also got into this dilemma is that there were 180 lobbying groups in Washington, D.C. that lobbied for this. And most of these people, if you sit back and look at them, were of the nature of apartment houses and condominiums. And quite frankly, I sit here red faced because in truth is there was an absolute total absence from the manufactured housing industry in all components prior to approximately June of 1988. Frankly, we had lost the battle once we got to that point.

I still ask the same question which I was told was going to be answered, I still make the same charge that there are no

senior mobilehome parks in California. I still have not heard the rebuttal. I might just add that that has been presented to this Legislature at least three or four times. And the Legislature had chosen not to enact senior mobilehome park designations.

In response to the lady from San Jose that they are going to take out homes and put in the family accommodations, that gets back to something that's said before. Conditional use permits in that particular park require that if they are going to convert to family that they must give approximately four or five spaces up for the development of, of those facilities for those people.

Also on the drawing book is HR 646 that everybody should be aware of. That is an attempt to change the effective date from the enactment date to March 12 which is the effective date of the regulations. That's been offered by Congressman Saxton of New Jersey and quite frankly unless we get busy, it's just going to labor, lay there and nothing will happen to it.

The other issue that we have not talked about here and is probably equal with the age discrimination, is the handicapped portions in mobilehome parks. As it has already been mentioned, we have no sidewalks, we have narrow streets, we have traffic obviously on those streets, we have bad weather, et cetera. Yet we are going to require handicapped people and inferred people, mentally handicapped, as well, to go up and down those streets at all 24 hours of the day, more or less, and to go to some of these facilities and services.

So I would caution anybody who lives in a mobilehome park that has handicapped people in that, that those accommodations must be made available to everybody, not just the able but, if you will, the unable or the disabled.

Let me leave the last thought with everybody. I have heard nothing about talking about the incoming, the residents who are already in the mobilehome park. As I have said repeatedly, it's not the current resident who is going to be the problem of the nature, the nature of this problem. It is going to be the public members out there who want to get into this kind of affordable type housing, that has been precluded from doing so before. Therefore, when the current homeowner wants to sell, if he's got a willing buyer out there, it is with that entity, along with the selling agents and the lenders and everybody else will line up on one side, and quite frankly, the park owner will line up solely on the other side.

So the issue that we have here is one of great magnitude and where the public wants into these 4.5 million mobilehome spaces that we have all across the country.

So leave me let that last, very last thought to this, is that we talk about this primarily as a California problem, and it certainly is not. We've got 38,000 mobilehome parks and a 4½ million spaces, and the public wants access to these spaces. And that's the real issue that we should be talking about. Because that public will then file the complaint. It won't come from the residents.

Thank you very much, Senator.

SENATOR CRAVEN: Thank you.

Well, ladies and gentlemen, as always, we are very happy that you took your valuable time to be with us today, and so many of you have offered us suggestions and comment as to the state of things today.

Although I don't know that we really solved any problems, we certainly categorized them. We will file them away for work wherein we feel that we may come up with some legislative remedies, if possible. But those comments that you made are very, very valuable to us.

And on behalf of Senator Dills and myself and our other colleagues who are no longer with us at this time, we want to thank you most sincerely for being with us, and we look forward to seeing you soon.

Thank you.

SECTION VI

A P P E N D I X

Selected Correspondence and Materials

Public Law 100-430
100th Congress

An Act

To amend title VIII of the Act commonly called the Civil Rights Act of 1968, to revise the procedures for the enforcement of fair housing, and for other purposes.

Sept. 13, 1988
[H.R. 1158]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Fair Housing Amendments Act of 1988. Discrimination, prohibition. 42 USC 3601 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Housing Amendments Act of 1988".

Civil Rights Act of 1968. 42 USC 3601 note.

SEC. 2. SHORT TITLE FOR 1968 ACT.

The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting after the comma at the end of the enacting clause, the following: "That this Act may be cited as the 'Civil Rights Act of 1968'.".

SEC. 3. REFERENCES TO 1968 ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or provision, the reference shall be considered to be made to a section or other provision of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968).

SEC. 4. SHORT TITLE FOR TITLE VIII.

Title VIII is amended by inserting after the title's heading the following new section:

"SHORT TITLE

"SEC. 800. This title may be cited as the 'Fair Housing Act'.".

Fair Housing Act. 42 USC 3601 note.

SEC. 5. AMENDMENTS TO DEFINITIONS SECTION.

42 USC 3602.

(a) MODIFICATION OF DEFINITION OF DISCRIMINATORY HOUSING PRACTICE.—Section 802(f) is amended by striking out "or 806" and inserting in lieu thereof "806, or 818".

(b) ADDITIONAL DEFINITIONS.—Section 802 is amended by adding at the end the following:

"(h) 'Handicap' means, with respect to a person—

"(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

"(2) a record of having such an impairment, or

"(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(i) 'Aggrieved person' includes any person who—

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"(1) claims to have been injured by a discriminatory housing practice; or

"(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"(j) 'Complainant' means the person (including the Secretary) who files a complaint under section 810.

"(k) 'Familial status' means one or more individuals (who have not attained the age of 18 years) being domiciled with—

"(1) a parent or another person having legal custody of such individual or individuals; or

"(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

"(l) 'Conciliation' means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

"(m) 'Conciliation agreement' means a written agreement setting forth the resolution of the issues in conciliation.

"(n) 'Respondent' means—

"(1) the person or other entity accused in a complaint of an unfair housing practice; and

"(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a).

"(o) 'Prevailing party' has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).".

Handicapped persons.
42 USC 3604.

SEC. 6. DISCRIMINATORY HOUSING PRACTICE AMENDMENTS.

(a) ADDITIONAL DISCRIMINATORY HOUSING PRACTICES.—Section 804 is amended by adding at the end the following:

"(f)(1) 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.

"(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

"(A) that person; or

"(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 person.

"(3) For purposes of this subsection, discrimination includes—

"(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;

"(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

"(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that—

"(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

"(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

"(iii) all premises within such dwellings contain the following features of adaptive design:

"(I) an accessible route into and through the dwelling;

"(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

"(III) reinforcements in bathroom walls to allow later installation of grab bars; and

"(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

"(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as 'ANSI A117.1') suffices to satisfy the requirements of paragraph (3)(C)(iii).

"(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph. State and local governments.

"(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

"(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

"(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

"(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act to State and local governments.

receive and process complaints or otherwise engage in enforcement activities under this title.

"(B) Determinations by a State or a unit of general local government under paragraphs (5) (A) and (B) shall not be conclusive in enforcement proceedings under this title.

"(7) As used in this subsection, the term 'covered multifamily dwellings' means—

"(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

"(B) ground floor units in other buildings consisting of 4 or more units.

State and local governments.

"(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

Public health and safety.

"(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.".

42 USC 3606.

(b) ADDITIONAL PROTECTED CLASSES.—(1) Section 806 and subsections (c), (d), and (e) of section 804, are each amended by inserting "handicap, familial status," immediately after "sex," each place it appears.

(2) Subsections (a) and (b) of section 804 are each amended by inserting "familial status," after "sex," each place it appears.

42 USC 3602 note.

(3) For the purposes of this Act as well as chapter 16 of title 29 of the United States Code, neither the term "individual with handicaps" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite.

(c) DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS.—Section 805 is amended to read as follows:

"DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

42 USC 3605.

"SEC. 805. (a) IN GENERAL.—It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

"(b) DEFINITION.—As used in this section, the term 'residential real estate-related transaction' means any of the following:

"(1) The making or purchasing of loans or providing other financial assistance—

"(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

"(B) secured by residential real estate.

"(2) The selling, brokering, or appraising of residential real property.

"(c) APPRAISAL EXEMPTION.—Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.".

42 USC 3607.

(d) ADDITIONAL EXEMPTION.—Section 807 is amended—

(1) by inserting "(a)" after "SEC. 807."; and

(2) by adding at the end of such section the following:

"(b)(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

"(2) As used in this section, 'housing for older persons' means housing—

"(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

"(B) intended for, and solely occupied by, persons 62 years of age or older; or

"(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

Regulations.
Aged persons.

"(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

"(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

"(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

"(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

Aged persons.

"(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2) (B) or (C): *Provided*, That new occupants of such housing meet the age requirements of subsections (2) (B) or (C); or

"(B) unoccupied units: *Provided*, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2) (B) or (C).

"(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).".

Drugs and drug abuse.

(e) CLERICAL AMENDMENT.—The heading of section 804 is amended by adding at the end the following: "AND OTHER PROHIBITED PRACTICES".

42 USC 3604.

SEC. 7. ADDITIONAL ADMINISTRATIVE AUTHORITY.

(a) COOPERATION WITH SECRETARY.—Section 808(d) is amended by inserting "(including any Federal agency having regulatory or supervisory authority over financial institutions)" after "urban development".

42 USC 3608.

42 USC 3608.

(b) ADDITIONAL FUNCTIONS OF SECRETARY.—(1) Section 808(e) is amended—

Reports.

(A) in paragraph (2), by inserting before the semicolon at the end, the following: ", including an annual report to the Congress—

"(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

"(B) containing tabulations of the number of instances (and the reasons therefor) in the preceding year in which—

"(i) investigations are not completed as required by section 810(a)(1)(B);

"(ii) determinations are not made within the time specified in section 810(g); and

"(iii) hearings are not commenced or findings and conclusions are not made as required by section 812(g)";

(B) by striking out "; and" at the end of paragraph (4);

(C) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(D) by adding at the end, the following:

Reports.
Public information.
Records.

"(6) annually report to the Congress, and make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of, programs administered by the Department to the extent such characteristics are within the coverage of the provisions of law and Executive orders referred to in subsection (f) which apply to such programs (and in order to develop the data to be included and made available to the public under this subsection, the Secretary shall, without regard to any other provision of law, collect such information relating to those characteristics as the Secretary determines to be necessary or appropriate).".

(2) Section 808 is amended by adding at the end the following:

"(f) The provisions of law and Executive orders to which subsection (e)(6) applies are—

"(1) title VI of the Civil Rights Act of 1964;

"(2) title VIII of the Civil Rights Act of 1968;

"(3) section 504 of the Rehabilitation Act of 1973;

"(4) the Age Discrimination Act of 1975;

"(5) the Equal Credit Opportunity Act;

"(6) section 1978 of the Revised Statutes (42 U.S.C. 1982);

"(7) section 8(a) of the Small Business Act;

"(8) section 527 of the National Housing Act;

"(9) section 109 of the Housing and Community Development Act of 1974;

"(10) section 3 of the Housing and Urban Development Act of 1968;

"(11) Executive orders 11063, 11246, 11625, 12250, 12259, and 12432; and

"(12) any other provision of law which the Secretary specifies by publication in the Federal Register for the purpose of this subsection.".

SEC. 8. ENFORCEMENT CHANGES.

Title VIII is amended—

(1) by redesignating sections 815 through 819 as sections 816 through 820, respectively; and 42 USC 3615–3619.

(2) by striking out sections 810 through 813 and inserting in lieu thereof the following: 42 USC 3610–3613.

"ADMINISTRATIVE ENFORCEMENT; PRELIMINARY MATTERS

"SEC. 810. (a) COMPLAINTS AND ANSWERS.—(1)(A)(i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint. 42 USC 3610.

"(ii) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary requires.

"(iii) The Secretary may also investigate housing practices to determine whether a complaint should be brought under this section.

"(B) Upon the filing of such a complaint—

"(i) the Secretary shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this title;

"(ii) the Secretary shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this title, together with a copy of the original complaint;

"(iii) each respondent may file, not later than 10 days after receipt of notice from the Secretary, an answer to such complaint; and

"(iv) the Secretary shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), unless it is impracticable to do so.

"(C) If the Secretary is unable to complete the investigation within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

"(D) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

"(2)(A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the Secretary.

"(B) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the Secretary's belief that the person to whom the notice is addressed is properly joined as a respondent.

Contracts.

"(b) INVESTIGATIVE REPORT AND CONCILIATION.—(1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Secretary, the Secretary shall, to the extent feasible, engage in conciliation with respect to such complaint.

"(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Secretary.

"(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

Public information.

"(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Secretary determines that disclosure is not required to further the purposes of this title.

Reports.

"(5)(A) At the end of each investigation under this section, the Secretary shall prepare a final investigative report containing—

"(i) the names and dates of contacts with witnesses;

"(ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

"(iii) a summary description of other pertinent records;

"(iv) a summary of witness statements; and

"(v) answers to interrogatories.

"(B) A final report under this paragraph may be amended if additional evidence is later discovered.

