



August 16, 2018

Joshua Greenberg  
Greenstein, DeLorme & Luchs, P.C.



Via Certified U.S. Mail and Email

*Attorney for:*

Community Realty Company



The Evergreens at Smith Run



RE: Kenneth and Liv Hauge; 21/30 Notice

Dear Mr. Greenberg,

First Liberty Institute represents Kenneth and Liv Hauge regarding Community Realty Company's ("CRC") threat to evict the Hagues from their residence at The Evergreens at Smith Run ("the Evergreens"). Please direct all future correspondence related to this matter to my attention.

On behalf of our clients, we request that you respond to our request for relief no later than 10:00 AM August 30, 2018. Should you fail to respond or deny our request for relief, we are prepared to pursue all available legal options.

### **Summary**

Ken Hauge, a semi-retired Lutheran minister, faces the prospect of eviction for leading a small Bible study inside of his private apartment. The threat of eviction follows repeated religious discrimination by Evergreens management, including forcing Hauge to refer to his event as a "Book Review" rather than a "Bible Study," withdrawing support of a resident social because a resident briefly said grace over the meal, and prohibiting religious activity in the Evergreens' Community Room. These actions violate federal law, including the Fair Housing Act.

## Hauge's Bible Study

The Hauges have resided at the Evergreens since January of 2017. Hauge is a semi-retired Lutheran minister who serves as a part-time pastor for a small church in Fredericksburg, Virginia. In early 2017 and at other residents' request, Hauge began leading a nondenominational Bible study for interested Evergreens residents on Wednesday evenings. Hauge lead the Bible study in his personal capacity, and the Bible study was not affiliated with his church. The Bible study was comprised of Evergreens residents and not open to the general public.

Prior to holding the first meeting, Hauge applied to ██████████, the Evergreens' manager, to reserve the Community Room. He provided the required deposit, and ██████████ approved the reservation but required Hauge to refer to the event as a "Book Review" rather than a "Bible Study." However, due to a misunderstanding as to the starting date of the weekly reservation, ██████████ cancelled Hauge's reservation. As a result, one of the Bible study attendees volunteered to host the Bible study, and it ultimately met in her apartment for the remainder of 2017.

During that time, and with ██████████'s permission, Hauge posted notices announcing the Bible study on the Evergreens' bulletin boards. However, ██████████ continued to insist that the notices refer to the Bible study as a "Book Review."<sup>1</sup>

In early 2018, ██████████ finally approved the Bible study to meet in the Community Room and scheduled the Bible study on the bimonthly calendar as a resident-sponsored "Book Review." Like other approved community events, she did not require Hauge to provide a deposit.

In February 2018, after a friend of one of the Bible study attendees contacted representatives of CRC, the Evergreens withdrew its insistence that the Bible study be called a "Book Review." In following months, the resident calendar properly entitled the event "Bible Study" and designated it as a resident-sponsored event for which the Evergreens management was not responsible. As always, the Bible study was nondenominational, open to any resident who wished to attend, and the decisions of those who did not wish to attend were respected.

Even so, several Evergreens residents attempted to interfere with the Bible study on several occasions. At least one of these residents repeatedly harassed and verbally abused Hauge and other Bible study attendees on the basis of their religious beliefs. In contrast, Hauge graciously endured this ill-treatment and neither prevented nor interfered with anyone else's use of the Community Room.

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<sup>1</sup> The notices included the date and time of each Bible study meeting, as well as the material to be covered. On several occasions, other Evergreens residents removed the Bible study notices.

## **The Evergreens' Discriminatory Policy and Eviction Notice**

On July 23, 2018, Evergreens residents, including the Hagues, unexpectedly received a new Community Room Usage Policy ("Policy"). The lengthy Policy prohibits any and all religious activities from occurring in the Community Room. However, the Evergreens allows any number of nonreligious activities, including bridge, bingo, and poker games, baby and bridal showers, wedding receptions, funeral gatherings, and birthday parties.

Moreover, on that same day, the Hagues received a "Notice to Cure Default or Quit" ("Notice") signed by [REDACTED]. The Notice threatened to terminate the Hagues's lease and evict them unless Hauge stopped leading the Bible study entirely, either in his private apartment or in the Community Room. Thus, not only is the Bible study presently denied a home, but should Hauge refuse to stop studying the Bible even in his private residence, the Evergreens is prepared to put Hauge and his wife on the street.<sup>2</sup>

### **Legal Analysis**

These actions violate the Fair Housing Act ("FHA") and its accompanying regulations. *See* 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65. The FHA prohibits discrimination "against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . religion . . ." 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65(a) ("It shall be unlawful, because of . . . religion . . . , to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling."). A landlord's housing practice may violate these provisions if the practice was motivated by discriminatory intent or it has a discriminatory impact, or both. *See Betsey v. Turtle Creek Assocs.*, 736 F.3d 983, 986 (4th Cir. 1984).

