The Rights of Unmarried Cohabiting Couples to Housing in New York

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THE RIGHTS OF UNMARRIED COHABITING COUPLES TO HOUSING IN NEW YORK

I. Introduction

Discrimination in housing exists in a wide variety of forms and reflects several factors including race, creed, color, and national origin. There also exist widespread discriminatory practices based on sex, age, disability, and marital status. Marital status discrimination in housing has become increasingly common in New York over the

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1. For purposes of this Note “housing” and “housing accommodation” will be used interchangeably. The New York State Human Rights Law and the New York City Human Rights Law define the term “housing accommodation” to include “any building, structure, or portion thereof which is used or occupied as the home, residence or sleeping place of one or more human beings.” N.Y. Exec. Law § 292(10) (McKinney 1982); New York, N.Y., Admin. Code ch. 1, § B1-2.0(10) (1976). This “housing accommodation” can be for sale, rent, or lease. N.Y. Exec. Law § 296(5)(a)(1) (McKinney 1982).

2. Housing discrimination includes the refusal to rent, sell or lease housing accommodations. Munroe v. 344 E. 76th Realty Corp., 113 Misc. 2d 155, 156, 448 N.Y.S.2d 388, 389-90 (Sup. Ct. N.Y. County 1982). Housing discrimination can occur after the inception of the lease, i.e., it need not occur at the leasing or selling stage. Id. at 157, 448 N.Y.S.2d at 390 (refusal to renew tenant’s lease is housing discrimination within the language of the statute); Yorkshire House Assocs. v. Lulkin, 114 Misc. 2d 40, 42, 450 N.Y.S.2d 962, 964 (N.Y.C. Civ. Ct. N.Y. County 1982) (terms and conditions in a lease may also constitute marital status discrimination). The discriminator can be a landlord in a privately owned building, or the state or federal government in publicly-assisted housing. The standard form lease in New York contains an “immediate family” clause, which limits occupancy of the premises to the tenant and his or her immediate family. This clause may be construed as a form of housing discrimination. How to Handle Unmarried Couples, New York City Apartment Law Insider, Dec. 1981, at 1, col. 1 (discussion of if and how a landlord can evict two cohabiting adults living in his apartment building); see also Yorkshire, 114 Misc. 2d at 42, 450 N.Y.S.2d at 964 (lease clause limiting occupancy to tenant’s immediate family was discrimination based on marital status). Furthermore, a “singles only” restriction contained within a lease has been held violative of the state’s and city’s public policy against marital status discrimination. Leonedas Realty Corp. v. Brodowsky, 115 Misc. 2d 88, 90-91, 454 N.Y.S.2d 183, 185 (N.Y.C. Civ. Ct. Queens County 1982).

3. Diona v. Lomenzo, 26 A.D.2d 473, 275 N.Y.S.2d 663 (1st Dep’t 1966). Discrimination on the basis of race, color, creed, or national origin is a matter of state concern because it threatens the rights of all inhabitants of a free democratic society. Id. at 476, 275 N.Y.S.2d at 667. See also State Div. of Human Rights v. Cerminaro, 63 A.D.2d 855, 405 N.Y.S.2d 860 (4th Dep’t 1978) (patent and intentional discrimination on the basis of race).

past few years.\textsuperscript{5} Between 1981 and 1982 the number of complaints of
marital status discrimination in housing received by the New York
City Commission on Human Rights increased from 15\% to 26\% of
the total number of housing discrimination complaints.\textsuperscript{6} Unmarried
cohabitng couples accounted for 40\% of these marital status com-
plaints in 1982.\textsuperscript{7} Under the current interpretation of New York law\textsuperscript{8}
these couples cannot be certain of receiving marital status protection
against housing discrimination.

This Note will examine the protections available to unmarried
couples against housing discrimination under the marital status provi-
sion of the New York City and New York State Human Rights Laws.\textsuperscript{9}

\textsuperscript{5} In 1981, 189 housing discrimination complaints were received by the New York
City Commission on Human Rights. Twenty-eight of these were marital status
complaints, twelve of which were filed by unmarried couples. New York City
Commission on Human Rights, Statistics: Marital Status Complaints in Housing
(1981). As of August 20, 1982 the total number of filed housing discrimination
complaints for the year 1982 was 153. Forty of these cases were marital status
complaints, sixteen of which were filed by unmarried couples. New York City
Commission on Human Rights, Statistics: Marital Status Complaints in Housing
(1982). The State Human Rights Division received 61 complaints of marital status
discrimination in housing for the fiscal year beginning April 31, 1980, and ending
March 31, 1981. For the fiscal year beginning April 1, 1981 and ending March 31,
1982, the State Division received 58 of these marital status complaints. Telephone
interview with Mr. Preston Israel, Program Research Specialist 3, Public Information
Unit of the State Human Rights Division (Oct. 18, 1982).

It is important to note that these figures represent only the number of marital
status discrimination complaints actually received by New York administrative agen-
cies. Complaints of marital status discrimination also arise in the courts as a defense
to a landlord’s holdover proceeding. Yorkshire House Assocs. v. Lulkin, 114 Misc. 2d
40, 450 N.Y.S.2d 962 (N.Y.C. Civ. Ct. N.Y. County 1982). However, there are no
figures available to determine the number of judicial complaints.