"(c) FAILURE TO COMPLY WITH CONCILIATION AGREEMENT.—Whenever the Secretary has reasonable cause to believe that a respondent has breached a conciliation agreement, the Secretary shall refer the matter to the Attorney General with a recommendation that a civil action be filed under section 814 for the enforcement of such agreement.

"(d) PROHIBITIONS AND REQUIREMENTS WITH RESPECT TO DISCLOSURE OF INFORMATION.—(1) Nothing said or done in the course of conciliation under this title may be made public or used as evidence in a subsequent proceeding under this title without the written consent of the persons concerned.

"(2) Notwithstanding paragraph (1), the Secretary shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Secretary's investigation, information derived from an investigation and any final investigative report relating to that investigation.

"(e) PROMPT JUDICIAL ACTION.—(1) If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this title, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 812 of this title.

"(2) Whenever the Secretary has reason to believe that a basis may exist for the commencement of proceedings against any

respondent under sections 814(a) and 814(c) or for proceedings by any governmental licensing or supervisory authorities, the Secretary shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

"(f) REFERRAL FOR STATE OR LOCAL PROCEEDINGS.—(1) Whenever a complaint alleges a discriminatory housing practice—

"(A) within the jurisdiction of a State or local public agency; and

"(B) as to which such agency has been certified by the Secretary under this subsection;

the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint.

"(2) Except with the consent of such certified agency, the Secretary, after that referral is made, shall take no further action with respect to such complaint unless—

"(A) the certified agency has failed to commence proceedings with respect to the complaint before the end of the 30th day after the date of such referral;

"(B) the certified agency, having so commenced such proceedings, fails to carry forward such proceedings with reasonable promptness; or

"(C) the Secretary determines that the certified agency no longer qualifies for certification under this subsection with respect to the relevant jurisdiction.

"(3)(A) The Secretary may certify an agency under this subsection only if the Secretary determines that—

"(i) the substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;

"(ii) the procedures followed by such agency;

"(iii) the remedies available to such agency; and

"(iv) the availability of judicial review of such agency's action;

are substantially equivalent to those created by and under this title.

"(B) Before making such certification, the Secretary shall take into account the current practices and past performance, if any, of such agency.

"(4) During the period which begins on the date of the enactment of the Fair Housing Amendments Act of 1988 and ends 40 months after such date, each agency certified (including an agency certified for interim referrals pursuant to 24 CFR 115.11, unless such agency is subsequently denied recognition under 24 CFR 115.7) for the purposes of this title on the day before such date shall for the purposes of this subsection be considered certified under this subsection with respect to those matters for which such agency was certified on that date. If the Secretary determines in an individual case that an agency has not been able to meet the certification requirements within this 40-month period due to exceptional circumstances, such as the infrequency of legislative sessions in that jurisdiction, the Secretary may extend such period by not more than 8 months.

"(5) Not less frequently than every 5 years, the Secretary shall determine whether each agency certified under this subsection continues to qualify for certification. The Secretary shall take appropriate action with respect to any agency not so qualifying.

"(g) REASONABLE CAUSE DETERMINATION AND EFFECT.—(1) The Secretary shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with

respect to a complaint, within 100 days after the commencement of such further action), determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary has approved a conciliation agreement with respect to the complaint. If the Secretary is unable to make the determination within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), the Secretary shall notify the complainant and respondent in writing of the reasons for not doing so.

"(2)(A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 812.

"(B) Such charge—

"(i) shall consist of a short and plain statement of the facts upon which the Secretary has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

"(ii) shall be based on the final investigative report; and

"(iii) need not be limited to the facts or grounds alleged in the complaint filed under section 810(a).

"(C) If the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary shall immediately refer the matter to the Attorney General for appropriate action under section 814, instead of issuing such charge.

"(3) If the Secretary determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall promptly dismiss the complaint. The Secretary shall make public disclosure of each such dismissal.

Public information.

"(4) The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

"(h) SERVICE OF COPIES OF CHARGE.—After the Secretary issues a charge under this section, the Secretary shall cause a copy thereof, together with information as to how to make an election under section 812(a) and the effect of such an election, to be served—

"(1) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and

"(2) on each aggrieved person on whose behalf the complaint was filed.

"SUBPOENAS; GIVING OF EVIDENCE

42 USC 3611.

"SEC. 811. (a) IN GENERAL.—The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this title. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the United States district court for the district in which the investigation is taking place.

"(b) WITNESS FEES.—Witnesses summoned by a subpoena under this title shall be entitled to the same witness and mileage fees as witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Secretary.

"(c) CRIMINAL PENALTIES.—(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a), shall be fined not more than $100,000 or imprisoned not more than one year, or both. Records.

"(2) Any person who, with intent thereby to mislead another person in any proceeding under this title—

"(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a);

"(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

"(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than $100,000 or imprisoned not more than one year, or both.

"ENFORCEMENT BY SECRETARY

"SEC. 812. (a) ELECTION OF JUDICIAL DETERMINATION.—When a charge is filed under section 810, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) in lieu of a hearing under subsection (b). The election must be made not later than 20 days after the receipt by the electing person of service under section 810(h) or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates. 42 USC 3612.

"(b) ADMINISTRATIVE LAW JUDGE HEARING IN ABSENCE OF ELECTION.—If an election is not made under subsection (a) with respect to a charge filed under section 810, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 810. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of title 5, United States Code. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

"(c) RIGHTS OF PARTIES.—At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 811. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

"(d) EXPEDITED DISCOVERY AND HEARING.—(1) Discovery in administrative proceedings under this section shall be conducted as

expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

"(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

"(3) The Secretary shall, not later than 180 days after the date of enactment of this subsection, issue rules to implement this subsection.

"(e) RESOLUTION OF CHARGE.—Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

"(f) EFFECT OF TRIAL OF CIVIL ACTION ON ADMINISTRATIVE PROCEEDINGS.—An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

"(g) HEARINGS, FINDINGS AND CONCLUSIONS, AND ORDER.—(1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

"(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the Secretary, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

"(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent—

"(A) in an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

"(B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

"(C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed

without regard to the period of time within which any subsequent discriminatory housing practice occurred.

"(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this title. Contracts.

"(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Secretary shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review)—

"(A) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

"(B) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

"(6) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Secretary shall send a copy of each such order to the Attorney General.

"(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The Secretary shall make public disclosure of each such dismissal. Public information.

"(h) REVIEW BY SECRETARY; SERVICE OF FINAL ORDER.—(1) The Secretary may review any finding, conclusion, or order issued under subsection (g). Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.

"(2) The Secretary shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

"(i) JUDICIAL REVIEW.—(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under chapter 158 of title 28, United States Code.

"(2) Notwithstanding such chapter, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

"(j) COURT ENFORCEMENT OF ADMINISTRATIVE ORDER UPON PETITION BY SECRETARY.—(1) The Secretary may petition any United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

"(2) The Secretary shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge. Records.

"(k) RELIEF WHICH MAY BE GRANTED.—(1) Upon the filing of a petition under subsection (i) or (j), the court may—

"(A) grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

"(B) affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

"(C) enforce such order to the extent that such order is affirmed or modified.

"(2) Any party to the proceeding before the administrative law judge may intervene in the court of appeals.

"(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

"(l) ENFORCEMENT DECREE IN ABSENCE OF PETITION FOR REVIEW.—If no petition for review is filed under subsection (i) before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement—

"(1) which is filed by the Secretary under subsection (j) after the end of such day; or

"(2) under subsection (m).

"(m) COURT ENFORCEMENT OF ADMINISTRATIVE ORDER UPON PETITION OF ANY PERSON ENTITLED TO RELIEF.—If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i), and the Secretary has not sought enforcement of the order under subsection (j), any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

"(n) ENTRY OF DECREE.—The clerk of the court of appeals in which a petition for enforcement is filed under subsection (l) or (m) shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

"(o) CIVIL ACTION FOR ENFORCEMENT WHEN ELECTION IS MADE FOR SUCH CIVIL ACTION.—(1) If an election is made under subsection (a), the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of title 28, United States Code.

"(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

"(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 813. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 813 shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought

for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

"(p) ATTORNEY'S FEES.—In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section 812, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5, United States Code, or by section 2412 of title 28, United States Code.

"ENFORCEMENT BY PRIVATE PERSONS

"SEC. 813. (a) CIVIL ACTION.—(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach. Contracts. 42 USC 3613.

"(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

"(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

"(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this title with respect to such charge.

"(b) APPOINTMENT OF ATTORNEY BY COURT.—Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

"(1) appoint an attorney for such person; or

"(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

"(c) RELIEF WHICH MAY BE GRANTED.—(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging

in such practice or ordering such affirmative action as may be appropriate).

"(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

Contracts.

"(d) EFFECT ON CERTAIN SALES, ENCUMBRANCES, AND RENTALS.—Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this title.

"(e) INTERVENTION BY ATTORNEY GENERAL.—Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 814(e) in a civil action to which such section applies.

"ENFORCEMENT BY THE ATTORNEY GENERAL

Courts, U.S.
42 USC 3614.

"SEC. 814. (a) PATTERN OR PRACTICE CASES.—Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

"(b) ON REFERRAL OF DISCRIMINATORY HOUSING PRACTICE OR CONCILIATION AGREEMENT FOR ENFORCEMENT.—(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 810(g).

"(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

Contracts.

"(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 810(c).

"(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 810(c).

"(c) ENFORCEMENT OF SUBPOENAS.—The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this title, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

"(d) RELIEF WHICH MAY BE GRANTED IN CIVIL ACTIONS UNDER SUBSECTIONS (a) AND (b).—(1) In a civil action under subsection (a) or (b), the court—

"(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order

against the person responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title;

"(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

"(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

"(i) in an amount not exceeding $50,000, for a first violation; and

"(ii) in an amount not exceeding $100,000, for any subsequent violation.

"(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28, United States Code.

"(e) INTERVENTION IN CIVIL ACTIONS.—Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 813.

"RULES TO IMPLEMENT TITLE

"SEC. 815. The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.". 42 USC 3614a. Public information.

SEC. 9. CONFORMING AMENDMENT TO TITLE IX.

Section 901 is amended by inserting ", handicap (as such term is defined in section 802 of this Act), familial status (as such term is defined in section 802 of this Act)," after "sex" each place it appears. 42 USC 3631.

SEC. 10. TECHNICAL AMENDMENT RELATING TO CIVIL ACTION.

Section 818 (as so redesignated by section 8 of this Act) is amended by striking out the last sentence thereof. 42 USC 3617.

SEC. 11. CONFORMING AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) JURISDICTION.—Section 2342 of title 28, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting "; and" in lieu thereof; and

(3) by inserting after paragraph (5) but before the matter beginning "Jurisdiction is invoked" the following:

"(6) all final orders under section 812 of the Fair Housing Act.".

(b) DEFINITION.—Section 2341(3) of title 28, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following:

"(D) the Secretary, when the order is under section 812 of the Fair Housing Act.".

42 USC 3601 note.

SEC. 12. DISCLAIMER OF PREEMPTIVE EFFECT ON OTHER ACTS.

Nothing in the Fair Housing Act as amended by this Act limits any right, procedure, or remedy available under the Constitution or any other Act of the Congress not so amended.

SEC. 13. EFFECTIVE DATE AND INITIAL RULEMAKING.

42 USC 3601 note.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the 180th day beginning after the date of the enactment of this Act.

(b) INITIAL RULEMAKING.—In consultation with other appropriate Federal agencies, the Secretary shall, not later than the 180th day after the date of the enactment of this Act, issue rules to implement title VIII as amended by this Act. The Secretary shall give public notice and opportunity for comment with respect to such rules.

Public information.

42 USC 3601 note.

SEC. 14. SEPARABILITY OF PROVISIONS.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SEC. 15. MODIFICATION OF RENTAL HOUSING BY HANDICAPPED PERSONS.

Section 804 (as amended by section 6 of this Act) is further amended by striking out the period at the end of subsection (f)(3)(A) and inserting in lieu thereof "except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.".

Approved September 13, 1988.

LEGISLATIVE HISTORY—H.R. 1158:

HOUSE REPORTS: No. 100-711 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 134 (1988):
June 22, 23, 29, considered and passed House.
Aug. 1, 2, considered and passed Senate, amended.
Aug. 8, House concurred in Senate amendment.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):
Sept. 13, Presidential remarks.

HUD Final Regulations

RE: Senior Housing

Implementing HR 1158

With Examples

Effective March 12, 1989

Subpart E - Housing for Older Persons

§100.300 Purpose.

The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.

§100.301 Exemption.

