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Request for Scheduled Public Comment : 6-6-2013 01:59:52 pm

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Thu, Jun 6, 2013 at 1:59 PM

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Below are the results of a Web form submitted on: June 6th, 2013 at 01:59PM (CDT).

Speaker's Name: (please indicate if more than one speaker): Jessica Kempf

President Columbia Board of Realtors

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Topic (please be specific): Concerns with the Over Occupancy Ordinance. (City of Columbia Ordinance 13-156 and 13-184

IP:199.47.233.121

Form: Request for Scheduled Public Comment

Challenging the Enforceability
City of Columbia Ordinance 13-156 and 22-184

POINT I: THE ORDINANCE IS COMPLETELY UNNECESSARY

If the purpose of the ordinance is to prevent mis-characterization of zoning laws in advertisements and other statements made by real estate licensees, then it is unnecessary since the Missouri Real Estate Commission regulations already prohibit misrepresentations and there are statutes and case law which create civil liability for such behavior.

POINT II: CREATION OF AN AFFIRMATIVE DUTY FOR SELLERS AND LANDLORDS AGENTS TO BUYERS AND TENANTS CONFLICTS WITH CURRENT MISSOURI STATUTES AND ACTUALLY CREATES A RISK FOR ALL CONSUMERS

If the purpose of the ordinance is to place an affirmative duty on seller's and landlord's agents to investigate zoning and disclose information to a buyer or tenant, then this ordinance conflicts with years of well-reasoned Missouri law on the subject.

Consumers are best served when their natural expectations are met by the professionals they are working with. By placing a burden of investigation and disclosure for information on a seller's agent for the benefit of a buyer, the ordinance gives buyer/consumers false expectations of how the law defines the relationships between real estate licensees and their clients or customers.

- Missouri's real estate license statutes in Chapter 339, RSMo were thoroughly rewritten in 1997 to solve this problem.
- The principal purpose of that revision was to make clear "to whom" a real estate licensee owed duties and to make sure that their actions conformed to the relationship that was created.
- The result was a well-reasoned set of laws that makes clear that a seller's or landlord's agent has no duty of investigation to any person other than the seller or landlord - and similarly, a buyer's or tenant's agent has no duty of investigation to any person other than the buyer or tenant.
- In fact, Missouri laws specifically state that a seller's or landlord's agent has no duty to conduct an independent inspection or discover any facts about the property for the benefit of the buyer or tenant.
- These laws make sure that consumers aren't given false expectations by scenarios (such as the one being imposed in Columbia) where a person who is NOT their agent is giving the appearance of a duty to investigate in one narrow area (such as zoning).

- REALTORS® also abide by a Code of Ethics which is consistent with those laws, and reinforces the idea that consumers are actually harmed when inconsistent obligations and duties create additional confusion for consumers in understanding the nature of the agency relationships used in real estate brokerage. Should REALTORS® be forced to violate that Code of Ethics they would face a fine of up to \$15,000.

- In short, Columbia's new ordinance directly conflicts with the state statutes governing real estate licensees and the Code of Ethics governing real estate licensees who are part of the REALTOR® organization - and those statutes and Code provisions were specifically drafted to try to make certain that false expectations would not be created by the imposition of duties that conflicted with the core principals of agency relationships that are used in the real estate industry.

- It may be helpful to draw a comparison to the legal profession. Essentially, this is the equivalent of telling an attorney that he/she has to do work for the party on the other side of a lawsuit. Obviously, that would create confusion over the duties owed by the attorneys to the parties involved.

POINT III: THE ORDINANCE HAS A DISCRIMINATORY IMPACT WHICH SUPPORTS OUR BELIEF THE ORDINANCE DOES NOT BEAR ANY RELATION TO A PERMISSIBLE PUBLIC INTEREST

The disclosure part of the ordinance in Section 13-156 was drafted to only apply to real estate licensees and property managers - it does not apply equally to owners selling or leasing without professional assistance. If this were really intended to assure that buyers were aware of zoning laws, the duty would be applied to sellers and landlords who are not using real estate licensees or property managers.

POINT IV: THE ORDINANCE IS AN INFRINGEMENT ON TENANTS' CONSTITUTIONAL 4TH AMENDMENT RIGHTS.

The requirement for an owner, operator or property manager to turn over "all tenant information" to a police officer or city inspector when investigating a code violation, infringes on the privacy rights of tenants as guaranteed by the US Constitution.

POINT V: THE ORDINANCE IS TOO VAGUE AND AMBIGUOUS FOR ANYONE TO CLEARLY UNDERSTAND THE CONDUCT REQUIRED

When an ordinance is vague or ambiguous, it should be invalidated as a violation of due process because it fails to sufficiently inform the regulated parties what is required of them so that they may act accordingly.

On or about January 23, 2013, counsel for the Columbia Board of Realtors® presented to the City's attorney a list of questions and concerns about some of the vague or ambiguous provisions of the ordinance, and to date, no clarification has been received.

CONCLUSION: THE ORDINANCE CANNOT LEGALLY BE ENFORCED BY THE CITY, AND THEREFORE, IT SHOULD BE RESCINDED.

Municipal ordinances may supplement or enlarge upon state law, but where the express or implied provisions of an ordinance are inconsistent with those of a state statute, the state statute annuls the ordinance. Here, the ordinance is clearly inconsistent with state statute.

Moreover, the City is only permitted to regulate for a permissible public purpose and vague or ambiguous ordinances cannot be enforced because the public has no way to know what the ordinance means. If this ordinance were not vague and ambiguous, surely the specific questions concerning the meaning of certain provisions of the ordinance would have been responded to by now.

REQUEST:

The Columbia Board of REALTORS® requests that the city rescind the Over Occupancy Ordinance, Ordinance 13-156 and 13-184. Additionally, we request an immediate moratorium on this Ordinance while city staff investigates the legal issues involved with this Ordinance.

A coalition of organizations join us in support of rescinding this Ordinance: they include, True North, Central Missouri Development Council, Home Builders Association, The Columbia Apartment Association, the Missouri Association of REALTORS® and the National Association of REALTORS®. Additionally, we have Chris Janssen from US Representative Vicky Hartzler's office in support of our position.

Thank you.