\textsuperscript{6} New York City Commission on Human Rights, Statistics: Marital Status Com-
plaints in Housing (1981 & 1982).

\textsuperscript{7} \textit{Id.}

\textsuperscript{8} In this context New York law refers to the interpretation of the New York City
and New York State Human Rights Laws by both the judiciary and administrative
agencies.

\textsuperscript{9} N.Y. Exec. Law § 296(5)(a) (McKinney 1982) provides:
It shall be an unlawful discriminatory practice for the owner, lessee, sub-
lessee, assignee, or managing agent of, or other person having the right to
sell, rent or lease a housing accommodation, constructed or to be con-
structed, or any agent or employee thereof:
(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from
any person or group of persons such a housing accommodation because of
the race, creed, color, national origin, sex, or disability or marital status of
such person or persons.

The New York State Human Rights Law is virtually identical to the New York City
Hudson View Properties v. Weiss, 106 Misc. 2d 251, 256, 431 N.Y.S.2d 632, 635
After a brief examination of cohabitation, this Note will review judicial and administrative construction of the Human Rights Law since its inception. This Note concludes by proposing that unwed couples be given the same protection as married couples under the marital status provision in the New York Human Rights Law. This proposition finds support in: (1) the statutory mandate that the Human Rights Law be liberally construed to accomplish its purpose; (2) recent New York case law interpreting the marital status provision to provide the growing number of unwed couples with an unimpeded opportunity to obtain housing and (3) broad rulings by the New York Human Rights agencies.

II. Cohabitation

The informal living arrangement of two unmarried adults, also known as cohabitation, has become increasingly common in the

10. For purposes of this Note "cohabitation" is defined as the informal living arrangement between an unmarried man and woman who share housing accommodations whether it be by lease, ownership or assignment. It includes, but is not limited to, the cohabitation which would be required for a common law marriage (New York does not recognize the common law marriage), meaning that a couple can be engaged in cohabitation without assuming marital rights, duties and obligations. The couple does not have to hold itself out to the rest of the world as husband and wife. "This requirement is anachronistic and therefore not necessary in light of the burgeoning number of unmarried couples openly living together, and the growing acceptability of such arrangements." Zimmerman v. Burton, 107 Misc. 2d 401, 404, 434 N.Y.S.2d 127, 129 (N.Y.C. Civ. Ct. N.Y. County 1980). This definition of cohabitation does not include homosexual couples; such relationships are beyond the scope of this Note. The marital status provision has not yet been extended to include unmarried homosexual couples. 420 E. 80th Co. v. Chin, 115 Misc. 2d 195, 196, 455 N.Y.S.2d 42, 43 (App. Term 1st Dep't 1982) (discrimination against two adult homosexual males is not discrimination on the basis of marital status); see also Alley, Marital Status Discrimination: An Amorphous Prohibition, 54 FLA. B.J. 217, 221 n.11 (1980) ("the better view would appear to be that homosexuals should not be afforded protection under the 'marital status' discrimination prohibition . . .").

11. "The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof." N.Y. Exec. Law § 300 (McKinney 1982).


13. See notes 96-102 infra and accompanying text.
United States over the past two decades. By 1980, there were approximately 2.8 million cohabiting couples in this country. Traditionally, cohabitation was not socially acceptable. It was considered to be deviant behavior and was once common only among the poor and minority groups. Today, cohabitation is increasingly common among other social groups, including young people, pensioners and those who receive benefits subject to termination or reduction upon formal marriage. The courts and legislatures have played a major

16. See Fineman, supra note 14, at 276.
17. Skolnick, The Social Contexts of Cohabitation, 29 Am. J. Comp. L. 339, 341 (1981) (general discussion of cohabitation and the reasons for its increasing acceptability). "Census data show that although unmarried couples are more likely to be poor than married ones, most are above the poverty line. . . ." Id. at 687.
18. Glendon, supra note 15, at 686. "Motivations to enter informal rather than legal marriage include economic advantages as in the case of many elderly people, inability to enter a legal marriage, unwillingness to be subject to the legal effects of marriage, desire for a 'trial marriage,' and lack of concern with the legal institution." Id. at 687.

There is a clear disincentive to remarry for older people who rely on social security benefits attributable to the earnings of a deceased or divorced spouse. Some categories of social security recipients lose their benefits upon remarrriage. See, e.g., 42 U.S.C. § 402(h)(1)(c) (1976) (divorced wives); id. § 402(e)(1)(A) (widows); id. § 402(f)(1)(A) (widowers); id. § 402(g)(1)(A) (surviving or divorced mothers); id. § 402(h)(1)(C) (parent of decedent). See generally Califano v. Jobst, 434 U.S. 47, 52 n.8 (1977) (analysis and discussion of congressional use of age and marital status to determine dependency).

Furthermore, the right of a surviving spouse to elect a statutory share of the decedent spouse's estate may discourage marriage. Those wishing to preserve their separate estates for their individual families by a previous marriage may be frustrated by their surviving spouse. Glendon, supra note 15, at 687 n.99.

role in making cohabitation more acceptable. Today, the majority of states have repealed statutes which once penalized cohabitation.

Fornication, however, continues to be a crime in some states. Although criminal cohabitation and fornication statutes are rarely enforced, their existence may prevent unmarried couples from enforcing their rights to housing.

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1. Skolnick, supra note 17, at 342. The courts may be more responsible than the legislatures for changes in the civil area, since judicial decisions are less open to public scrutiny than legislative enactments. Fineman, supra note 14, at 278.


23. Since cohabitation was made a crime by state law, "[c]ohabitors also received no legal protection from those who disapproved of such unions and attempted to deprive them of certain benefits or entitlements because of their status." Fineman, supra note 14, at 316. See also Doran, Living In Sin, 6 STUDENT LAW. 38 (Dec. 1977) (analysis of the problems facing couples who live together without the benefit of marriage).
III. Judicial Construction of The New York Human Rights Law

In enacting the "Human Rights Law,"24 the New York State Legislature declared that failure to provide every individual with an equal opportunity to enjoy a full and productive life due to discrimination or inadequate housing not only threatens the rights and proper privileges of its inhabitants but also threatens the peace, order and general welfare of the state.25 The Division of Human Rights,26 which has the authority to develop human rights plans and policies,27 was created to enforce the Human Rights Law.28 To assist the Human Rights Division, the Legislature directed that the statute be construed liberally to accomplish its purposes.29

The New York Human Rights Law was initially enacted to prohibit discrimination based upon race, creed, color and national origin.30 It

24. N.Y. Exec. Law § 290(1) (McKinney 1982) ("This article shall be known as the 'Human Rights Law.' "). The enactment of the Human Rights Law is an exercise of the police power of the state to protect public health, welfare and peace in fulfillment of the state constitutional provisions regarding civil rights. Id. § 290(2). See N.Y. Const. art. I, § 11.


27. N.Y. Exec. Law § 295(9) (McKinney 1982). The Human Rights Division is authorized "[t]o develop human rights plans and policies for the state . . . to promote good-will and minimize or eliminate discrimination because of age, race, creed, color, national origin, sex, disability or marital status." Id. (emphasis added).

28. Id. § 295(5) (McKinney 1982) provides that the Division of Human Rights has authority "[t]o adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this article." Id.

29. Id. § 300 (McKinney 1982). "The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof." Id. See New York Inst. of Technology v. State Div. of Human Rights, 40 N.Y.2d 316, 353 N.E.2d 598, 386 N.Y.S.2d 685 (1976) (involving sex discrimination in employment; since the Human Rights Law is to be liberally construed, the commissioner may in a proper case grant tenure); 300 Gramatan Ave. Assocs. v. State Div. of Human Rights, 45 N.Y.2d 176, 379 N.E.2d 1183, 408 N.Y.S.2d 54 (1978) (involving race and color discrimination; since the statute should be construed liberally to accomplish its purpose, the commissioner’s findings were held to be amply supported).

30. See State Div. of Human Rights v. Village of Spencerport, 78 A.D.2d 50, 52, 434 N.Y.S.2d 52, 54 (4th Dep't 1980). In 1951 the Human Rights Law prohibited "employment discrimination" on the basis of race, creed, color, or national origin. 1951 N.Y. Laws ch. 800 § 296 (codified at N.Y. Exec. Law § 296(1) (McKinney 1982)). In 1952 the law was amended to prohibit "discriminatory practices" in the
soon became apparent that widespread discriminatory practices based on sex, age, disability, and marital status, which were overlooked in the original bill, also existed.31 In 1975, New York amended its Human Rights Law to include a prohibition against marital status discrimination in housing.32 This provision has been narrowly construed by the New York Court of Appeals in an employment discrimination case to include only an individual's status of being married, single, divorced, or widowed.33 The statute, however, has also been broadly interpreted by other courts to protect unwed cohabiting couples.34 The court of appeals has yet to determine squarely whether unmarried couples should be protected against housing discrimination under the marital status provision of the Human Rights Law.35 The court, however, has suggested that marital status would not protect unwed couples.36

withholding or denying of public accommodations to any person on the basis of race, creed, color, or national origin. 1952 N.Y. Laws ch. 285 § 6 (codified at N.Y. Exec. Law § 296(2) (McKinney 1982)).


32. 1975 N.Y. Laws ch. 803 § 10 (codified at N.Y. Exec. Law § 296(5)(a) (McKinney 1982)). "[T]he State has assumed . . . an overriding responsibility to ensure that access to housing throughout the State will not be denied on the ground of marital status, or lack of it." McMinn v. Town of Oyster Bay, 111 Misc. 2d 1046, 1058, 445 N.Y.S.2d 899, 867 (Sup. Ct. Nassau County 1981). The 1975 amendment also extended the marital status protection to employment discrimination. 1975 N.Y. Laws ch. 803 § 1 (codified at N.Y. Exec. Law § 296(1) (McKinney 1982)).