(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§100.302, 100.303 or 100.304.

(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

§100.302 State and Federal Elderly Housing Programs.

The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

§100.303 62 or Over Housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over.

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of paragraph (a) of this section:

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in § 100.304.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.

§100.304 55 or over Housing.

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, Provided that the housing satisfies the requirements of §100.304(b)(1) or (b)(2) and the requirements of §100.304(c).

(b)(1) The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care or programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

(2) It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this paragraph (b)(2) of this section the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this paragraph (b)(2) of this section -

(i) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to

provide is not alone sufficient to demonstrate that the provision of such services is not practicable.

(ii) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale.

(iii) The income range of the residents of the housing facility.

(iv) The demand for housing for older persons in the relevant geographic area.

(v) The range of housing choices for older persons within the relevant geographic area.

(vi) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of this paragraph (b)(2) of this section.

(vii) The vacancy rate of the housing facility.

(c)(1) At least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989 need not

comply with this paragraph (c)(1) of this section until 25% of the units in the facility are occupied; and

(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph (c)(2) of this section:

(i) The manner in which the housing facility is described to prospective residents.

(ii) The nature of any advertising designed to attract prospective residents.

(iii) Age verification procedures.

(iv) Lease provisions.

(v) Written rules and regulations.

(vi) Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(d) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over.

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(e) The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty (80) units are occupied by at least one person who is 55 years of age or older. Eighteen (18) units are occupied exclusively by persons who are under 55. Among the units occupied by new occupants after September 13, 1988 were 18 units occupied exclusively by persons who are under 55. Two (2) units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82% of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years old or older. If John and Mary are accepted for occupancy, then 81 out of the 99 occupied units (82%) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption.

B. If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13, 1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988 67% of the Green Meadow's occupied units (600 out of 900) were occupied by at at least one person 55 years of age or older. Under paragraph (d)(1) of this section, Green Meadow qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that were occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Under paragraph (d) of this section, Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80% of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in paragraph (c)(1) of this section that at least 80% of the occupied units be occupied by at least one person 55 years of age or older per unit until 50 units (25%) are occupied. When the 50th unit is occupied, then 80% of the 50 occupied units (i.e., 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

101ST CONGRESS
1ST SESSION

H. R. 646

To amend the Fair Housing Act to provide a longer transition period with respect to qualifying as housing for older persons for certain purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 1989

Mr. SAXTON introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

---

A BILL

To amend the Fair Housing Act to provide a longer transition period with respect to qualifying as housing for older persons for certain purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 807(b)(3)(A) of the Fair Housing Act is amended by striking out "the date of enactment of this Act" and inserting "March 12, 1989" in lieu thereof.

○

(1) by inserting "(a)" after "SEC. 807."; and

(2) by adding at the end of such section the following:

"(b)(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

"(2) As used in this section, 'housing for older persons' means housing—

"(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

"(B) intended for, and solely occupied by, persons 62 years of age or older; or

"(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

Regulations.
Aged persons.

"(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

"(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

"(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

"(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

Aged persons.

"(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2) (B) or (C): *Provided*, That new occupants of such housing meet the age requirements of subsections (2) (B) or (C); or

"(B) unoccupied units: *Provided*, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2) (B) or (C).

"(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).".

Drugs and drug abuse.

(e) CLERICAL AMENDMENT.—The heading of section 804 is amended by adding at the end the following: "AND OTHER PROHIBITED PRACTICES".

42 USC 3604.

SEC. 7. ADDITIONAL ADMINISTRATIVE AUTHORITY.

(a) COOPERATION WITH SECRETARY.—Section 808(d) is amended by inserting "(including any Federal agency having regulatory or supervisory authority over financial institutions)" after "urban development".

42 USC 3608.

AMENDED IN SENATE MARCH 6, 1989

Senate Joint Resolution No. 1

Introduced by Senators Craven, Alquist, Ayala, Beverly, Leroy Greene, McCorquodale, Nielsen, Petris, and Presley
(Coauthors: Assembly Members Bradley, Dennis Brown, Chandler, Condit, Farr, Ferguson, Filante, Frazee, Kelley, La Follette, and Mojonnier)

December 7, 1988

Senate Joint Resolution No. 1—Relative to mobilehome parks.

LEGISLATIVE COUNSEL'S DIGEST

SJR 1, as amended, Craven. Federal Fair Housing Amendments Act of 1988.

This measure would memorialize the President and Congress of the United States to support and enact urgency legislation to ~~delay the effective date of~~ *amend* the Federal Fair Housing Amendments Act of 1988, *to clarify the intent of Congress with regard to the effect of the requirements for senior facilities and services upon the affordability of senior mobilehome parks for the residents of those parks.*

Fiscal committee: no.

WHEREAS, For some years most California mobilehome parks, pursuant to Sections 798.76 and 799.5 of the Civil Code, have operated with "adults only" residency restrictions, offering an adult or senior lifestyle to more than one-half million Californians of retirement age; and

WHEREAS, There is a need for affordable housing for senior citizens and persons of retirement age which mobilehomes provide; and

WHEREAS, Congress has recently passed, and the President signed, HR 1158, the Federal Fair Housing Amendments Act of 1988, which prohibits "adults only" residency restrictions in most single-family and multiresidential housing *but permits 55 years and older senior housing where there are significant facilities and services to meet the physical or social needs of seniors*; and

~~WHEREAS, Mobilehome parks which have established adult and senior living patterns for many years have only until March 13, 1989, to comply with requirements to open parks to persons of all ages; and~~

WHEREAS, The federal Department of Housing and Urban Development (HUD) has already adopted regulations to enforce provisions of the Fair Housing Amendments Act of 1988, without congressional review; and

~~WHEREAS, The HUD regulations do not distinguish between conventional rental housing and mobilehome parks, where residents own their own individual homes; and~~

~~WHEREAS, The broadly drafted and ambiguous nature of the HUD regulations do not clarify whether mobilehome parks will be allowed to continue to~~

WHEREAS, The ambiguous nature of the HUD regulations do not clarify what facilities and services will have to be installed for mobilehome parks to be allowed to continue to maintain a retirement lifestyle for residents 55 years of age and older but leave to HUD administrators on a local level the power to make such determinations on a case-by-case basis; and

~~WHEREAS, Mobilehome park residents, due to the swiftness of enactment of HR 1158 and implementing regulations, have been afforded little or no notice of prospective lifestyle changes in parks in which they have lived for many years; and~~

WHEREAS, Senior facilities and services which have to be installed may increase the cost of housing in senior mobilehome parks; and

WHEREAS, The swiftness with which HR 1158 and

implementing regulations have become effective has served to create confusion and anxiety among park residents, stir up numerous conflicts between park owners and their residents, and led to lawsuits and a multiplicity of complaints to local and state elected officals; now, therefore be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to support and enact urgency legislation to ~~delay the effective date of~~ *amend* the Federal Fair Housing Amendments Act of 1988 ~~; as it affects mobilehome parks, and enact legislation to treat existing mobilehome parks separately and distinctly from other forms of housing in recognition of the fact that such parks provide housing primarily for persons of retirement age; and be it further~~ *to clarify the intent of Congress with regard to the effect of the requirements for senior facilities and services upon the affordability of senior mobilehome parks for the residents of those parks; and be it further*

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, and each Senator and Representative from California in the Congress of the United States and to the Secretary of the federal Department of Housing and Urban Development.

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OUR FILE NO._____

February 9, 1989

Senator William Craven
Chair of the Senate Select Committee on Mobilehomes
1100 J Street, Room 511
Sacramento, California 95814

Re: HR1158

Dear Senator Craven:

As you are aware, our firm is the largest in California in terms of representation of owners and operators of mobilehome parks. As it is my understanding that the Senate Select Committee On Mobilehomes will be meeting this next Tuesday to consider issues relating to HR1158, I am writing on behalf of our clients who are affected by that new legislation for the purpose of having this information considered by the Committee.

By way of general introductory remarks, I would indicate that in my 14 years of experience in dealing with mobilehome park issues, I have never seen legislation which had such wide-ranging effects and consequences to both mobilehome park owners and their residents. Unfortunately, the impact of HR1158 on the mobilehome park industry is greatly complicated by the fact that this legislation and the implementing regulations are ambiguous and leave unanswered a wide range of important issues. Thus, it is imperative that every effort be made to take such steps as are possible to bring clarity to this situation and otherwise minimize the detrimental effects on mobilehome park owners and residents.

The way to best address these ambiguities and other problems is as set out in the Western Mobilehome Association's comments to HUD regarding the draft regulations. A copy of those comments is enclosed for the Committee's information.

Additionally, I would indicate that I have spoken with Craig Biddle of the Western Mobilehome Association regarding the testimony he

intends to present this next Tuesday to your Committee. I concur in Mr. Biddle's comments and support the solutions he will propose.

Before concluding, I want to draw the Committee's attention to one specific problem that will have a very detrimental effect on a number of mobilehome parks in California. Although the example I will use relates to mobilehome parks built since 1973 in the San Jose area, similar circumstances exists for other mobilehome parks in California.

Specifically, beginning in 1973, developers of new mobilehome parks in San Jose were often required by school districts to enter into contracts whereby the park owner agreed to pay substantial school fees if, at some time in the future, the park ceased to be "adult only" and school-aged children became residents. Our clients inform us that approximately 5,000 spaces in the San Jose area are subject to agreements of this type. The fees the park owners will be required to pay, if HR1158 forces them to become "family" parks, amount to several hundred dollars per space. Additionally, these contracts also require that anywhere from four to eight mobilehomes be removed and their spaces converted to playground areas. In some instances, the park owner is also required to additionally provide temporary school space, to accommodate the school district's immediate needs for classrooms for children who move into the parks.

The negative impact of these school district contracts is obvious. Both the park owner and the residents will be adversely affected. Clearly, residents who are required to pay their pro rata share of the school fees will object. Those residents who are required to leave the park so that their spaces may be converted to playground facilities will be uprooted, with all the adverse consequences that brings.

The school district fee problem is one which is deserving of immediate attention by the Committee. Remedial legislation or other appropriate action is required and is certainly in the best interest of all concerned.

I want to thank you and the other members of the Committee for your kind attention and consideration of these comments. If I may be

of assistance to the Committee, either now or in the future, I hope that you will contact me for these purposes.

Very truly yours,

C. BRENT SWANSON
For the Firm

CBS:ym:028LT7
cc: Craig Biddle
Mike McGuire

COMMENTS OF THE
WESTERN MOBILEHOME ASSOCIATION
REGARDING THE PROPOSED REGULATIONS
IMPLEMENTING THE FAIR HOUSING AMENDMENTS ACT OF 1988
DOCKET NO. R-88-1425; FR-2565

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Western Mobilehome Association

COMMENTS OF THE
WESTERN MOBILEHOME ASSOCIATION
REGARDING THE PROPOSED REGULATIONS
IMPLEMENTING THE FAIR HOUSING AMENDMENTS ACT OF 1988
DOCKET NO. R-88-1425; FR-2565

INTRODUCTION

The Western Mobilehome Association (WMA) is the major organization representing the mobilehome park industry, which provides housing opportunities for over 800,000 residents in California. Its members consist of the owners, managers and developers of mobilehome parks throughout the State. In addition, it is the largest, most active, and involved organization of mobilehome parks in the United States and many of its members not only operate parks in California but also in various other sections of the country. For this reason, and reasons outlined in these Comments, WMA believes that its members address the issues raised in these Comments and the proposed regulations implementing the Fair Housing Amendments Act (the Act) based on a broad spectrum of experience and knowledge of the particular and unique needs of mobilehome parks throughout the United States. In addition, WMA is also addressing certain issues which are not unique to the mobilehome park industry but which WMA believes are concerns of all segments of the housing industry which are affected by passage of the Act and the implementing regulations.

Prior to the passage of the Fair Housing Amendments Act of 1988 by Congress, the members of WMA found themselves in an untenable position of not having a copy of the entire text of the Act. Consequently, WMA and its members were forced to depend upon sketchy descriptions of its contents contained in newspaper articles and other incomplete documents, and were completely uncertain as to its impact on the mobilehome park industry and mobilehome park residents in the State. There was tremendous consternation and concern in the parks, created to a great extent by the rapid passage of the final version of the Act by Congress. This concern was intensified because the Act appeared to abrogate a long-standing trend of the mobilehome park industry in California, arising due to market conditions, residents' preferences, and because of a specific enabling State statute, to establish adult only mobilehome communities throughout the State. Indeed, that trend has been devastated by the enactment of the Act. Thus, both park owners and park residents alike have experienced profound confusion and great concern regarding the future of mobilehome parks in California.

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Once the President signed the Act, this apprehension was not abated. There was a tremendous amount of confusion as to the interpretation of the Act, the "transition period", the definition of "facilities", the "80/20" ratio, and what action mobilehome park owners must take as it relates to providing housing opportunities for families and for older persons. The confusion was particularly acute in California because of the unique California Mobilehome Residency Law (discussed later in these Comments). The notice requirements of that Law may directly conflict with the Act and made reasonable and thoughtful attempts to comply with the Act extremely difficult, despite the best efforts of park owners to make sound business decisions based on the information available.

Absent any clear guidelines, various conflicting opinions were espoused by attorneys, representatives of HUD, the California Department of Fair Employment and Housing, and various members of Congress and their staffs. This situation continues to the present time.

The U.S. Department of Housing and Urban Development has now issued its proposed regulations to implement the Act. WMA has met with HUD officials in California and we continue to be confused. We have also received a letter from Michael Dorsey, General Counsel of HUD, regarding the transition period, which may indicate, and has been interpreted by some to mean, that if a park wishes to provide housing for older persons, the park must have established that policy by September 13, 1988. However, due to the uniqueness of mobilehome parks in California and the requirement that mobilehome park owners provide a specified notice to their residents prior to any change in their rules, mass confusion continues.

The most important service that HUD could perform for the mobilehome park owners and residents in California is to promulgate clear, definitive, and exact regulations relating to the implementation of the Act. These regulations must take into account the unique nature of the California mobilehome park communities and the unique state laws which govern their activities. The guidelines for mobilehome parks to provide housing for families or older persons should not be left to be decided by the courts, should not be decided on a case-by-case basis subject to the disparate understandings of individual investigators, nor should they be decided by the differing opinions of lawyers. Prompt and proper compliance with the Act should be promoted by regulations promulgated by HUD which are definite, firm and exact, and not subject to interpretative nuances.

Clarity is the key. Without such clarity, the confusion which currently exists in mobilehome parks in California will continue. The membership of the WMA appreciate the intent of the Act. The

membership of WMA provides and wishes to continue to provide affordable housing for its residents. In order to do so and in order to make the appropriate determinations as to whether a mobilehome park should provide a valuable housing opportunity for older persons or for families, the HUD regulations must not only fulfill the Congressional mandate of the Act but must also clarify the numerous unanswered questions contained in the Act.

Prior to providing our particular comments regarding the implementation of the Act and the proposed regulations in question, we believe it would be of assistance for HUD to have a clear understanding of the mobilehome park industry in California, why it is unique, and why it provides a particular form of affordable housing that is not available in conventional communities.

Our emphasis in the following background material is on the provision of housing for older persons by mobilehome parks in California. The reason we are emphasizing that area of the Act, and the issues surrounding this area throughout these Comments, is that it is the predominant area of concern to the industry. For those communities which are providing, or are going to provide, housing for families, the Act is much more clear than for those communities who desire to meet the "housing for older persons" criteria.

BACKGROUND ON MOBILEHOME PARK INDUSTRY

This summary of important background facts demonstrates that the mobilehome park industry is unique from other forms of rental housing. This is true in many areas of the United States, not just California and the other Sun Belt states. This uniqueness depends not only on the physical setting found within mobilehome parks, but to a much larger extent, this uniqueness is best described in terms of the mobilehome park lifestyle we have created. This lifestyle, while depending in part on the physical facilities and services offered by a mobilehome park, is predominately a function of long established resident attitudes, desires and other important intangibles. Mobilehome parks are unique in another respect in that the preservation of this lifestyle is shared equally by WMA's members and their residents. Mobilehome park residents are as much confused and concerned about the problems noted above as are mobilehome park owners and operators. They, too, believe that it is essential for HUD to recognize the uniqueness of mobilehome parks and be responsive to WMA's comments.

Based on statistics gathered in 1985, there are approximately 6,000 mobilehome parks in California containing 450,000 mobilehomes and housing over 800,000 people. Virtually all of the residents of the parks own their own mobilehomes and rent the space the mobilehome occupies. Between 1970 and 1980, the number of mobilehomes in California increased by 96%, while the rest of

the housing stock increased by only 32%. Since 1980, mobilehomes have contributed 15% to the overall growth of the housing stock, as compared to 8% for all other housing units. In addition to providing important housing opportunities, mobilehome parks are important from a state housing policy standpoint because they are a significant housing resource for older persons; 70% being occupied by residents age 55 or older.

Commonly our parks have a density of 7 to 9 spaces per acre. The majority of parks (55%) have less than 50 residential spaces. However, most residential spaces (69%) are in parks with 50 to 300 spaces. The largest category is the 100 to 199 space parks which have 32% of the spaces. 55% of the spaces are designed for double-wide mobilehomes. Most of the remainder (37%) are for single-wide mobilehomes, with the balance large enough to accommodate triple-wide mobilehomes.

Our parks are located in diverse population areas. Many, particularly the smaller, older parks, are in small communities with their attraction being the small town atmosphere and access to outdoor recreational opportunities. Many, particularly the larger, newer ones, are in metropolitan areas.

The average vacancy rate is 3.6%; most of which is in relatively new parks which are in the process of completing their fill-up period. Almost without exception, mobilehomes are sold to remain in the mobilehome park, not moved to another location. The turnover rate (e.g., sales and other transfer) of approximately 11% is relatively low.

Statewide, the average rent for all single-wide spaces was $167; for double-wides, $206; for triple-wides, $246. This represents an average rent of $198 and a median rent of $185.

A good part of the uniqueness of the mobilehome park lifestyle is that it is one which is peculiarly appealing to older persons. The statistics bear this out. Our appeal to older persons is not necessarily dependent on the services and facilities we provide. Rather, that lifestyle is the result of what these older persons have reflected in the market place as being their demands for the type of "older person's housing" that they desire to see built and operated. What our residents want is not services and facilities or an environment which even begin to approach convalescent care type housing for individuals who are, or expect to be, partially or totally, incapacitated. Rather, they want mobilehome parks to provide an environment where they feel emotionally safe and secure and can be with others of their age group, while at the same time remaining independent and self-sufficient.

The density of mobilehome parks points to the fact that our residents want to be, and are capable of, caring for themselves and living independently. Compared to apartments, convalescent care or similar housing, our density is very low and our parks provide a single-family neighborhood environment. Our residents have enough space to have a garden and other yard area to interest them and provide physical activity. The minimum upkeep of their mobilehome and space allows them the freedom to travel and pursue other interests.

The close proximity of the mobilehomes also encourages strong emotional bonds and a feeling of community between our residents and their neighbors. This results because the majority are of similar age and outlook. Our residents take care of one another in many ways, not only through the emotional environment created in our parks but also by helping one another and sharing in common recreational and other interests. The fact that our parks are commonly fenced with a limited number of entrances and exits and have 24-hour a day personnel available to respond to emergency and other needs fosters this environment. In fact, in many of the smaller, older parks, there are no other facilities or services offered except a laundry. Nonetheless, this lifestyle exists just as strongly as in parks with a larger number of facilities or services and is just as jealously guarded and valued by these residents.

A significant percentage of our residents in the age 55 and older category are persons who have not yet retired or are in their early retirement years. The group that is under age 55 is most commonly persons in their mid- to late-40's or early 50's. These residents have been attracted to our parks because of the "older persons' environment" it offers. They plan to remain in our parks after they retire and live active, independent lives.

Almost invariably, our residents in the mid-60 and up age group are all quite active, mentally alert and more than capable of caring for themselves. It is extremely rare for any of them to be confined to a wheelchair, bedridden or to have other significant incapacities which prevent them from living an independent, self-sufficient life. When these incapacities do exist, these residents are cared for by a family member who lives with them, with in-home nursing being virtually nonexistent.

The fact that mobilehome parks are unique because of the living environment intangibles they offer is supported in many other ways. One is the existence of the Golden State Mobilehome Owners League, which is the primary mobilehome resident organization in California. This group is dominated by older persons who are quite concerned and supportive of this unique, important source of housing for older persons. In meetings and conversations with WMA and HUD local officials, the Golden State Mobilehome Owners

League has not, to our knowledge, taken the position that the Act should be implemented to require extensive services or facilities in order to meet the age 55 exemption.

In California, we have an extensive set of state statutes called the Mobilehome Residency Law which deals with nearly every facet of the relationship between mobilehome park owners and their residents. Those statutes are unique in defining this landlord-tenant relationship and do not exist for other forms of housing. Many other states have similar statutes which recognize the uniqueness of mobilehome parks. The thrust of all of these statutes is to maintain, promote and encourage the unique life-style peculiar to mobilehome parks.

The fact that mobilehome parks are unique and peculiarly important in fulfilling the role of providing housing for older persons was recently recognized in the California Supreme Court decision in Marina Point, Ltd. v. Wolfson, et al. That decision recognized that although special social and psychological needs of older persons are perhaps less obvious than their physical needs, they are no less real. It pointed out that age-homogeneous communities afford a sense of security, facilitate social relationships and increase opportunities for peer contact which many older persons need and desire. As a result, older persons living in communities such as our mobilehome parks are found to have higher morale, higher housing satisfaction and greater mobility in their neighborhoods. This decision concluded by stating that the special features of mobilehome parks which correlate closely with the special needs of older citizens may well explain the fact that mobilehome parks constitute the only housing facilities in which the California Legislature has explicitly authorized age restrictions.

Local government also recognizes our uniqueness and the fact that the intangible living environment mobilehome parks provide is important for older persons in their community. For example, services and facilities such as those found in convalescent care or other similar housing for older persons who are partially or wholly incapacitated are not required as conditions for building mobilehome parks. In addition, when our residents appear before local government to voice complaints or concerns, one never hears them ask for services and facilities of this type.

In summary, the uniqueness of mobilehome parks and the intangible living environment they provide is, and has been, recognized for decades by our members, their residents, state and local government and the courts. Ours is an industry which meets the social and environmental needs of our residents because of the fact that they are primarily age-homogenous communities for older persons. Although the existence of physical facilities or services enhances this lifestyle, they are not essential to its existence.

It is for this reason that we have provided a number of comments relating to the services or facilities sections of the proposed regulations.

TRANSITION PERIOD

In the proposed regulations implementing the Act, at Section 100.303 and 100.304, the Department has invited public comment on the complex issue of the transition provision of Section 805(b)(3) of the statute and the apparent conflict in the law in connection with "effective" and "enactment" dates. WMA believes that there are a number of communities throughout the country which are concerned about this complex issue because of particular notice requirements that may be placed on providers of other forms of housing. In particular, however, this area of the proposed regulations is extremely important to the mobilehome park communities in California and the membership of WMA because of a provision of California law, commonly known as the Mobilehome Residency Law which states:

> "A rule or regulation of the park may be amended at any time with the consent of a homeowner, or without his or her consent upon written notice to him or her of not less than six months, except for regulations applicable to recreational facilities which may be amended without his or her consent upon written notice to him or her of not less than 60 days. Written notice to a new homeowner, whose tenancy commences within the required period of notice, of a proposed amendment shall constitute compliance with this section where the written notice is given to him or her before the inception of his or her tenancy." (Section 798.25 of the Civil Code) (Emphasis added.)

The membership of WMA finds itself in a "Catch 22" situation. On one hand, state law provides for a six-month notice to current residents to change a rule in a mobilehome park, while on the other hand the Act provides that:

> ". . . (3) Housing shall not fail to meet the requirements for housing for older persons by reason of:
> (A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections 2 (b) or (c), provided that new occupants of such housing meet the age requirements of subsections (2)(B) or (C); or . . . (Section 807(d)(3)) (Emphasis added.)

Because of this, the General Counsel to the WMA wrote two letters of inquiry to the General Counsel of HUD in an attempt to obtain clarification on the issue of when a rule establishing housing for older persons must take effect in order to comply with the Act and whether the provisions of the Act take precedence over

the California law requiring a six month notice to park residents prior to a change in the rule. Although HUD's response provided some clarification, it did not answer all of the questions and problems facing the mobilehome park industry. To WMA's knowledge there have already been several lawsuits filed in the California courts and several complaints filed with governmental agencies stemming from this particular issue. As of this date, there is no definitive regulation so that all of the mobilehome park owners know exactly what they must do to comply with the transition provision of the Act. Lack of clarity in this area alone is probably the most difficult aspect of the Act as it relates to mobilehome parks in California.

To highlight the need for clarity in this area, based on the "Catch-22" situation outlined above, the following examples are provided. WMA urges that the final regulations implementing the Act address each of these examples by clearly and definitively responding to the questions and issues raised.

