DISCRIMINATION AGAINST FAMILIES WITH CHILDREN:
AN AUDIT OF RICHMOND AND SUNSET DISTRICT
REAL ESTATE AGENCIES AND THEIR RENTAL PRACTICES

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INTRODUCTION

Since 1975, San Francisco has had an ordinance expressly prohibiting discrimination against families with children. Such a law is in effect in only a handful of cities throughout California, though fair housing groups unanimously agree that such protection is necessary and desirable for this class of rental home seekers. The San Francisco Ordinance (Ord. No. 320-75) prohibits discrimination in rental housing because home seekers have children. Specifically, the ordinance states:

"Sec. 102. Prohibited Activity. It shall be unlawful for the owner, lessor, lessee, sublessee, real estate broker, assignee, or other person having the right of ownership, the rights of possession, or the right to rent or lease any housing accommodations, or any agent or employee of such person to:

(a) Refuse to rent or lease, or otherwise deny to or withhold from any person such accommodations because the person has a minor child or children who shall occupy the leased or rented premises with such person;

(b) Represent to any person because of the potential tenancy of a minor child or children that housing accommodations are not available for inspection or rental when such dwelling is, in fact, so available;

(c) Make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of housing accommodations that indicates any preference, limitation, or discrimination based on the potential tenancy of a minor child or children;

(d) Discriminate against any person in the terms, conditions, or privileges of the rental or housing accommodations or in the provision of services or facilities in connection therewith, because of the potential tenancy of a minor child or children;

(e) Refuse to rent after making of a bona fide offer, or to refuse to negotiate for the rental of, or otherwise make unavailable or deny, housing accommodations to any person because of the potential tenancy of a minor child or children;

(f) Include in any lease or rental agreement of housing accommodations a clause providing that as a condition of continued tenancy the tenants shall remain childless or shall not bear children.

In essence, discrimination based upon the presence of one or more children in the family is illegal and punishable by a fine of from $250 to $500. The Fair Housing Program of the San Francisco Human Rights Commission has received many such complaints from frustrated parents attempting to rent housing for their families. Such complaints constitute the second highest category, behind racial discrimination, of discrimination complaints received at the Fair Housing Program. The purpose of this study was to determine the extent of discrimination against families with children. Using standard fair housing audit techniques, a sample of realty agencies in the Richmond and Sunset Districts of the City which handle rental units were investigated. We attempted to duplicate actual experience of apartment hunting for San Francisco families and document our findings. With this information, we wish to shed some light on the obstacles imposed on families attempting to rent apartments as well as the policy options open to our local legislators for strengthening the existing ordinance.
DESIGN FOR THE FAMILIES WITH CHILDREN AUDIT

A housing discrimination audit is a technique used to test for the presence of discrimination. It can be used to test for such illegal real estate practices as racial steering, red-lining or, as in this study, housing discrimination against families with children. A housing discrimination audit is the investigative tool used by most fair housing groups when gathering evidence in an alleged case of housing discrimination. To determine if a landlord, manager, or rental agent is discriminating illegally in the selection process, selected individuals are sent to the unit in question, and differences in treatment, if any, are noted. Evidence obtained in this fashion is routinely used in court and is often the key to successfully prosecuting such cases.

For the purposes of this audit, the services of two "testers" were necessary for each check. Checkers were matched for such factors as age, race, sex, income level, and length of residency in the city. Both checkers were provided with similar cover stories with only one exception; the first checker was looking for an apartment for herself, and an elderly mother; the second checker was looking for an apartment for herself, and a child, aged 8. On order to give added inducement to the rental agent, the checker representing herself as having a minor child was given a family income slightly higher than the checker without a minor child and was sent in first to each renting agency. Therefore, given all the relevant factors, the checker with children should have been offered the apartment in question first unless the rental agent did not want to rent to a family with a child.

The profiles of the two testers were as follows:

Profile #1 Apartment Seeker with no Children

1. Age - 29
2. Sex - Female
3. Race - White
4. Marital Status - Single
5. Children - None
6. Others in Household - Mother on Social Security - $310 monthly.
7. Employment - Employed for two years at an income of $1700 - References provided.
8. Total Family Income - $2,010 monthly.
9. Reason for seeking apartment - Mother recently moved in with daughter and they are seeking a larger apartment, two instead of one bedroom - Looking for an apartment near Golden Gate Park for approximately $600 monthly.
Profile #2 - Apartment Seeker with Child

1. Age - 36
2. Sex - Female
3. Race - White
4. Marital Status - Divorced
5. Children - One girl, aged 8.
6. Others in Household - none
7. Employment - Employed for 2 years at an income of $2,100 monthly - References provided.
8. Total family income - $2,100 monthly.
9. Reason for seeking apartment - Looking for a larger apartment, two bedrooms, in a good neighborhood near Golden Gate Park. Willing to spend approximately $600 monthly.