35. Motion for leave to appeal to the court of appeals was granted on April 1, 1982. Hudson View Properties v. Weiss, 87 A.D.2d 750 (1st Dep't 1982). The arguments are scheduled to be heard in Spring, 1983. Telephone interview with the Calendar Clerk of the New York Court of Appeals (Jan. 27, 1983).

In *Manhattan Pizza Hut, Inc. v. New York State Human Rights Appeal Board*, the New York Court of Appeals upheld an employer's anti-nepotism rule against a charge of marital status discrimination. The court determined that the focus of the Human Rights Law was on an individual's position relative to marriage, rather than that person's relationship to another person. A distinction was made between an individual's marital status, which is protected, and an individual's marital relationship, which is unprotected. The former relates to whether an individual is divorced, separated, widowed, or single; the latter relates to identification of one's present or former partner, who may very well have a different status. This interpretation places unmarried couples into the latter, unprotected, category.

*Manhattan Pizza Hut*, however, is not dispositive of the rights of unwed cohabitants to housing accommodations. First, it involved marital status discrimination in an employment context, not in a housing context. The policy reasons behind the marital status provision differ in each area. The court in *Manhattan Pizza Hut* emphasized the concerns of business and labor and the valid reasons behind the anti-nepotism policy, such as the avoidance of favoritism. By contrast, the addition of marital status in the housing area to the Human Rights Law reflects changing societal mores and the common

Pizza Hut. See also How to Handle Unmarried Couples, New York City Apartment Law Insider, Dec. 1981, at 2, col. 1 (discussion of if and how a landlord can evict two cohabiting adults living in his apartment building).

38. Id. at 514, 415 N.E.2d at 954, 434 N.Y.S.2d at 965. Manhattan Pizza Hut, Inc., had an employment policy which prohibited an employee from working under the supervision of a relative. The complainant, who worked under direct supervision of her husband, was discharged pursuant to the anti-nepotism rule. She alleged that this anti-nepotism rule violated the marital status provision of the Human Rights Law. Id. at 509-10, 415 N.E.2d at 951-52, 434 N.Y.S.2d at 962-63.
39. Id. at 512, 415 N.E.2d at 953, 434 N.Y.S.2d at 964.
40. Judge Fuchsberg stated that "[h]ad the Legislature desired to enlarge the scope of its proscription to prohibit discrimination based on an individual's marital relationships—rather than simply on an individual's marital status—surely it would have done so." Id.
41. Id.
44. Id. at 513, 415 N.E.2d at 954, 434 N.Y.S.2d at 964.
place practice of “non-marital” living arrangements. Second, the complainants in Manhattan Pizza Hut were a married couple; absent from the opinion was any reference to unwed couples. Furthermore, the anti-nepotism policy in question would not even affect an unmarried couple. Manhattan Pizza Hut, therefore, should not be applied to deny unwed couples marital status protection.

A. The Traditional View

The statutory mandate requiring liberal construction of the Human Rights Law has led to judicial and administrative decisions favorable to unmarried couples in the housing context. Some courts, however, have taken a more traditional view and have denied rights and protections to unmarried couples in housing.

The traditional view, which would deny rights and privileges to unwed cohabiting couples in housing, is exemplified in Fraydun Enterprises v. Ettinger. In that case, the Appellate Term of the New York State Supreme Court held that the presence of a tenant’s fiancée in his apartment amounted to a breach of a substantial obligation of the tenancy warranting termination of the lease. Although Fraydun


46. 51 N.Y.2d 506, 415 N.E.2d 950, 434 N.Y.S.2d 961.
47. Id. at 515, 415 N.E.2d at 955, 434 N.Y.S.2d at 966 (Cooke, C.J., dissenting).
50. See notes 80-103 infra and accompanying text.
51. Fraydun Enters. v. Ettinger, 91 Misc. 2d 119, 397 N.Y.S.2d 301 (App. Term 1st Dep’t 1977); Jema Properties v. McLeod, N.Y.L.J., June 7, 1976, at 8, col. 1 (App. Term 1st Dep’t June 4, 1976); see also One-Two East 87th St. Corp. v. Rees, 35 Misc. 2d 158, 232 N.Y.S.2d 292 (App. Term 1st Dep’t 1962) (tenant violated the lease by allowing a friend to stay with her, despite the fact that the friend paid no rent to the tenant or the landlord).
52. 91 Misc. 2d 119, 397 N.Y.S.2d 301 (App. Term 1st Dep’t 1977).
53. Id. at 119, 397 N.Y.S.2d at 302.
Enterprises was decided two years after the Human Rights Law was amended to include marital status, the court did not discuss the Human Rights Law.\textsuperscript{54} Similarly, in Jema Properties \textit{v.} McLeod,\textsuperscript{55} the Appellate Term, without discussing the facts, upheld a Housing Court judgment that the presence of the tenant’s common law husband in her apartment amounted to a material breach sufficient to warrant termination of the tenancy.\textsuperscript{56}