EXAMPLE 1. Prior to September 13, 1988, a mobilehome park in California had established a rule limiting occupancy to persons 55 or older. That rule had been in effect for over 10 years and all of the residents occupying mobilehomes in the park as of September 13, 1988, were 55 or older. Due to the enactment of the Act, the owners of the mobilehome park evaluated the intent of the Act, the needs of the residents, the park's ability to meet the demands of existing and future residents, the economic and demographic make-up of the community and, based on that evaluation, issued a notice to its current residents on or about September 13, 1988, that the park would be converting to an open (or family) park, with no age restrictions whatsoever. In giving such notice, the park complied with the "six month" provision under California law and indicated that, effective March 12, 1989, there would be no age restrictions in the park. On October 15, 1988, a husband, wife, and three small children attempted to purchase a mobilehome from a current resident and applied for tenancy in the mobilehome park. The management withheld approval for residency based on management's belief that under California law the new rule could not take effect until March 12, 1989, and, thus, the park's previous restrictions of "55" remained in force until that date.

The issue is whether or not the park is in violation of the Act in withholding approval for residency to the family during the "transition period". Further, must the park continue to withhold approval for families with children until March 12, 1989.

EXAMPLE 2. A mobilehome park in California prior to September 13, 1988, had a long-standing rule limiting residency to adults only, based on the California statute providing that such limitation was lawful (Section 798.76 of the California Civil Code (Mobilehome Residency Law)). Upon the passage of the Act, the

park owner conducted the same type of evaluation described in Example 1, and decided that it was in the best interest of the park's residents to convert the park to one which provides housing for older persons, limiting residency to one person per mobilehome at least 55 years of age or older. The park gave the "six months" notice to the current residents, many of whom were under 55, of this rule change on or about September 13, 1988. On October 15, 1988, a young couple ages 35 and 38, without children, applied for residency in the park. That couple would have complied with the previous rule limiting residency to adults but did not comply with the new rule issued on September 13, 1988.

The issue is, if the couple is allowed residency on October 15, 1988, is the park in violation of Section 805(b)(3) of the Act, which states that all new occupants after September 13, 1988, must satisfy the applicable age requirements or can the park continue to enforce its previous rule until the six month time period has elapsed.

In addition, notwithstanding California law, WMA requests that the regulations provide further clarification as to the intent of the Act and its implementation in the following examples:

EXAMPLE 3. A mobilehome park had a long-standing rule limiting residency to adults only. Most of the residents in the park were older and the park had few amenities. Given the uncertainty of various provisions of the Act, the park owner delayed making a decision regarding residency requirements until early December, 1988. However, after making an evaluation and survey, the park owner determined that its best course of action would be to establish a community to provide housing for older persons, limiting residency to persons who are 62 and older. This decision was based in part on the desires of the residents to continue to live in a community which provided housing for older persons and based in part on the continued uncertainty regarding what requirements may be placed on the park if it decided to opt for the "55" exemption. However, during the period between September 13, 1988, and December 15, 1988 (when the park changed its rules), several persons under 62 years of age moved into the park.

Because the park owner was trying to fully understand the Act and determine what type of housing opportunities the park should provide and, thus, did not institute the new rule until after September 13, 1988; the issue is whether the park is in jeopardy of losing its "housing for older persons" exemption when it allowed certain persons to move into the park who did not meet the "62 or older" requirement between September 13, 1988, and December 15 (when the park owner established the new age rule.)

EXAMPLE 4. In a situation similar to that outlined by Example 3, the park owner decided to establish an age restriction of "55", pursuant to the Act, in the hope that he could prove that his park provided important housing opportunities for older persons, given the current population of the park and the residents' continuing desire to maintain their lifestyle. However, he did not publish the new age-restrictions until March 11, 1989, and prior to that date continued to allow persons to move into the park under the "adult only" restrictions. However, even with the new residents, the park continued to maintain an "80/20" ratio.

The issue is whether the park owner could revise his age restrictions after September 13, 1988, so long as he complied with every other provision of the Act and could still qualify as a community which provides "housing for older persons" under the provisions of the Act.

Without a clear, definitive regulation on the timing and the meaning of the transition period, the potential for lawsuits and complaints over this issue alone in California are horrendous. WMA believes that this issue is of importance to all providers of housing throughout the country, and is not unique to the California mobilehome park industry. WMA urges HUD to set forth in its regulations a distinct, unambiguous statement on this issue.

PROPOSED REGULATION ON TRANSITION PERIOD

WMA proposes that a regulation be adopted by HUD stating that a park may change its age requirements to either family, 55, or 62, at any time. The decision to change an age requirement rule must take effect at the same time the age requirement rule is established by the park and the residents are notified of the change. To provide needed flexibility and to benefit current and future residents of our mobilehome parks, the issue of the "enactment" date of September 13, 1988, and the "effective" date of March 12, 1989, should be disregarded at this time and the HUD regulations should clearly state that when a mobilehome park makes a change in its age restriction rules, the effective date of that rule change will be immediate. This would be applicable as to any change (whether it be from older persons to family, family to older person, 55 to 62, etc.) and would also apply to any change in the future. In brief, the regulations should state that the decision to change residency requirements may be made at any time, as long as the park thereafter complies with the Act, and that the new age requirements shall become effective immediately upon the publication/notification of such policy by the park owner to his or her residents.

WMA's proposal would be consistent with the legislative intent of the Act to stop discrimination against families with children but to allow for distinct housing opportunities for older persons. It would also be consistent with the last sentence of Section

798.25 of the Mobilehome Residency Law which states: "Written notice to a new homeowner, whose tenancy commences within the required period of notice, of a proposed amendment shall constitute compliance with this section where the written notice is given to him or her before the inception of his or her tenancy." It would also further the good faith efforts of mobilehome park owners in California to respond to the housing needs of their residents. If HUD accepts this proposal as part of its final regulations, a mobilehome park operator could then know exactly what the guidelines are relating to the provision of housing for older persons, and could establish and publish its age policies accordingly.

Also, HUD's acceptance of this proposal would respond to a critical need in California in permitting a mobilehome park to evaluate whether it is more prudent to devote its existing housing resource to families or to older persons, and would allow consideration in the future for the changing circumstances of a community and the mobilehome park itself. Acceptance of this proposal is appropriate since the circumstances in any particular park might be different in 1989 than they would be in 1992. Further, the mobilehome park industry in California has provided a much-needed housing opportunity for over 40 years and has changed dramatically during that period to meet the changing world. Acceptance of WMA's proposal would permit each mobilehome park to continue to respond to the needs of its residents and the community in which the park is located, both now and in the future.

55 OR OVER HOUSING FACILITIES AND SERVICES

Both the Act and the proposed regulations provide an exemption from the anti-discriminatory provisions of the Act for housing communities intended and operated for occupancy by at least one person 55 years of age or over per unit if such communities satisfy certain criteria.

In Section 100.304 of the proposed regulations, the Department invites comments on one provision wherein an incubating housing facility need not comply with the "80%" requirement until 25% of the units in the housing facility have been filled. Specifically, the Department has invited comments on whether the 25% requirement is too high or too low. WMA wishes to commend HUD for its efforts in dealing with the practical problem of filling a newly constructed facility and believes that the 25% "threshold" is fair and reasonable.

Further, WMA appreciates the efforts of HUD in attempting to spell out what "significant facilities and services" may be required for a housing facility to qualify for the 55 or older ex-

emption. We would call your attention to the fact that the Act states that HUD "shall develop regulations which require at least the following factors:

> (i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons." (Emphasis added.)

As explained in detail in the Background section of these Comments, WMA must once again stress that a mobilehome park is unique and that it cannot be compared with a conventional rental housing facility; nor should it be required to provide the same type of services and facilities provided by convalescent-type housing. The list of facilities and services contained in the proposed regulations relate more to the type of community which is specifically designed and operated to assist "elderly" persons, not necessarily older persons who are attracted to mobilehome park living and their ability to live an independent, self-sufficient life in our parks. Furthermore, it would appear that the specific language of the Act gives equal weight to facilities and services which meet either the physical or social needs of older persons. Clearly, mobilehome parks by their nature meet the social needs of older persons and this uniqueness should be considered by HUD in developing its regulations.

As evidence of the unique status of mobilehome parks, there exists a sharing between park residents and the park owner of certain property interests and responsibilities. For example, the park owner provides the streets, common and recreational facilities, utility systems, etc., and provides a space on which to place an individual mobilehome.

The mobilehome park resident is unique from other residents of conventional housing facilities, as outlined in the Background section of these Comments, as a mobilehome park resident selects this lifestyle so that the resident can live independently and assume a degree of personal responsibility for the resident's home and homesite (space). The park resident owns his or her mobilehome and is responsible completely and totally not only for the upkeep but also for the amenities contained within the home. In addition, it is the resident's responsibility to install steps, porches, cabanas, decking, etc. which are attached to the resident's mobilehome and to maintain those accessory structures. Also, mobilehome park residents are responsible for maintenance of the area of land (space) on which their mobilehome is located. Mobilehome park residents are free to remove their mobilehome from a park at any time and move the mobilehome to another location or are free to sell their mobilehome to another person who wishes to reside in the park. Unlike conventional rental hous-

ing, the park owner is unable to install the types of amenities in an individual mobilehome which might meet the criteria discussed in Section 100.304 such as lever type doorknobs, single lever faucets and hand rails along interior hallways, because the mobilehome is not owned by the park but rather by an individual resident.

Persons residing in mobilehome parks choose to do so for various reasons. Older persons who reside in mobilehome parks choose to do so because they have the independence of owning their own property (a mobilehome), yet can still enjoy the benefits of a small yard, a close-knit community, and, in the newer parks, certain community amenities which would not be available if they owned their own home in a conventional neighborhood environment. Because of the independent nature of mobilehome park living and because of its dramatic differences from residency in conventional rental housing such as apartments, to require mobilehome park owners to comply with the list of significant facilities and services which HUD has set forth in the proposed regulations would place an undue hardship not only on the park owners but also on park residents who would be required to pay for services or facilities they neither want nor need through higher rents, which result from increased operating expenses to the park owner. This additional cost to residents is of very grave concern to both the residents and WMA's members.

PROPOSED REGULATIONS ON FACILITIES AND SERVICES

As is discussed later in these Comments, WMA believes that the establishment by HUD of a pre-certification procedure would be a tremendous service to all providers of housing and strongly urges HUD's consideration of that proposal. However, in the event that HUD declines to establish such a procedure, it is our opinion that the proposed regulations of facilities and services must be revised so that the guidelines are clear and definitive. Therefore, WMA proposes that HUD adopt an expanded and distinct list of significant facilities and services which should be taken into consideration in determining whether a mobilehome park qualifies for such exemption.

In developing this list, we call to your attention the following physical facilities which many mobilehome parks provide in California: accessible clubhouse, with communal recreational and meeting facilities; exercise facilities and rooms; community laundry facilities; swimming pools; hydrotherapy pools; shuffleboard; fences for privacy and security; greenbelts; resident managers, who are available 24 hours a day to respond to emergencies; small lots which provide ease of maintenance for the residents (vs. large yards in conventional neighborhoods); close proximity of mobilehomes to adjacent mobilehomes, promoting close knit friendships and security while still providing individual

living units; parking adjacent to each individual mobilehome; convenient garbage service; convenient mailboxes; and street lighting.

In addition, we would also call to your attention the following social services which are often provided in mobilehome parks in California: group or individual activities for older persons (e.g., arts and crafts, bingo, exercise classes, billiards, card-playing, shuffleboard, bazaars, square dances, etc.); comprehensive rules and regulations conducive to quiet, orderly living; libraries; lounge area; recreational and educational activities; accessibility of common areas for social, educational and political activities and meetings; a senior directory; park newsletter; and policies that limit the facilities only to older persons.

WMA wishes to reiterate that the mobilehome park industry does not provide conventional housing. In fact, it does not provide housing in the traditional sense. It provides a common area and facilities and a group of individual lots on which a person or persons may place their individually-owned mobilehomes.

After you examine the above list relating to mobilehome parks, it becomes imminently clear that mobilehome parks are unique and that mobilehome park residents have individual needs and desires which can only be met by this form of housing opportunity. A separate and distinct "facilities and services" list should be developed and an exemption should be granted if the mobilehome park provides a reasonable mix of items on that list to its residents or if the mobilehome park, by the very demographics of the park's population, provides a important housing opportunity for older persons.

PRE-CERTIFICATION PROCEDURE
FACILITIES & SERVICES; IMPRACTICABILITY

Further, not only should the regulations established by HUD be definite and certain, but both mobilehome park owners and residents want to know as soon as possible whether a particular park qualifies under the exemption in connection with the "facilities and services" requirement. If a mobilehome park in good faith attempts to meet the services and facilities requirements of the Act and HUD's regulations and then, some time later, it is determined that the park in fact does not meet those requirements, both the park residents and the park owner may find themselves at risk. WMA believes that HUD should establish regulations providing for a pre-certification procedure whereby interested park owners could seek HUD certification of facilities or services as adequate under the Act, or that the provision of the same would not be practical.

WMA proposes that regulations be adopted which would allow a mobilehome park to make application to HUD for a determination that the park is meeting the physical or social needs of older persons through the various facilities and services provided by the park. The applicant park would be required to pay an appropriate fee to cover the administrative costs of such certification by HUD. WMA believes that this pre-certification program would be the most economical and expedient method of determining whether a mobilehome park can comply with the Act's requirements and the "55 or older" exemption.

In addition, WMA believes that as a part of this pre-certification program, a park should be able to make application and prove that it is not practicable for it to provide significant facilities and services designed to meet the physical or social needs of older persons but that it can demonstrate that the park is necessary to provide important housing opportunities for older persons. We would reiterate that by their very nature many mobilehome parks do provide such an important housing opportunity. As an example, impracticability would include, without limitation, the fact that the current population already meets the "older person" criteria and, therefore, is already being provided an important housing opportunity for older persons; the lack of space within the park, which might result in the need to remove a housing unit (mobilehome) to provide a facility or service; the necessity of abnormal rent increases or unfair economic hardship to fund the facility or service; or the unnecessary duplication of facilities or services already provided by federal, state, or local governmental agencies or other organizations.

Thus, under this proposal, the question of qualification for the "housing for older persons" exemption could be quickly and clearly resolved. This suggested procedure would avoid what will otherwise be a great multiplicity of lawsuits, numerous frivolous complaints filed with HUD investigators which could well cripple HUD's ability to administer the Act and other programs, and the great confusion, uncertainty and emotional turmoil which now permeates the California mobilehome park industry, including its 800,000 plus residents, as well as other communities throughout the country.

Clearly, pre-certification is the most cost effective manner to obtain uniform compliance with the Act.

Knowing that HUD has limited resources to regulate all of the programs for which it is responsible, WMA anticipates that this procedure, for the most part, could be handled by an application process wherein a park owner could complete a form, under penalty of perjury, to be reviewed in the HUD offices and, thus, there would not be, except in rare cases, a need for a HUD investigator to personally visit the premises. With the incorporation of the

other suggestions made in these Comments regarding a separate and distinct "facilities and services" list, and appropriate guidelines relating to impracticability or that the community "is necessary to provide important housing opportunities for older persons", such a pre-certification program need not be burdensome at all to HUD. In the alternative, HUD may wish to contract with the appropriate state agencies in California and elsewhere in the country who are currently providing other services to HUD and who could reasonably perform this service as well.

55 OR OLDER HOUSING
AGE OF OTHER RESIDENTS

Another portion of the Act and the proposed regulations that is unclear concerns the 55 or older housing exemption and involves the language, "occupancy by at least one person 55 years of age or over per unit". This language, unfortunately, does not address the issue of the age of any other person occupying the unit. This has caused tremendous confusion and turmoil in the mobilehome park industry in California in its attempts to comply with the new law. We believe that this confusion must also exist for other providers of housing opportunities seeking to comply with the Act. In its attempt to resolve this problem, representatives of WMA have conferred and met personally with HUD officials in California. The HUD officials have offered to WMA their verbal interpretation of what these regulations mean. However, there is no written document from HUD which provides a clear, definitive statement of what this regulation means. WMA believes that a mobilehome park owner should be given the maximum flexibility to select the age rule of each individual park. As was pointed out in connection with the regulation relating to the transition period, WMA believes that a park owner should be able to establish the ages of other occupants depending upon the needs of a particular park's residents and the community at large, the desires of the existing residents, the economic environment, as well as the possibility of changing circumstances within the park.

Therefore, WMA proposes that a mobilehome park be allowed to adopt any one of the following types of rules as they relate to the "55" exemption:

1. All mobilehomes occupied by persons only age 55 or older; or
2. All mobilehomes occupied by at least one person age 55 or older with all other occupants of any age; or
3. All mobilehomes occupied by at least one person age 55 or older, with all other occupants adult; and
4. Adoption of a 80/20 regulation for Options 2 and 3 above wherein the 20% factor may consist of either adults or persons of any age and that no one in the 20% must comply with the "55" requirement.

55 OR OVER HOUSING
80/20 RATIO

Another area of confusion in the provisions of the Act and the proposed regulations relates to the computation of the 80/20 ratio for housing for persons 55 years of age or older. Again, we would stress that this confusion not only relates to mobilehome parks, but other forms of housing affected by the Act. The confusion arises from the fact that there are various interpretations being espoused as to what is the "base" for a computation of the 80/20 ratio, and is probably best described by providing the following example.

EXAMPLE 5. A mobilehome park has 100 spaces/units. On September 13, 1988, it changes its rules to comply with the "55 or over" exemption. At that time, 45 units are occupied by people under the age of 55, 5 units are vacant, and 50 units are occupied by persons over 55. During the next few months, 15 units which were occupied by persons 55 or older are sold to persons under 55.

The issue is whether the park is still in compliance with the 80/20 ratio even though the new occupants (after September 13, 1988) do not meet the age requirements because 85 units are occupied by residents who are over 55, or who lived in the mobilehome park prior to September 13, 1988 ("grandfathered in"), or spaces continue to be vacant. Or, on the contrary, is the park out of compliance because 60% of the occupants do not comply with the "55" requirement.

WMA believes that the common sense rule, which is consistent with the intent of Congress, is to use all 100 units to compute the 80/20 ratio. Therefore, WMA believes that in this example, the ratio would be 85/15.

DUAL PURPOSE HOUSING FACILITIES

Neither the Act nor the proposed regulations address an issue which is quite common in mobilehome parks in California. A number of parks have been operating as dual purpose properties where specified units or sections of the park are not age-restricted and other units or sections have been designated for adults. In addition, in order to meet the intent of the Act, relevant market criteria and resident preferences, many property owners would probably prefer to convert from adult housing to dual purpose housing with sections for both families and older persons. WMA believes that the regulations should be promulgated to permit the operation of dual purpose properties, so that certain sections or units are not age-restricted and certain sections or units designated for housing for older persons. Further, the regulations should provide that only the sections which are designated for older persons would be subject to the "80/20

ratio" if the age restriction is "55" or would be subject to the "62" age restriction envisioned in the Act. This would enable the existing residents of such mobilehome parks to continue in the lifestyle which they are currently enjoying.

REASONABLE OCCUPANCY LIMITS

The Act specifically provides in Section 807(b)(1) that "Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. . . .". WMA commends Congress in inserting this important language and urges HUD to promulgate a regulation which would enable a mobilehome park or other housing facility to establish similar restrictions in the absence of any governmental restrictions, in order to meet the vital health and safety needs of that particular form of housing. For those communities which are converting to "family", such occupancy limits are clearly essential for health and safety reasons. For example, a housing facility or mobilehome park with limited electrical capacity or private sewage treatment facilities must be able to ensure that those facilities are not overloaded through rules reasonably limiting the number of persons using the facilities within their specified limitations.

GOOD FAITH COMPLIANCE

The issue of good faith compliance is especially important because of the magnitude of the penalties which may be imposed under the Act. The possibility of civil penalties of $10,000 and more, in addition to actual damages and legal fees, certainly has a chilling effect on all providers of housing in the country. Thus, WMA believes that the regulations must contain provisions specifying that a property owner's good faith attempts to comply with the notice requirements, 80/20 ratio, and the facilities or services or impracticability provisions of the "55 or older" exemption, or the "62" exemption shall excuse immediate penalty actions. Further, WMA believes that property owners, whether they be mobilehome park owners or owners of other housing accommodations, acting in good faith who have been found not to be in compliance shall be given notice and a reasonable opportunity to "cure" so that they may qualify for the age option they have selected. Further, WMA believes that the regulations should provide safeguards whereby a property owner exercising reasonable and good faith efforts to comply with the Act should not be penalized. Additionally, the regulations should provide that park owners be given notice of non-compliance and an opportunity to "cure" without loss of the "housing for older persons" exemption. Moreover, a property owner's good faith compliance with any state or local law or regulation which is inconsistent with the Act or HUD's regulations shall not result in loss of the exemption and the property owner shall be given ample notice and the opportunity to cure.

CONCLUSION

The membership of the Western Mobilehome Association provides an important segment of affordable housing opportunities to the citizens of California. WMA welcomes the clear intent of the Act and interpretive regulations to promote the creation and preservation of greater housing opportunities for families and for older persons. It believes that the regulations to be promulgated by the Department of Housing and Urban Development must be clearly set forth, without ambiguity, so that property owners can promptly comply with the Fair Housing Amendments Act of 1988 and so that controversies concerning compliance can be minimized. WMA believes that the final regulations must answer the questions raised in this document and strongly urges HUD to incorporate the suggestions made by WMA into its final regulations. Failure to do so would be extremely detrimental to both mobilehome park owners and residents in California who are attempting to comply with both the letter and the intent of this new law.

TO: Hon. Senator William Craven
State Capitol
Sacramento, Ca. 94248

FROM: Inge Swaggart, Assoc. Dir. R-2
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San Carlos, Ca. 94070

RE: SENATE JOINT RESOLUTION NO. 1 - MOBILHOME PARKS AMENDMENTS
PUBLIC HEARING - FEB. 14, 1989

Thank you for holding this public hearing and giving all an opportunity to express their thoughts. Since we are unable to attend, we would like to have this document entered into the record regarding our thinking on HR-1158.

It has taken almost twenty (20) years, but Congress and the President finally put some teeth into the FAIR HOUSING ACT. HR-1158 gives the government broad new powers to fight housing discrimination against minorities, the handicapped and -- for the first time -- even families with children. It opened up recourse against discrimination for 36 million handicapped Americans and families with children.

HUD estimated 26 percent of rental housing bans children. According to California's HCD Survey of Mobilhome Park Owners - February 1986, 76% of all mobilhome spaces (approximately 329,000) spaces) in the state are unavailable to families with children because of arbitrary age restrictions of the park owners choosing. According to Mike McGuire, Executive Director, WMA, Santa Clara Valley, 120 of the 122 adult-only parks are converting to Senior only parks.

According to Jo Anne Bernhard, Past President of the California Apartment Association, who appeared on the nationally televised "Phil Donohue Show" to defend the owners' stand on the no-children rule, the real issue was one of property rights ..... the rights of the owners (of the dwelling) to rent to whomever they pleased based on strictly economic criteria.

What property rights do the mobilhome owners have? Should they be able to sell their property to 'whomever they please based on strictly economic criteria'?

A large part of your constituence are mobilhome owners and seniors. How many are in the up to 55 group that have now been cut out of the only really affordable option in housing that they have - to start to realize the American Dream of owning a home. (See attached sales brochure from Santa Clara Valley - is this misleading advertising?)

TO: Hon. Senator William Craven FROM: Inge M. Swaggart

RE: SENATE JOINT RESOLUTION NO. 1 (Cont'd)

Affordable housing is of the utmost importance. Your priorities should be proposals encompassing the following areas - housing production of all types, the preservation of existing housing, reduction of fees, add-ons and restrictions imposed by state and local governments to increase the production of "affordable" homes and let the supply and demand balance the problems created by shortages.

The signing of the bill into law on September 13, 1988, did not finish the work. HUD, the Department of Justice, National Association of Realtors, the National Association of Home Builders, the National Apartment Association, the National Multi-Housing Association, the American Institute of Architects and the National Manufactured Housing Foundation participated in various meetings held for the purpose of drafting regulations that all could operate their business.

Most members of these organizations know that they must comply with the law. But in order to fulfill the conditions, they must have clear cut and decisive answers to - 1) Health and Safety rules setting by owners/managers

2) Assumption of a greater degree of liability due to the addition of families w/children and handicapped as a protected class
3) occupancy rules/standards in single family dwellings
4) design/construction modifications & regulations

Attorney General Thornburg stated that the administration is committed to enforcement of the law and not finding ways around it.

It would seem to me that you would also prefer to let the law first be implemented before you request changes.

It is very obvious that the park owners and their attorneys and some GSMOL leaders and members started the panic, and you did your best to respond. A complete study and consideration of the ACTUAL REAL-LIFE IMPACT of HR-1158 and accompanying regulations would be more productive. Properly operated mobilhome communities which were originally established as retirement communities with proper amenities have no problem. Only the "bad apples" that have been playing games for years and want to continue to control their customers have problems.

2-9-89
I&TS
Enclosures- Sales Brochure -Evans&O'Brien
Sonoma I-T -Affordable Home Options Dwindle

Affordable home options dwindle

SONOMA INDEX TRIBUNE -Jan 17, 1989

Feb 7, 1989

FOR YOUR INFORMATION
Inge Swaggart, GSMOL Reg. #2
Assoc. Dir.

By Teri Shore
Index-Tribune Staff Writer

Mobile homes and condominiums have historically provided affordable alternatives to single-family dwellings for first-time home buyers.

But age restrictions and huge demand have depleted those housing choices in Sonoma Valley.

There were 10 condominiums listed for sale in the February Sonoma County Multiple Listing Service directory. Only half were priced under $100,000.

"That's a very scarce number," said Henry Mayo, real estate broker at Sonoma Properties. "That is the lowest number I've ever seen. You used to see 20 listings consistently."

Last year, 37 condominiums were reported sold in Sonoma Valley, from a low of $66,500 to a high of $138,950, according to figures provided by Mike Hedley at Tara Properties.

"THE CONDO market was slow last year," said Hedley. "People were concentrating on single family homes. But it's starting to have a resurgence now as a more affordable option."

"They're good buys for those who can afford it," said Tunkis.

The condominium and mobile home prices do appear more affordable than the average 1988 sale price of $150,000 for a single-family home in the Valley.

But, as in purchasing a home, a down payment of 10 to 20 percent is usually required. In addition to monthly loan payments, condominium owners also must pay maintenance fees of about $150 per month, according to the Realtors.

THERE ARE currently about 70 mobile homes priced from $10,000 to $50,000 for sale in the Valley, according to information provided by managers of the eight mobile home parks here.

But most of these homes are in parks restricted to people over 55. Only two are family parks.

Families with children are accepted only at Rancho Vista mobile home park in Fetters Hot Springs and Acacia Grove Mobile Park on Highway 12.

Rancho Vista owner Ray Paolucci said about 25 homes in his park are on the market, selling from about $10,000 for a single-wide home to $48,000 for a double-wide.

Lee Tunkis of Sonoma Plaza Realtors has only sold about 10 mobile homes in his 20 years selling real estate, but feels it's an option many have overlooked.

"The thing working against mobile home parks is the reputation of some of them. But we're blessed here with a number of very nice parks," he said.

"For $50,000 to $60,000 you can buy a nice unit that beats a condo at twice the price. Mobile homes could be the saving grace of this civilization," he commented.

MOBILE HOME OWNERS make loan payments, but also pay rent of about $300 per month for use of park facilities, according to park managers.

The age restrictions on mobile parks and other types of housing may be lifted soon as a result of a new federal housing law which is supposed to take effect in March.

The law could help open the housing market, specifically mobile homes, to more families and young first-time buyers.

The amendment to the Fair Housing Act requires that any senior park or housing development must provide specific seniors' services.

Housing developments not meeting the federal requirements will have to allow all age groups.

THE LAW EFFECTIVELY eliminates the adult-only category from condominium complexes, mobile home parks, housing tracts, and other types of housing.

Housing facilities will have to be designated as totally senior with resident age groups of over 55 or over 62, or take all ages.

Most Valley parks have been senior or adult-only parks for more than 20 years. At this time, the parks have chosen the over-55 category.

But because the specifics of the federal regulations have not yet been given out, whether or not the parks will stay that way remains a question.

"All we can do is wait," said Ernie Thomas, president of the Park Owners Association in Santa Rosa.

Condominiums in Sonoma Valley

Current Feb. '89 listings: 10
Under $100,000: 5

Provided by Henry Mayo, Sonoma Properties, from Sonoma County Multiple Listing Service

1988 SALES

Total condos: 37
Lowest price: $66,500
Highest price: $138,950
Average price: $100,000

Per Mike Hedley, Tara Properties, from Sonoma County Multiple Listing Service

Local couple comments on local real estate costs

Editor, Index-Tribune:

After reading your three articles on the unaffordability of homes in this area, I was compelled to write you about our family's situation.

We have been searching in Sonoma for a home to buy since 1987. Due to the ridiculous prices of existing homes in the area, we decided to get the most value for our dollar and build our own home. We are unable to compete with contractors, Marin and Bay Area buyers, investors, etc.

The odds against us are so great. Are you guys aware of how many young families have left our Valley because they couldn't compete? This will become even worse and Sonoma will be the one to lose.

On top of all this, we recently received a "30-day notice to quit" our house we have rented for 5 years. Are we going to join the ranks with the homeless?

It won't get that bad, but we now have to use money we've saved for closing costs to go into another rental. We're very thankful we've already started the ball rolling and we believe that our needs will be met.

I disagree with comments by a realtor that builders are creating "no frills" homes. Anyone reading the real estate ads, realizes that is bogus.

Check out all the new subdivision price tags. The only affordable new homes in the area are in adult communities. The average price of homes in Tuesday's ads was $173,533. I don't know of any young family who can afford that. Do you?

Also what about lots of $47,500 and $52,500 that can't even be built on (no sewage or water)?

Some of your I-T readers have received letters from us regarding property. In our limited time frame we are investigating every avenue.

In closing, we would like to say, we believe in free enterprise and everything America stands for. The solution, however, to this housing crunch lies with every one of us taking responsibility for our freedom. Maybe taking responsibility to be satisfied with a reasonable profit instead of a staggering one. Just sign us..."-Holding on to The American Dream."

Rick & Lisa Binkley

February 10, 1989

Senator William A. Craven, Chairman
Senate Select Committee on Mobile homes
Room 511
1100 J Street
Sacramento, CA 95814

Dear Senator Craven:

Due to the age requirement of 55 years or older, we are unable to sell our mobile home.

This park was not a Senior Adult Park when we bought a mobile home in it. It was made one January 1, 1986.

Each year our space rent goes up. Effective January 1, 1989, the monthly space rent is $252.00. Whoever buys our mobile home AUTOMATICALLY gets another ten percent tacked on to the monthly rent, thus making it $262.00 per month.

To live in this park, a car is a necessity. There are no amenities offered by the park, such as a shuttle bus to take senior citizens to the grocery store, or doctor's appointments. The utility bills each month are staggering. PLEASE, TELL US HOW MANY SENIOR CITIZENS CAN AFFORD TO LIVE IN SUCH A PLACE?

Most sincerely yours,

B. F. Snyder

Mr. & Mrs. Bob Ford Snyder
Riverview Plaza
600 I Street Apt. 1102
Sacramento, CA 95814

Enclosures (2)

Southgate Mobile Estates

A Senior Community

3201 Florin Road
Sacramento, California 95823
(916) 422-9076

OCTOBER 21, 1988

NOTICE OF RENT INCREASE

Re: Address: 3103 Winning Way

Dear Resident:

We, the Management at Southgate, find it important to continue in our efforts to maintain our Park in a manner which makes you proud of your surroundings.

Accordingly, we are notifying you that your monthly rental rate will be increased $21.00 over your present monthly rate, commencing January 1, 1989, which means that effective January 1, 1989, your monthly rent will be: $ 252.00 .

You may continue to expect that this Park will be maintained and operated in a manner that assures your living in a truly attractive Park.

Sincerely yours,

SOUTHGATE MOBILE ESTATES

By: [signature]

NOBEL OLIVE

SOUTHGATE MOBILE ESTATES

Amendment to Community Standards

Dear Residents:

Effective January 1, 1986, please be advised that the Community Standards for Southgate Mobile Estates are hereby amended to add the following provision:

1. SENOR ADULT COMMUNITY

Southgate Mobile Estates is a senior adult community limited to persons 55 years of age and older. Prospective residents may be required to show proof of birthdate before their application for tenancy will be approved. Existing residents in the park under age 55 as of the effective date of this Amendment may remain in the park.
All incoming residents after the effective date of this Amendment must be 55 years of age or older.

Robert L. Hampton

MANAGER, SOUTHGATE MOBILE ESTATES

SUSANA WOODS MOBILEHOME OWNERS ASSOCIATION
6480 KATHERINE ROAD, SIMI VALLEY, CALIFORNIA, 93063

February 6, 1989

Senator William A. Craven
Chairman, Select Committee on Mobilehomes
Room 113, State Capitol
Sacramento, California

Dear Senator Craven:

Our mobilehome park will be unable to send anyone to represent us at the hearing regarding "Adult Status" for mobilehome parks to be held February 14, 1988. I am sure there will be plenty of people representing residents like us. We would, however, like to express our opinion to help identify the serious situation that faces many of our kind.

Susana Woods has been operated as an "Adult Park" for over twelve years. The advertising, park regulations, and particularly the guidelines dated June, 1982, have been used, along with verbal assurances, that this was and always would be an adult park. The managers of the park sent a letter dated October 5, 1988, to inform us of the change of status in the park. When they were reminded that they were required to give us 6 months notice by law, they sent another letter dated November 21, 1988, setting the date of their 6 month notice as of the date of the first letter.

We have taken a survey of our residents, finding that 111 of 139 units had at least one resident over the age of 55 on Sept. 13, 1988. That relates to 79.856, or 80%. Actually, we determined that 161 persons in the park are over 55. The majority of us were certainly influenced by the advertising, both printed and verbal to invest our money in coaches here. To have the park open to children would certainly lower the value and desirability of the park to most of us. We believe that a precedent has been set that amounts to a contract that should not be broken between management and tenant. We have appealed to the managers; however, little hope is held for a satisfactory agreement.

We are at a loss to know where to turn for appeal of the inequities we believe are being imposed upon us by management after enticing us to purchase coaches in the park. We are writing to H.U.D. and several local agencies; however, this situation is a terribly large weight hanging over the heads of thousands of mobilehome residents throughout the United States.

If something isn't done to postpone the implementation of the law until proper guidelines and equitable interpretation of the bill can be obtained, thousands of owners like me and the others in our park will be in a very serious predicament.

In a communication from Congressman Don Edwards of the 10th District in California, he was very apologetic for the confusion created by HR 1158 and indicated that the law was in no way intended to usurp the authority of the State of California. It does seem to us that the confusion is continuing and it will require the efforts of people like you who are familiar with the situation at the local level. We sincerely hope that you will be able to help us.

I am enclosing a copy of an advertising brochure, showing the words "Deluxe Adult Park" on the back, a copy of our Community Guidelines dated June, 1982, which clearly states intended park status in paragraph N. Also enclosed are two letters from the management of the park, informing of the change of status. We believe that somewhere there must still be a place to find justice in these United States. We hope you can help.

Sincerely,
SUSANA WOODS MOBILEHOME OWNERS ASSOCIATION

THOMAS W. JONES,
Chairman

January 28, 1989

Senator William A. Craven
State Capitol
Sacramento, CA 95814

Dear Senator:

Please accept the following evidence as part of the data you will be collecting during your February 14th Hearing relatng to that portion of the Fair Housing Amendment Act pertaining to Mobilehome Parks.

I reside at the Oxnard Shores Mobilehome Park, 5440 W. 5th St #56, Oxnard, Ca., 93035. Approximately two months ago the park residents were presented with an offer by the park management, Phillips Management Association as follows: if the park residents would voluntarilly pull out of the City of Oxnard's rent control ordinance, Park Management would gladly do what they had to do to have the park reclassified to senior status. However, all residents would have to sign a new lease, rents would immediately be raised 25%; additionally, rents would automatically be raised each year an amount equal to the CPI or 8%, whichever was greater, and new residents would have an additional 25% added to their rents. The leases would be go for four years only. The offer was voted down by the Park residents by a margin of 95% to 5%. This opposition was in spite of strong support of the offer by the Park Managers.

Two weeks ago I heard the Park Manager quoted as saying that because of the residents "hard-nose attitude", Management is going to do nothing to reclassify the Park. In fact, according to the Manager, the Management believes that they will make far more money allowing it to become a Family Park.

Mobile Home Parks are not small business. I am not privy to the income statements of the Phillips Management Company, but my understanding is that the rental income of the Park homes approximates $1,000,000 per year. (there are 181 homes in the park) There are only three full-time employees--a husband and wife team managing the park, and a full-time maintenance man. The only other large expense is property taxes, and that is set at the 1975 level, plus small annual additions, because of Proposition 13. In other words the cost of maintaining the Park is minimal compared to the income with profits being healthy.

I read in the Mobile Park publications and in some of the reports originating from your office that the cost of converting to a Senior Park status is stopping many of the Parks from so acting. From what I hear from my own Park, and from I can logically calculate, the cost of converting has nothing to do with whether the Parks convert or not. The only issue being considered by Park Owners and Managers is whether or not they make more money as a Senior Park or Family Park. Because their property taxes rise less than does the CPI, and because property taxes constitute the Parks largest, single costs, the Parks already enjoy an increase in net profits greater than the increase of the CPI--they merely want to make more and more.

In addition to the above, please consider in your Hearing that Seniors moved into Mobilehome Parks because such parks are not really suited for children--the houses are too close to each other and there is no place for the children to play without getting in the way of their neighbor. In addition, a crying baby can keep all residents of the adjoining coaches awake during the entire night. This cannot work, and the seniors felt that these truisms would be recognized, and that Mobilehome residents would not have to be concerned with the requirements of the Fair Housing Laws.

In conclusion, because of the lay-out of Mobilehome Parks children cannot comfortably and happilly live in a Park where a majority of the residents are already Seniors. Because of this Mobilehome Parks should be exempt from the Fair Housing Laws. If they cannot be exempted from the Laws, please consider that the Parks are already earning a healthy profit which increases at a greater annual rate than does the CPI because of the protection offered them by Proposition 13. Mobilehome Parks can easilly afford whatever is required to convert their Parks to Senior status if their residents so desire, and they should be forced to do so.

I well recall the campaign waged by Jarvis and Ganns when Proposition 13 was being considered by the voters. Both insisted that rentors would also gain by the passage of the Proposition because landlords would see their operating costs lessen, and would pass this savings on to the rentors. Jarvis and Ganns did not recognize the inherent greediness of landlords as a class. Please consider all this data in your Hearing. I don't know what you can do to help us because we are dealing with Federal legislation, but I do believe that you should be able to generate sufficient opposition to force the Feds to listen. Thanks for your help.

Sincerely,

Jim Moore

Jim Moore
5440 W. 5th #56
Oxnard, CA 93035
(805) 984-4955

SACRAMENTO BEE, Sunday, February 12, 1989

New fair housing law likely to affect age-restricted condos

By Andree Brooks
New York Times

When Congress modified the Fair Housing Act last September to insure that families with children would no longer face discrimination in buying or renting a home, it included a provision intended to exclude retirement and "adult only" communities.

But lawyers now insist the exclusion is so tightly worded that it is likely to have a major impact on the nation's 26,000 age-restricted condominiums. Many many have to make major changes to their documents or facilities or face a plethora of suits, fines and ultimately the loss of the their long-cherished right to restrict the ages of their residents.

The issue gained wide publicity a few weeks ago when a condominium board in Margate, Fla. Threatened to evict a father who had brought his 9-year-old daughter to live in his unit, despite restrictions to the contrary. Lawyers say to new law might allow the daughter to remain.

In an age-restricted condominium a buyer must reach a certain age — say, 45-years-old — before being allowed to buy a unit. Such communities are particularly prevalent in New Jersey, Florida, California, Arizona and Connecticut. Virtually all exclude children, the intent being to let older adults live without the noise and confusion of youngsters.

The right to enforce age restrictions has been repeatedly upheld by the courts, according to the many reports published in the Community Law Reporter, the monthly summary of legal decisions connected with condominium-style living published by the Community Associations Institute, a management advisory organization. More over, the idea is becoming so popular that some states, such as California, confirmed that right by enacting special statute.

But the new Federal legislation jeopardizes that assurance. "It's going to be chaos," said Donald Dyekman, a lawyer in Phoenix who specializes in representing developers and elected officers of age-restricted condominiums. What should the officers of an age-restricted community do?

First, say lawyers, it is vital to quickly bone up on the new law since there are only two months to take action to preserve the status quo, if that becomes the strategy. The law takes effect March 12.

The statute permits further exemption only if 80 percent of the occupants are 55 years or older (one occupant per unit must pass that test). In addition, the complex must provide facilities or services specifically designed to meet the needs of older people. And it must publish and adhere to policies that show clear intent to provide housing for people 55 years older. Moreover, warned Dyekman, the complex must fulfill all three requirements, not just one.

The initial step, say lawyers, is therefore to take a census. If the 80 percent test is met and all other requirements are fulfilled, little else need be done.

"The sooner you have the data to defend your position, the better," said Douglas Klein, director of research for the Community Associations Institute.

Lawyers insist that an association has every legal right to require a response from each member. "Its a perfectly reasonable exercise of power needed to fulfill a Government requirement," said Gurdon Buck, a Hartford lawyer specializing in condominium law.

Those who fail to respond, he said, could be fined or subject to any other sanction the association normally levies against those who violate its rules. For the future, however, it might help to pass a rule making such a response a mandatory requirement of the association, said Dyekman, since the new law may require such surveys annually.

The second step is to take inventory of facilitie and programs, documenting what is clearly designed for older residents, such as handrails in bathrooms, a shuttle bus to shopping daytime bingo games and regular visits by health-care providers. If few such amenities exist, "you might want to bring some in," said Mr. Klein.

The third and probably most controversial step will be to meet the "intent" provision. George Nowack Jr., an Atlanta lawyer also specializing in condominium law, warned that unless the association's documents are amended or raise the minimum age from its current level — the most common range around the nation is 40 to 50 years — the complex could be denied exemption status even if everything else is in order.

"You are going to have a clear choice," said Nowack. "Change up to 55 or become a family community."

The lawyers concede that obtaining such a change may not be easy since the approval of at least two-thirds of the unit owners is usually needed before the underlying documents can be altered.

Many may object, they warn, since raising the age to 55 will limit the market, should they wish to sell or rent their unit.

But Gary Poliakoff, a lawyer in Fort Lauderdale, Fla., and author of "The Law of Condominium Operations," (Callaghan & Co., Deerfield, Ill, two vols., $175), believes failure to fulfill the exemption requirements is unlikely to spell disaster.

"A natural selection process will take over," he said. "Many of these communities are not near schools, so young couples with children will not be attracted to them. The unit sizes are usually small. So even though you might get the occasional child or younger single person, it's likely to remain the exception."

Associations will get a better idea of how to comply with the new law once the Department of Housing and Urban Development publishes its final regulations in a week or so.

Even so, lawyers expect a period of uncertainty. Some predict that if compliance becomes too onerous, the outcry will be so great from residents of these developments that further amendments may have to be made, especially since Its target was primarily rental housing.

COVER STORY

All-adult units brace for the 'sandbox set'

By Don B. Stevenson

ANGELOCCI: Complex seeks senior exemption.

By Anne Kates
USA TODAY

Sam Angelocci doesn't want to live in a retirement community. But if his choice is living with children or living with only elderly neighbors, he'll take the elderly, thank you.

Angelocci, 75, of Sun Lakes, Ariz., is among millions of residents in adults-only communities facing a new lifestyle.

A federal law that took effect Sunday makes it illegal to discriminate against families with kids in selling, renting or financing housing. Senior citizen housing — if it meets the law's new guidelines — is exempt.

Adult communities have been bracing for an invasion of the sandbox set, or, like Angelocci's Sun Lakes, preparing to exclude younger adults to qualify for exemptions.

The law is meant to open more affordable housing to families. But singles, empty-nesters and other child-free adults who'd prefer to stay that way say they're the ones facing discrimination now. And housing industry groups say the new law will increase costs for builders, property managers — and ultimately residents — of formerly adults-only apartments, condos and subdivisions.

"Congress made a determination that housing families with children is more important than a landlord saving some money," says lawyer Jim Morales of the National Center for Youth Law in San Francisco.

In essence, the new law:

▶ Prohibits communities from banning kids unless all residents are 62 or older — or at least one resident in 80 percent of the units is 55 or older and the community has special facilities or activities for seniors. Under-age residents in developments choosing the senior exemption will be allowed to stay.

▶ Bans discrimination against handicapped people and requires new multifamily developments occupied after March 13, 1991, to be accessible to the handicapped or adaptable for handicapped use.

Ending housing bans against kids has been a cause for Ron and Bonnie Pomerantz of Tamarac, Fla., ever since they were evicted from their adults-only subdivision in the summer of 1985 after a two-year legal fight. The birth of daughter Erica violated deed restrictions.

"We had to prove our daughter had a right to live in our house," says Ron Pomerantz, 46. They challenged the subdivision's restrictive covenant in state court, but lost. "We knew we had little chance of winning — we fought for principle."

Publicity surrounding the Pomerantz case helped fuel a nationwide lobbying campaign that united scores of civil rights activists and eventually attracted the support of lawmakers, including Sen. Edward Kennedy, D-Mass.

The new law proves "it's no longer fashionable to be a bigot in our country," Pomerantz says.

Those against the new rules say they've got rights, too.

"It's not being prejudiced," says Sue LaLiberte, 37, a resident of Shadow Ridge Apartments in Santa Fe. "It's just kind of nice without (kids) around. ... We purposely moved here because there weren't kids. ... We like our quiet." She and her husband of 16 years now are considering moving out.

Property managers say it's not bigotry but economics that makes adult communities want to stay that way. Face it, kids leave fingerprints on the walls, dirty the carpet and tear up the lawn, they say.

Increased maintenance costs incurred when an adult complex turns family can run as much as 25 cents a square foot — that's about $50,000 a year in a complex with 250 units, says National Apartment Association president Paul Nichols.

Some owners also are shelling out to child-proof their designed-for-adults developments to comply with local ordinances or because they're worried insurance costs will rise if they don't take the precautions.

It's frustrating when amenities suddenly become drawbacks, Nichols says. "If an adult complex is built on a river, it's scenic. I'd build a jogging path along it," says Nichols. "Put a family with children adjacent to that — it becomes a hazard."

Just a fence around the pool can cost $2,000 to $7,000. Other modifications might include installing child-safe railings on high-rise terraces or new windows on upper stories that kids can't climb through.

Maintenance and child-proofing costs are likely to be passed on to residents in housing markets where it's feasible, Nichols says.

How developments are coping:

▶ At Winston Towers 700, a Miami Beach condo that used to limit the number of children between the ages of 4 and 16, discipline will be tougher.

"Before, if we caught a child destroying property, we might have imposed a small fine on the mother or barred him from the pool for a month. Now, we might have to evict to prove to people we're serious about keeping a safe, sound and happy environment," says general manager Robert Densmore.

▶ At Shadow Ridge complex in Sante Fe, "Our main concern is letting residents know children don't have a safe place to play," says manager Connie Quest. "There's no playground, no pool. The only options are the parking lot or the landscaped areas — not conducive to children."

▶ At Sun Lakes, where the old rules welcomed residents starting at age 40, residents are hoping they'll be able to keep some units open for younger adults while still qualifying for a senior housing exemption.

Residents worry that a 55-and-over crowd won't give the volunteer time that makes the community work. Diminished use of the golf course, tennis courts and swimming pool — now supported by fees paid when residents use them — could make those amenities more expensive for everyone.

Laments Sun Lakes' Angelocci: "Instead of putting in some younger blood at the bottom, we'll have all old people."

Other seniors worry that property values will fall because owners will no longer be allowed to sell to a significant segment of the market.

Condo owner Fred Hyatt in Stratford, Conn., for instance, lives in an adult complex that's boosting the minimum age from 35 to 55. Worries about the general downturn in the Northeast condo market are enough — without adding the worry of a shrinking market, he says.

In practice, many adult communities could find they have little to fear from the little ones, after all. In many cases the clamor is over apartments too small for most families.

"Our apartments are so small people with children won't want to live here," says Elizabeth Edwards, manager of Tierra Zia apartments in Santa Fe, where a two-bedroom apartment measures just 780 square feet.

And all-adult projects are rarely the most affordable housing because they're often newer and stocked with expensive amenities such as gyms and jacuzzis, says property manager Henry Hirsch at ECI Management in Atlanta. It's not likely families will invade such dwellings en masse.

At Oakwood Apartments in Falls Church, Va., a fitness center and clubhouse were focal points of the singles lifestyle once courted by management.

Regional manager Randall Ell says Oakwood welcomes the change to family living, but concedes such expensive amenities put Oakwood's rents out of reach for many families.

Whether the new rule dictates who our neighbors are or are not, the vehemence of the debate has been disturbing to some. "I'm troubled," says Lisa Mihaly at the Children's Defense Fund in Washington.

"So many people seem bound and determined not to have children in their building. I had a neighbor with a cat that screeched all night, another neighbor that sounded like he was moving furniture — we've all had neighbors who were difficult to live with. Children are a part of life."