Over the past year and a half, your clients, CRC and the Evergreens, have established a long record of obstructing and stifling residents' religious beliefs and the free exercise thereof. First, when the Evergreens, through its manager, approved Hauge's Community Room reservation request for the Bible study, it refused to allow Hauge to call the event a "Bible Study." Instead, it required him to refer to it as a "Book Review," even though the resident calendar disclaimed affiliation with resident-sponsored events. Second, in 2017 the Evergreens refused to reimburse the resident social committee for an agreed-upon portion of expenses associated with a monthly resident social dinner because a resident briefly and audibly said grace over the meal. In this context, the Notice and Policy merely crystalized the discriminatory purpose and disparate treatment the Evergreens demonstrated and effectuated for some time.

The Notice, which would evict Hauge and his wife for holding a Bible study in their private residence, and the Policy, which denies Evergreens residents use of the Community Room for any

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<sup>2</sup> The Hagues have complied with the Notice and Policy pending resolution of this matter for fear of losing their home.

religious purpose, taken individually or in concert, manifest a clear discriminatory intent and has a discriminatory impact on residents of faith in violation of the FHA.

First, the Policy itself discriminatorily impacts residents of faith. The Evergreens' Community Room provides residents with space to use for a variety of nonreligious activities, including weekly bingo, bridge, and poker games, anniversary and birthday parties, and monthly resident socials. In addition, as the Notice specified, residents may reserve the Community Room for bridal showers, birthday parties, wedding receptions, and funeral gatherings. However, the new Policy prohibits residents from using the Community Room for "[r]eligious services or for other religious purposes." As a result, the Policy excludes the Bible study (regardless of who leads it) based solely on its religious identity and content. Such a Policy facially discriminates against religious residents and results in religious adherents receiving unequal treatment.

Indeed, the United States Department of Justice describes a strikingly similar scenario as a textbook example of unlawful religious discrimination under the FHA: "An apartment complex has a meeting room that is available for residents to reserve for card games, social activities, and similar events. A resident is told that she may not use the room to hold a Bible study with friends."<sup>3</sup> Your clients' conduct is indistinguishable and equally discriminatory.

Moreover, as past practice demonstrates, your clients broadly define the term "religious purposes." The term includes *something as simple as a resident praying audibly over a meal or referencing the Bible in public*, both of which the Evergreens, through its management, has previously punished or stifled. Further, the Notice curiously singles out Hauge and a handful of other residents' habit of watching a documentary or travelogue on Sunday evenings as a "religious movie screening."<sup>4</sup> Although such programs may cover the history of a geographic area, including religious and cultural context, they hardly merit being characterized as religious movies.<sup>5</sup> Evergreens' willingness to categorize even a vague, tangential appearance of religion as prohibited activity evinces deep discriminatory intent to isolate, intimidate, and discriminate against our clients because of their religious identity.

Such an expansive understanding of the Policy's scope invites arbitrary and discriminatory application, even if undertaken by someone who holds no discriminatory intent. However, in the hands of one who intends to discriminate on the basis of religion, this Policy provides a formidable weapon. As a result, no resident of faith can feel safe watching, reading, or studying any material that contains any religious references, no matter how tangential or academic in nature. Your

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<sup>3</sup> U.S. Dep't of Justice, "Combating Religious Discrimination and Protecting Religious Freedom" (Dec. 4, 2017), <https://www.justice.gov/Combating%20Religious%20Discrimination%20And%20Protecting%20Religious%20Freedom>.

<sup>4</sup> The handful of residents who gather to watch the programs on Sunday night do so informally, desiring simply to share a casual activity with others in order to fill an otherwise empty evening. The individuals who participate vary, and they have never attempted to exclude others from the Community Room while watching these programs. Hauge was under the impression that such informal gatherings did not require a prior reservation. If this is in error, he would be happy to discuss making a reservation.

<sup>5</sup> That your clients' objection to residents watching these programs derives from their belief that the programs are religious in nature speaks volumes to the extent of your clients' discriminatory intent.

clients' actions make clear residents of faith must choose between religious exercise, no matter how quiet, and living with a roof over their heads. As a result, the Policy effects a profoundly discriminatory impact against religious residents who, now, cannot reasonably use the Community Room unless they actively hide every potential public manifestation of their religious beliefs.