In 1981, the Civil Court of the City of New York in \textit{Avest Seventh Corp. v. Ringelheim}\textsuperscript{57} expressly rejected an extension of the marital status provision of the Human Rights Law to unmarried couples.\textsuperscript{58} The \textit{Avest} court reasoned that the granting of such protection would lend itself to the destruction of the family unit, characterized as the “foundation of society.”\textsuperscript{59} In the following year, however, the \textit{Avest} decision was reversed by the Appellate Term of the Supreme Court.\textsuperscript{60} This reversal was based entirely on the court’s earlier decision in \textit{420 East 80th Co. v. Chin}.\textsuperscript{61} \textit{Chin}, like \textit{Avest}, involved two cohabiting homosexuals.\textsuperscript{62} The Appellate Term in \textit{Chin} held that in light of the

\textsuperscript{54} Although \textit{Fraydun Enters.} did not discuss the Human Rights Law, the New York Supreme Court did provide the tenant and his fiancée with an alternative method to cure. “If, however, undertenant becomes a member of tenant’s immediate family (as appears imminent), or removes from the apartment, within the period of time herein provided, issuance of the warrant will be stayed until the further order of this court.” \textit{Id.}

\textsuperscript{55} N.Y.L.J., June 7, 1976, at 8, col. 1 (App. Term 1st Dep’t June 4, 1976).

\textsuperscript{56} \textit{Id.}


\textsuperscript{58} 109 Misc. 2d at 286, 440 N.Y.S.2d at 161. In \textit{Avest} the tenant was sharing her apartment with another lesbian. The landlord brought the proceeding to recover possession on the grounds that the apartment was occupied by a person other than a member of tenant’s immediate family. \textit{Id.} at 284, 440 N.Y.S.2d at 160.

\textsuperscript{59} \textit{Id.} at 286, 440 N.Y.S.2d at 161.

\textsuperscript{60} Avest Seventh Corp. \textit{v.} Ringelheim, No. 48665-81 (App. Term 1st Dep’t Sept. 17, 1982).

\textsuperscript{61} \textit{Id.;} 420 E. 80th Co. \textit{v.} Chin, 115 Misc. 2d 195, 455 N.Y.S.2d 42 (App. Term 1st Dep’t 1982).

\textsuperscript{62} \textit{Chin}, 115 Misc. 2d at 195-96, 455 N.Y.S.2d at 43. The landlord wanted to evict the tenants on the grounds that their living arrangement amounted to a substantial violation of a lease provision which limited the tenancy to the tenant and tenant’s immediate family. \textit{Id.} Although \textit{Chin} cited Hudson View Properties \textit{v.} Weiss, 86 A.D.2d 803, 448 N.Y.S.2d 649 (1st Dep’t 1982), the Appellate Term of the Supreme Court reasoned that marital status protection would not apply to homosexual couples. \textit{Chin}, 115 Misc. 2d at 196, 455 N.Y.S.2d at 43.
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"nonexistent vacancy rate"\(^{63}\) in the New York City housing market, it was not feasible to impose eviction for breach of the "immediate family" clause absent a showing of prejudice to the landlord.\(^{64}\) In both Avest and Chin the couples were allowed to retain their apartment.\(^{65}\)

The traditional view, although undermined by the Avest and Chin decisions, is supported by the State Human Rights Appeal Board's decision in Taylor v. Stanley.\(^{66}\) In Taylor, a landlord refused to rent to a heterosexual couple because they were not husband and wife.\(^{67}\) The couple charged that the landlord violated the Human Rights Law by discriminating against them because of their marital status. The Appeal Board\(^{68}\) dismissed the complaint,\(^{69}\) holding that "[a] person's marital status can be either single [which includes widowed and divorced] or married. There is, however, no protection in the law for lack of marital status or, put in another way, the status of persons unmarried to each other."\(^{70}\)

The concept that only an individual, not a couple, has a marital status would appear to negate any argument in favor of prohibiting landlord discrimination against unwed cohabitants. A Maryland court

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63. The court took judicial notice that "the vacancy rate for rental apartments in [New York City] is virtually nonexistent." Chin, 115 Misc. 2d at 196, 455 N.Y.S.2d at 43.
64. Id. at 196-97.
67. Id. at 1.
68. The New York State Human Rights Appeal Board vacated and reversed the Order and Decision of the Commissioner of the State Human Rights Division, who had found for the complainants. Id. "[T]he Commissioner should have first made a finding as to the person's marital status, and not as was done in this case, the person's lack of marital status." Id. at 1.
69. Id. at 2. "Since their unmarried relationship is not protected by the Human Rights Law, the [landlord's] denial of an apartment because of this does not violate the law." Id. at 1 (emphasis added). The Appeal Board's use of the word "relationship", as opposed to status, mirrored the New York Court of Appeal's language in Manhattan Pizza Hut, Inc. v. N.Y. State Human Rights Appeal Bd., 51 N.Y.2d 506, 415 N.E.2d 950, 434 N.Y.S.2d 961 (1980). For a discussion of this case see notes 37-47 supra and accompanying text. Both Taylor and Manhattan Pizza Hut held that while an individual's marital status is protected, his marital relationship is not. Taylor, No. H-M-44102-76, at 1; Manhattan Pizza Hut, 51 N.Y.2d at 512, 415 N.E.2d at 953, 434 N.Y.S.2d at 964. If the New York Court of Appeals applies the marital relationship concept, as opposed to the marital status concept, to the informal living arrangement of the unmarried adults, it is highly unlikely that these cohabitators will be protected under the Human Rights Law. See notes 45-47 supra and accompanying text for a discussion of Manhattan Pizza Hut's inapplicability to this issue.
applied this concept in *Prince George’s County v. Greenbelt Homes, Inc.*, to uphold a co-op by-law forbidding the sale of housing to unmarried couples.\(^71\) In *Greenbelt*, the complainants, a man and woman living together without marital or consanguinal ties, were denied membership in a co-op pursuant to a by-law effectively prohibiting joint membership to an unmarried couple.\(^72\) The *Greenbelt* court reasoned that “[w]hile each [individual] separately had a marital status, collectively they did not.”\(^73\) Since each applicant was not denied membership because of his or her own individual marital status (single and unmarried), the policy did not violate a local ordinance prohibiting discrimination on the basis of marital status.\(^74\)

The Minnesota Supreme Court in *Kraft, Inc. v. State*, held that the inclusion of marital status within the Minnesota Human Rights Law clearly reflects the protected status the institution of marriage enjoys in our society.\(^75\) According to *Kraft*, if unwed couples are entitled to the same rights belonging to married couples, the preferred status enjoyed by the institution of marriage would be undermined.\(^76\) This proposition would appear to find support in New York because the State has strengthened its conviction towards the traditional marital relationships by abolishing common law marriages.\(^77\) As one New York court has stated, “[t]he statutory abolition of [common law marriages] was not a declaration of abhorrence but one of denial of benefits, rights, and remedies provided by statute to the parties.”\(^78\) Accordingly, it has been argued that the unmarried couple, although increasing in numbers and acceptance, should be denied the rights

\(^72\). Id.
\(^73\). Id. at 319, 431 A.2d at 748. The court noted that “[o]nly marriage as prescribed by law can change the marital status of an individual to a new legal entity of husband and wife.” *Id*.
\(^74\). Id. at 319-20, 413 A.2d at 748-49.
\(^75\). *Kraft, Inc. v. State*, 284 N.W.2d 386, 388 (Minn. 1979). *See generally* Griswold v. Connecticut, 381 U.S. 479, 486 (1965) (marriage is “an association for as noble a purpose as any involved in our prior decisions”).
\(^76\). 284 N.W.2d at 388.
and protections provided by the marital status provision of the Human Rights Law.\textsuperscript{79}

\textbf{B. The \textit{Hudson View} Principle}

The leading New York case on the subject of the rights of unmarried cohabitants to housing is \textit{Hudson View Properties v. Weiss}.\textsuperscript{80} In \textit{Hudson View}, an unmarried woman shared her apartment with a man not related to her by blood or marriage.\textsuperscript{81} Her landlord instituted a holdover proceeding\textsuperscript{82} alleging that the tenant's living arrangement was a substantial violation of a covenant of the lease which limited the occupation of the apartment to the tenant and the tenant's immediate family.\textsuperscript{83} The tenant moved to dismiss, arguing that the lease clause violated the marital status provision of the Human Rights Law.\textsuperscript{84}

The appellate division granted the tenant's motion, adopting the opinion of the civil court.\textsuperscript{85} In granting the tenant's motion to dismiss, the civil court noted the changes in societal mores and the commonplace practice of unmarried cohabitation.\textsuperscript{86} The civil court interpreted the Human Rights Law as prohibiting "landlords from differentiating between those who are married and those who are not married, all other facts being equal."\textsuperscript{87} This ruling is popularly referred to as the \textit{Hudson View} principle.

\textsuperscript{79} \textit{See} cases cited in note 51 \textit{supra}.


\textsuperscript{81} Id. at 251, 431 N.Y.S.2d at 634.

\textsuperscript{82} Id. at 252, 431 N.Y.S.2d at 634. A holdover proceeding is a summary proceeding brought pursuant to N.Y. \textit{REAL PROP. ACTS. LAW § 711} (McKinney 1979 & Supp. 1982-1983), whereby a landlord seeks to recover possession of the property upon termination of the lease.

\textsuperscript{83} "The typical form lease [in New York City] limits occupancy to 'tenant and the immediate family of tenant.' If the tenant marries, his spouse can occupy the apartment as a member of the immediate family. But if the tenant invites his lover to live with him, a different situation arises, because the lover is not a member of tenant's [immediate] family." \textit{How to Handle Unmarried Couples}, New York City Apartment Law Insider, Dec. 1981, at 1, col. 1.

\textsuperscript{84} \textit{Hudson View}, 106 Misc. 2d at 252, 431 N.Y.S.2d at 634.


\textsuperscript{86} Id. at 255, 431 N.Y.S.2d at 636. Justice Asch, in his dissenting opinion at Appellate Term, would have affirmed the decision of the Civil Court. 109 Misc. 2d 589, 595, 442 N.Y.S.2d 367, 371 (App. Term 1st Dep't 1981) (Asch, J., dissenting).