RESULTS

The audit was performed within a three week period in October of 1981. A total of ten real estate offices were audited during this period. Of these ten agencies, no differential treatment was evident in seven of these tests. Of the remaining three real estate agencies, Cal-East Agency offered the apartment to the tester with no children first. During the conversation with this tester, the agent stated that he had two equally qualified applicants with the exception that the other applicant had a child. He went on to state that he would rather rent to her and her mother because "adults are more stable." After the tester with no children turned down the apartment, the tester with a child was offered the unit.

The second agency, Rainbow Realty, also offered the apartment in question to our childless tester first. At the time of the offer, the agent stated that she would attempt to offer the only other applicant another apartment in the building. The tester with a child was then offered another apartment in the building which she turned down. While both testers were offered apartments in the same building, the tester with no children was given preferential treatment.

In the final test, with Roman Realty, neither tester was officially offered the apartment, however, both were asked to meet with the owner for a final interview. Both testers declined this opportunity. During the conversation with the realty agent, the tester with a child (also divorced) was asked whether she planned to have a man move in with her in the near future. She said, "no" and asked why he wanted to know. The agent stated that divorced women, more often than single women, have men move in with them. No such questions were asked of our other tester.
While this question cannot be construed as discrimination against families with children, it does seem to indicate differential treatment in regard to marital status, which is illegal under State Law.

CONCLUSION

In only three out of ten of these tests was any differential treatment detectable. In two of these cases, the apartments in question were offered to our tester without a child first, even though the income of this tester was less than the second checker, and the fact that the tester with a child applied for the apartment first. In the third case, the tester with a child was asked questions concerning whether she planned to have a man move in with her and was told that divorced women are more likely to have this happen than single women. This question, asked only of the divorced women, is conceivably a form of marital status discrimination.

In a number of other tests, no definite determination could be made as to discrimination against families with children because large deposits, in the hundreds of dollars, was necessary before applications would be considered. This problem is one of the major drawbacks to investigation of housing discrimination in this manner. It is interesting to note that these deposits in some cases were more than the total fine that can be assessed against landlords who discriminate on the basis of child discrimination ($500 maximum fine).

Child discrimination in rental housing is a serious problem in San Francisco. If the City is truly interested in maintaining a significant population of families with children, an undisputably important resource to a diversified and stable city environment, strict enforcement of the child discrimination ordinance is important.

A major problem with this ordinance is its small fine and ineffectiveness as a prohibitive measure. Even if a rental agent is found guilty of such discrimination, he or she is in no danger of losing his or her real estate license, even after repeated violations of the ordinance. Only if a real estate agent is found guilty of a misdemeanor or a felony will the California Real Estate Department consider revoking a license. The Child Discrimination Ordinance in San Francisco is only considered an infraction of the law.

A major limitation of this audit is the fact that the test only involved one child. This was done because it is difficult to design an audit with more children, and an equal number of adults, with believable and comparable incomes. While it is illegal to deny an apartment or other rental unit on the basis of children, it is not illegal to deny an apartment based upon the number of people who will occupy it. Hypothetically, it is possible for a landlord to deny a three bedroom apartment to a family of four with children by stating that he or she does not want to rent a apartment to a family of four, three, or even two. As long as the decision is based on the number of people, rather than children, this would not be legally considered discrimination.
One method for preventing this type of discrimination against larger family units would be to amend the ordinance so that a landlord would have to consider a family with children, or any other type of group attempting to rent a housing unit, using a ratio of people to bedrooms. For example, the law might be written so that two people per each bedroom would be entitled to rent a unit. Such a law, which exists in other cities, would prevent landlords from arbitrarily setting their own ratios or limits in a discriminatory manner.

Discrimination against Families with Children continues to be a problem in San Francisco six years after the ordinances enactment. The changes suggested above would lessen the difficulties of such families in renting an adequate apartment as well as reaffirm the City's commitment to maintaining San Francisco as a place open to people of all ages.
1) Realty Agency ____________________________

2) Name of Agent dealt with ____________________________

3) Describe the initial phone call (i.e. Were you told of any apartments, quoted any rent prices, locations, etc.) ____________________________

4) Were you asked any questions on the phone concerning children, income, employment, or any other factors concerning your qualifications as a tenant? ____________________________

5) What arrangements were made to see the apartment(s) in question? ____________________________

6) After examining the apartment, were you asked any questions regarding children? Were any special conditions (i.e. differential rates, rules, prohibitions, etc.) placed on the unit to your knowledge? ____________________________

7) Did you complete an application form for the apartment? (If possible, keep copies of all documents used during these transactions including application forms, business cards, leases, deposit slips, etc.) ____________________________

8) Were there any other incidents or events related to your transactions with the realtor concerning the tenancy of children? Please describe in detail. ____________________________

9) ____________________________
9) When do you expect to hear whether or not you will be offered the apartment?

10) Were you offered the apartment. Please give the date and time as well as any reasons given for this decision.

Additional Comments: