

*The Disparate Impact of Price Fixing Software on
Fair Housing Act Protected Class Renters*

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On February 28th, 2024, the Arizona Attorney General Kris Mayes announced a lawsuit against RealPage, Inc. and nine major residential apartment landlords operating in Arizona for conspiring to illegally raise rents and price-fixing for hundreds of thousands of Arizona renters and contributing to Arizona's affordable housing crisis.

RealPage is a software company that offers "revenue management" to its clients and has allegedly used its revenue management algorithm to illegally set artificially high rent prices and fees for all participants.

Attorney General Mayes said, "In the last two years, residential rents in Phoenix and Tucson have risen by at least 30% in large part because of this conspiracy that stifled fair competition and essentially established a rental monopoly in our state's two largest metro areas. RealPage and its co-defendants must be held accountable for their role in the astronomical rent increases forced on Arizonans." She also accuses the companies of violating the Arizona Uniform State Antitrust Act and the Arizona Consumer Fraud act.

According to the Arizona Attorney General's office, about 70% of multifamily apartment units in Phoenix and half of the units in Tucson are owned, operated, or managed by companies that have contracted with RealPage and have charged at least 12% more compared with landlords who didn't use it.

"They tricked tenants into paying more for rent than they otherwise would have, and they did this at a time when inflation had skyrocketed, and Arizona's affordable housing crisis was among the worst in the nation," Mayes said. According to Mayes' office, RealPage gathers private data on pricing and occupancy from competing landlords and then directs its participating apartment owners "which units to rent and at what price."

Among the companies named in the Arizona lawsuit, are three property management companies which also operate in the state of Washington. Looking at Craigslist's ads for current vacancies in Spokane, Washington, it becomes apparent that these three companies have a strong presence and offer a majority of advertised vacancies to potential tenants seeking housing in a housing market with less than 1% vacancy rate.

According to an article by the Spokesman Review on July 18th of 2021, Spokane had the nation's fastest monthly rent growth at 8.1% in June and rates were up more than 31% since the start of the pandemic. However, according to Neilsburg Research the median household income in the Spokane county only rose 1.7% from 2020-2021.

The Spokesman Review article shares the story of a single mother whose rent went up by \$300 a month from \$1,085 for a small two-bedroom apartment. “When you have a special-needs daughter with a host of doctors’ appointments – even with adequate health insurance, you’ve got co-pays,” she said. “Now, it’s just going to make it significantly more stressful if there was something major coming up.”

Terri Anderson, the Spokane Director for the Tenants Union of Washington was quoted saying, “I’m getting calls and emails (from tenants) every day. These aren’t \$50 or \$100 rent increases – they are \$500,” Anderson said. In one case, a tenant reported rent rising from \$1,105 to \$1,810. “We call those economic evictions because that’s what they are,” Anderson said. “If you can’t afford it, you can’t live there. It’s an eviction without having to go to court.”

Northwest Fair Housing Alliance in Spokane, Washington also receives many daily phone calls from tenants who are being economically evicted, many of whom are the elderly or people with disabilities on a fixed income and on the verge of becoming homeless.

The artificially made massive rent increases along with high inflation rates have disproportionately had a major negative impact on people with disabilities, families with minor children, and female-headed households, in addition to black and brown people whose net financial worth have historically been much less than the white population because of systematic racism.

So, while the massive rent increases seem to at first affect everyone equally, it does in fact have a disparate impact and can be considered discriminatory since it “adversely impacts” specific groups of people based on their disability, race, national origin, sex and familial status.

While the massive rent increases and price-fixing schemes have violated the Arizona Uniform State Antitrust Act and the Arizona Consumer Fraud Act, because of disparate impact they also may violate the Fair Housing Act’s prohibition on discrimination because of protected characteristics, including but not limited to race, national origin, sex, disability and familial status.

If the Arizona’s lawsuit succeeds, the state is calling for restitution to renters, a court order to landlords to stop their anticompetitive practices and civil penalties paid out to the state. In the meantime, many have lost their homes and their lives have been negatively impacted.

To avoid further harm to those impacted the federal government should regulate the use of rental price-fixing software on a national level, considering the applicability of antitrust and consumer protection laws, and the Fair Housing Act.

The stability and well-being of a country depends on the stability and well-being of its citizens. And there is substantial evidence that indicates that when people—both adults and children alike—experience housing instability or homelessness, their prospects for

future educational attainment, employment growth, health stability, and family preservation are significantly reduced.

A home is a necessary basic right which should be available for all without any threats.

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