The *Hudson View* principle has been adopted by New York courts in subsequent cases. In *Munroe v. 344 East 76th Realty Corp.*, the court issued a preliminary injunction restraining the landlord from evicting an unwed couple living together. Relying on *Hudson View*, the *Munroe* court held that the complainants demonstrated a likelihood of ultimate success on the merits. More recently, the New York City Civil Court extended the *Hudson View* principle still further. In *Yorkshire House Associates v. Lulkin*, the court was faced with a situation similar to that presented in *Hudson View*. In *Yorkshire*, however, the original tenant had vacated the premises, leaving his companion in sole possession. Noting the legitimacy and commonplace practice of non-marital living arrangements, the *Yorkshire* court held that the landlord could not discriminate against the live-in solely because she is not or was not married to the tenant.

Decisions of the administrative agencies created to enforce the Human Rights Law also support the *Hudson View* principle. The State Division of Human Rights, in *Kramarsky v. Estate of Price*, has held that the refusal to rent or sell housing to unmarried and unrelated couples constitutes unlawful marital status discrimination in violation of the New York Human Rights Law. In *Kramarsky*, the complain-
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ants had alleged that their offer to purchase real estate was rejected because they were unwed and expected to live together on the property. The court stated that "the Legislature and the Governor intended that we cast aside any prior conceived notions of moral propriety" and treat persons living together without the benefit of clergy the same as those legally married. Similarly, the New York City Commission on Human Rights in Mishalove v. 109 St. Marks Place, Inc. has determined that unmarried cohabiting couples are members of a class protected by the Human Rights Law. In Mishalove, the landlord attempted to terminate the lease because the tenants, an unmarried couple, were living together in violation of a lease provision limiting the tenancy to the tenant and his immediate family. The Commission ruled that the provision could not stand because it had an adverse impact on the complainants "by reason of his or her having participated or failed to participate in a marriage."

IV. The Hudson View Principle and the Emerging Family Unit

The cases and arguments against granting couples marital status protection notwithstanding, the Hudson View principle, which affords both married and unmarried couples marital status protection against housing discrimination, is the appropriate standard of law to apply.

In 1980 the New York City Civil Court determined that "[c]ohabitation for a number of years cannot be distinguished from marriage

99. Id.
100. Id. at 6.
102. Id. at 1-2.
103. Id. at 11 (quoting Manhattan Pizza Hut, 51 N.Y.2d 506, 511, 415 N.E.2d 950, 953, 434 N.Y.S.2d 961, 964 (1980)).
104. Neither Fraydun Enters. v. Ettinger, 91 Misc. 2d 119, 397 N.Y.S.2d 301 (App. Term 1st Dep't 1977), nor Jema Properties v. McLeod, N.Y.L.J., June 7, 1976, at 8, col. 1 (App. Term 1st Dep't June 4, 1976), should be used to deny marital status protection to unwed couples. Both cases were decided after the Human Rights Law was amended to prohibit housing discrimination on the basis of marital status. Yet, in both cases the Appellate Term failed to consider the then existing marital status provision. In light of this failure, Fraydun Enters. and Jema Properties are not dispositive of the issue at hand.
for all purposes.” In Zimmerman v. Burton a landlord had brought an action to evict the live-in cohabitant of a recently deceased tenant from a rent controlled apartment. By applying the same standard used to determine the existence of a common law marriage, the court held that the rationale for the New York City Rent Regulations does not permit distinctions between a bereaved live-in and a widower with a marriage certificate.

Common law marriages were abolished in New York at a time when societal mores and views towards cohabitation were more conservative than at the present. However, New York courts still recognize valid common law marriages entered into in the State before 1933 and all valid common law marriages entered into in sister states. Today, cohabitation has gained increasing acceptance in both society and the legal system. Accordingly, New York’s abolition of common law marriages a half century ago should be considered immaterial to a grant of protection to unwed couples under the 1975 marital status amendment to the Human Rights Law.

While the promotion of marriage and the marital relationship is a valid state interest, the presumption that granting marital status

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108. Id. at 402, 434 N.Y.S.2d at 128.
109. Id. at 403-04, 434 N.Y.S.2d at 129. The first factor, which the Zimmerman court applied, is the presence of a mutual agreement “to act as husband and wife and to enter into an exclusive and permanent relationship.” Id. The second factor applied in Zimmerman is that the cohabitation must be constant and for a significant period of time. However, there is no need for the couple to hold themselves out as husband and wife, as some jurisdictions require. Id.
111. See notes 16-22 supra and accompanying text.
115. Fineman, supra note 14, at 278; Skolnick, supra note 17, at 341.
protection to unwed couples would destroy the institution of marriage is incorrect.\textsuperscript{117} Granting protection to unwed couples does not automatically lead to a breakdown of the marital unit.\textsuperscript{118} Moreover, it has been suggested that distinctions between married and unmarried couples cannot possibly promote marriage.\textsuperscript{119} In fact, the reverse could be inferred since certain laws seem to penalize couples who are married.\textsuperscript{120}

Rather than the narrower goal of promotion of marriage, the state’s interest should be the promotion of the “family unit.”\textsuperscript{121} As noted previously, the Civil Court of the City of New York rejected the \textit{Hudson View} principle in \textit{Avest Seventh Corp. v. Ringelheim}\textsuperscript{122} for fear that it would destroy the family unit, which the court deemed to be the “foundation of society.”\textsuperscript{123} The “family unit” to which the \textit{Avest} court refers is apparently the traditional family structure of husband, wife and children. However, a recent New York decision\textsuperscript{124} declared that “[t]he ‘nuclear family’ arrangement is no longer the only model of family life in America. The realities of present day urban life allow many different types of nontraditional families. . . . [T]he best description of a family is a continuing relationship of love and care, and an assumption of responsibility for some other person.”\textsuperscript{125}

The reasoning of the \textit{Avest} court fails to account for nontraditional family structures consisting of a cohabiting man, woman and children.\textsuperscript{126} If landlords are permitted to discriminate against unwed

\textsuperscript{118} Id.
\textsuperscript{119} Id. at 292.
\textsuperscript{120} Id. See note 18 \textit{supra} and accompanying text.
\textsuperscript{121} Mitchelson & Glucksman, \textit{supra} note 116, at 291-93.
\textsuperscript{122} Mitchelson & Glucksman, \textit{supra} note 116, at 292. “At one time the concepts of the ‘family unit’ and the ‘marital institution’ were synonymous.” \textit{Id.} This is no longer true with the recognition and acceptance of nonmarital relationships. But “[t]he backbone of society has not been weakened drastically, as it is still the family unit which constitutes this core, not the institution of marriage.” \textit{Id.}
\textsuperscript{124} \textit{Id.} at 286, 440 N.Y.S.2d at 161; \textit{see also} DeBurgh v. DeBurgh, 39 Cal. 2d 858, 250 P.2d 598 (1952). “The family is the basic unit of our society, the center of the personal affections that enoble and enrich human life.” \textit{Id.} at 863-64, 250 P.2d at 601.
\textsuperscript{125} \textit{In re} Adult Anonymous II, 88 A.D.2d 30, 35, 452 N.Y.S.2d 198, 201 (1st Dep’t 1982).
\textsuperscript{126} \textit{Id.}

Of the 2.799 million cohabiting couples in this country today, \textit{see} note 16 \textit{supra} and accompanying text, 491,000 of these couples have children in their house-
couples, in many cases such discrimination "would effectively prevent one of the parents from living with and raising in a close and intimate relationship his or her own children." 127

Hence, Avest's interpretation of the Human Rights Law fails to protect the children of unwed cohabiting couples. 128 Such a result would be contrary to the state's interest in promoting the family unit. The Hudson View principle, by contrast, gives equal protection under the marital status provision of the Human Rights Law to both the traditional family unit and unwed couples with children. 129

Furthermore, the Hudson View principle is in accord with federal and state court decisions interpreting various statutes 130 as granting the unwed cohabiting couple numerous protections and benefits. 131 For example, the District of Columbia Circuit Court, in Markham v. Colonial Mortgage Service Co. Associates, 132 interpreted the Equal Credit Opportunity Act as requiring a bank to treat an unwed couple applying jointly for credit the same as if they were married. 133 In a California case, Atkisson v. Kern County Housing Authority, 134 the

132. 605 F.2d 566 (D.C. Cir. 1979).
133. Id. at 570. For an analysis of the Markham decision, see Consumer Credit and Truth-in-Lending Compliance Report, Sept. 1979, at 2 (E. Phillips ed.). The commentator criticizes the Fifth Circuit for applying the Equal Credit Opportunity Act too literally and for misinterpreting congressional intent.
policy of the United States Department of Housing and Urban Development (HUD) was interpreted to prohibit discrimination against unwed cohabiting couples in housing. In Atkisson, a case similar to Hudson View, the tenant was living with a man to whom she was not related. The defendant housing authority had a policy prohibiting cohabitation. The California Court of Appeals held that the defendant's policy violated HUD's prohibition against automatic exclusion of a particular class by excluding all unwed couples—a class of people defined by their marital status.

In addition to the practical considerations of a virtually nonexistent vacancy rate in New York City housing, the most important policy reason why the Hudson View principle should be the standard of law in this area is that it reflects the changing moral standards of today. Significantly, the principle is consistent with the statutory mandate of liberal construction, the interpretation of the Human Rights Law by the Human Rights agencies and the increasing acceptance of cohabitation by society and the courts.

V. Conclusion

Under current New York law, the unwed couple cannot be certain of receiving marital status protection against housing discrimination. The Hudson View principle provides such protection as it prohibits

135. Id.
136. Id. at 93-94, 130 Cal. Rptr. at 377.
137. Id. at 93, 130 Cal. Rptr. at 377.
138. Id. at 97, 130 Cal. Rptr. at 379.
landlords from differentiating between married and unmarried couples in housing. This holding should apply to all forms of housing discrimination based on marital status, including discrimination aimed at unwed couples. The *Hudson View* principle evidences legislative intent, legislative history, the position of the Human Rights Commission, and evolving notions of societal morality. Therefore, given the commonplace practice of cohabitation, the *Hudson View* principle is an appropriate standard to apply.

Alternatively, the legislature should again amend the Human Rights Law. The amendment should clearly indicate that both the purpose of the amendment and the legislative intent is to afford unwed cohabiting couples the protection that married couples enjoy under the marital status provision of the Human Rights Law.

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