Furthermore, the Notice itself is deeply flawed, manifesting both discriminatory intent and effecting discriminatory impact. Primarily, the Notice negligently or intentionally mischaracterizes Hauge's leadership of the Bible study as a business activity. Hauge may be a minister by profession, but he led the Bible study in his personal capacity and on his own time. The Bible study was nondenominational and not affiliated with Hauge's (or any other) church, and, indeed, it was prompted by other residents' interest. He received no compensation for his leadership, and the attendees hailed from a wide variety of Christian denominations. Such studies are a common practice among Christians, who often gather outside of their churches as friends and neighbors to study the Bible and develop friendships in their spare time. As such, the Bible study cannot properly be characterized as a business activity.

Yet, the Notice establishes that if Hauge wishes to live at the Evergreens, he must not audibly pray for or discuss the Bible with anyone, even on his own time and in his own private residence.<sup>6</sup> For doing so, he is threatened with losing his home. Thereby, the Notice directly conflicts with the FHA.

Moreover, the Notice's internal inconsistencies demonstrate both discriminatory intent and disparate treatment. In one breath, the Notice implies that part of your clients' objection to the Bible study derives from the purported attendance of nonresidents.<sup>7</sup> Yet in the next, the Notice lists a number of permitted events, including birthday parties, wedding receptions, and funeral gatherings, which usually entail nonresident attendees. In addition, although the Notice characterizes the Bible study as an unauthorized event your clients recently uncovered, CRC and the Evergreens have been aware of the Bible study for approximately a year and a half, even approving its Community Room reservations and listing it on the resident calendar. These inconsistencies not only point to disparate treatment, but they also indicate that the Notice's purported rationales are pretextual. That is, your clients do not seem concerned with eliminating home businesses; they seem concerned with eliminating Hauge's religious practice.

Finally, Hauge and other Bible study attendees also have endured harassment and verbal abuse from residents who oppose the Bible study ideologically—harassment and abuse to which your clients appear indifferent. These residents appear to take offense from encountering residents

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<sup>6</sup> Moreover, Hauge has never conducted pastoral counseling sessions at the Evergreens, whether in the Community Room or in his own apartment. Allegations to the contrary are false.

<sup>7</sup> Contrary to the Notice's assertion, the Bible study is comprised of residents of the Evergreens and not open to the general public. However, Evergreens *staff*, though not residents themselves, customarily use the Community Room to host personal events, such as baby showers.

whose beliefs differ from their own, subjecting Hauge and other Bible study attendees to verbal abuse and attempting to impede the Bible study on multiple occasions.<sup>9</sup>

CRC and the Evergreens failed to determine whether the resident complaints the Notice cites had merit. Instead, your clients resorted to drastic measures such as prohibiting all religious activity and issuing eviction threats. In so doing, CRC and the Evergreens perpetuate and encourage a longstanding pattern of harassment against Hauge and other Bible study attendees because of their religious beliefs.

Although an apartment complex is often called upon to balance a number of competing interests, it is obligated to do so consistently with the FHA. Even if some residents take offense at being exposed to their neighbor's religious beliefs, discriminating against residents due to their religious free exercise is unlawful under the FHA.

## **Conclusion**

Through the Policy, CRC and the Evergreens unlawfully disfavor residents of faith, deeming their religious identity and practice "inappropriate." And by pairing the Policy with the Notice's threat to evict Hauge and his wife, CRC and the Evergreens deprive our clients of their rights under the FHA as well as deter other residents of faith from religious practice. Such discriminatory conduct and disparate treatment blatantly violate the FHA's prohibition on discriminating on the basis of religion "in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith." 42 U.S.C. § 3604(b).

It is our clients' hope that this matter may be resolved amicably. Accordingly, we request that CRC and the Evergreens take the following actions:

- 1) rescind the Notice and remove it from the Hagues's tenant file;
- 2) rescind the July 23rd Community Room Policy prohibiting religious activities and notify Evergreens residents accordingly;
- 3) restore Hauge's access to the Community Room for the Bible Study; and
- 4) take prompt steps to curtail the pattern of harassment against the Hagues and other residents of faith who attend the Bible study.

We request a response by no later than 10:00 AM, August 30, 2018. Should you deny these requests or fail to respond to this letter, we are prepared to pursue all available legal remedies, including reporting the matter to the United States Department of Housing and Urban Development. Our clients are also prepared to seek all available relief, including any necessary preliminary relief and attorney's fees under 42 U.S.C. § 3613(c)(1).<sup>10</sup>

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<sup>9</sup> For example, Hauge has been stopped in the hallway and subjected to profane rants, and several individuals have attempted to disrupt the Bible study on multiple occasions.

<sup>10</sup> Please note that your clients are prohibited from retaliating against the Hagues for vindicating their rights under the FHA. *See* 42 U.S.C. § 3617; 24 C.F.R. § 100.400.

Thank you for your prompt attention to this matter. You can reach me by email at [REDACTED] or by phone at 972-941-4444.

Sincerely,

/s/ Hiram Sasser

Hiram Sasser  
General Counsel