



OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

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

**FEB 18 2009**

G. Michael Payton  
Executive Director  
Ohio Civil Rights Commission  
30 East Broad Street, 5<sup>th</sup> Floor  
Columbus, OH 43215

Dear Mr. Payton:

As you know, there have been recent developments that affect the rights, procedures, and remedies available under the Ohio fair housing law. I am writing to you regarding the impact of those developments on Ohio fair housing law's continued substantial equivalence to the federal Fair Housing Act, as amended in 1988 (the Act).

On August 12, 2008, Kenneth J. Carroll, Director, Fair Housing Assistance Program Division, sent you a letter identifying substantial equivalence concerns raised by Ohio state court decisions in Fair Housing Advocates Assn., Inc. v. Chance, Ohio Civ. Rights Comm. v. Akron Metro Hous. Auth., and State ex rel. Am. Legion Post 25 v. Ohio Civ. Rights Comm. These decisions interpreted Ohio's fair housing law inconsistent with the Act on issues related to the standing of private fair housing organizations, landlord liability in hostile living environment harassment cases, and a respondent's right to seek subpoenas during an investigation. As indicated in Mr. Carroll's letter, the Ohio fair housing statute also does not provide an aggrieved person with the right to intervene in an administrative hearing or civil action, which is inconsistent with the Act. Since Mr. Carroll's letter, two more developments have arisen that raise additional substantial equivalence concerns: Ohio Civil Rights Comm'n v. Fairmark Dev., Inc. and HB444.

I. **Ohio Civil Rights Comm'n v. Fairmark Dev., Inc.**

In Fairmark Dev., Inc., an Ohio Court of Appeals interpreted the Ohio fair housing law inconsistent with the Act on several issues. First, Fairmark Dev., Inc. held that relief available in pattern or practice cases brought under Ohio's fair housing law does not include retrofitting of dwellings that are in noncompliance with the design and construction requirements. Second, Fairmark Dev., Inc. indicated that, in pattern or practice cases, Ohio's fair housing statute does not provide authority for the recovery of civil penalties, monetary relief, or such other relief that a court deems necessary. Finally, Fairmark Dev., Inc. held that the statute of limitations for design and construction claims filed with the Ohio Civil Rights Commission (OCRC) commences when the construction of a housing complex is complete, which is inconsistent with HUD's interpretation of the Act.

## II. **HB444**

HB444, which recently amended an Ohio state statute, provides the following:

"[f]or purposes of enforcement by the Ohio civil rights commission only, approval of a plan as required under [the Ohio building code] creates a rebuttable presumption that the plans, drawings, specifications, or data submitted are in compliance with the rules adopted by the board pursuant to this section as they relate to accessibility."

The presumption created by HB444 that plans approved under Ohio law comply with the Act's design and construction requirements creates an evidentiary hurdle for aggrieved persons that is absent from the Act. Accordingly, the change made by HB444 to Ohio's fair housing law presents yet another substantial equivalence concern.

## III. **Corrective Actions to Address Substantial Equivalence Concerns**

The most recent Memorandum of Understanding between HUD and OCRC was executed in 2004 and will expire in 2009. Therefore, in 2009, OCRC is due for a determination of recertification. Because of the issues raised by Fairmark Dev., Inc. and HB444 as well as the issues raised in Mr. Carroll's August 12, 2008 letter, I will recommend that the Ohio fair housing law not be recertified and OCRC's participation in the FHAP be suspended, pursuant to 24 C.F.R. Section 115.211, unless enacted changes to Ohio's fair housing law that effectively address all issues raised are provided to HUD by June 30, 2009. The June 30, 2009 timeframe is based on your prior representations related to Ohio's current legislative session. If there are barriers to meeting this timeframe with regard to the issues raised by Fairmark Dev., Inc. and HB444, please contact Mr. Carroll as soon as possible.

Please send all changes to the Ohio fair housing law to:

Kenneth J. Carroll  
Director, Fair Housing Assistance Program Division  
Office of Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW, Room 5206  
Washington, DC 20410

In addition, beginning immediately, HUD will not refer to OCRC complaints alleging violations of the design and construction requirements of the Act. OCRC should consent to HUD's reactivation of any and all currently open design and construction complaints. When OCRC receives such complaints, it should immediately inform HUD and have the complaint transferred to HUD for processing. OCRC will not receive payment for such complaints under the FHAP. Pursuant to the August 12, 2008 letter, similar procedures have been implemented with regard to complaints alleging a housing provider's failure to take corrective action because of tenant-on-tenant harassment, and complaints filed by private fair housing groups that arise in Lorrain, Medina, Summit, and Wayne counties.

I appreciate your attention to these matters. If you have any questions, comments, or concerns, please contact Mr. Carroll at (202) 402-7044.

Sincerely,

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

Lynn M. Grosso  
Director, Office of Enforcement

cc: Barbara Knox, FHEO Region V Director  
Kathleen M. Pennington, Assistant General Counsel for Fair Housing Enforcement