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### **10 Things Landlords Should Know About Fair Housing**

Sounds pretty simple if there are just 10 things to advise Landlords about with regard to fair housing law. Unfortunately there are more than just the 10 items listed in this article. However, these 10 are an excellent start, and knowing about fair housing will help lead to understanding what should and should not be done when renting property. Understanding fair housing is the best protection against a claim that a fair housing law has been violated. If you are an attorney advising a landlord on what to watch out for, the following items are a good start.

1. **ADVERTISING.** Advertising is one of the most common ways landlords find people to place in rental properties. When advertising, landlord clients should describe property attributes and/or amenities, not what they are or are not looking for in a resident. Landlords should not say “great for a young couple” as it may be considered discriminatory to families with children. Nor should landlords say “safe” or “exclusive” as this may imply they only rent to certain groups. At the end of the advertisement, landlords should use either the fair housing logo or a disclaimer such as “This community does not discriminate on the basis of race, color, religion, national origin, sex, disability or familial status.” Photographs need to be carefully considered before use in advertising and only after speaking with an attorney.

2. **STEERING.** “Steering” occurs when a landlord attempts to direct a resident, for whatever reason, to a specific area of the property. To help avoid claims of “steering” by a prospective resident, landlords should show all available properties to prospects, let the prospect decide what to see and what to skip, and finally present only facts about the property and the community, not about other residents or neighbors. Landlords should never say “you would really like this particular apartment because it is nice and quiet with few children around”, or “there are lots of other children in the same age group as your own” as both statements may be considered a violation of fair housing law. Failing to show a handicapped person the recreational areas (on the assumption the prospect would not use those facilities) may create potential liability. However, if a prospective resident expressly states they are not interested in seeing a specific area it is okay to skip that area. Even if asked, landlords should never comment on the “types” of persons who live in the community.

3. **SCREENING/APPLICATIONS.** Fair housing claims arise frequently as a result of the application and screening process. Landlords should have a written rental policy detailing the criteria necessary for approval to live in their property. The rental policy should include occupancy guidelines, availability policy, rental criteria (i.e. employment history/income, credit standards, etc.) with an explanation of what the criteria are, an outline of the application process and that your client adheres to all applicable fair housing laws. Questions included on the application should not ask about physical or mental disabilities, and landlords should limit questions about drug/alcohol use and lawsuits. Asking questions regarding prior evictions, prior money judgments, bankruptcy and why prospective residents are leaving their current landlord are acceptable and may provide important information. Once a written policy is created, the landlord should expect strict adherence and compliance with the written policy. Additionally, landlords need to keep good records of each applicant or inquiry. However, if an applicant requests a deviation from the written policy based on a disability, the landlord should consult you immediately before making a decision.

4. **OCCUPANCY STANDARDS.** In 1996 Congress enacted a law based upon a 1991 HUD memo stating that a 2-person-per-bedroom occupancy standard was acceptable in most situations. This is by no means a hard and fast rule with regard to the number of occupants for a particular residence. This figure can change depending on how the property is laid out. More occupants may be allowed if there are unusually large living spaces or bedrooms, and fewer occupants if the opposite holds true. Many fair housing experts believe that infants do not count when calculating occupancy standards.

5. **APARTMENT RULES.** It is absolutely acceptable for a landlord to have a set of “house rules” for all residents to live by. The house rules should be basic and non-discriminatory. Rules should be written so they are applicable to all residents and not just specific groups of residents. Rules stating “Children shall not roughhouse in the hallway” may be discriminatory. Using general terms such as “Residents or guests” should keep the rule unbiased, fair and applicable to all

residents. Rules must be enforced uniformly against all residents and records regarding rule violations need to be kept. The records should include the time/date and manner of the violation, how the landlord became aware of the violation and what actions were taken to enforce the rule. As a special note, pool rules should be carefully scrutinized to insure they do not discriminate against children. A rule saying “no children under 4 in the pool area” is discriminatory, while a rule saying “children under 12 must be supervised by an adult over 18” is likely not discriminatory. As always, landlords should consult you for specific state or local laws on these issues as well.

**6. REASONABLE ACCOMMODATION.** A reasonable accommodation is at the resident’s request and when a client voluntarily makes exceptions to their standard rules/policies to accommodate the resident’s disability. The requested accommodation must be reasonable and should not present an undue burden on the landlord. If the accommodation is not reasonable or if it would impose an undue hardship on the landlord, the request may be denied. If the request is denied a letter should be sent to the resident explaining the denial, the facts behind the denial, how those facts were discovered and offering to meet with the resident. Landlords should not offer to make an accommodation to a resident but should wait for a resident to request the accommodation. Offering an accommodation before it is requested may subject your client to a claim of discrimination.

**7. REASONABLE MODIFICATION.** This should not be confused with a reasonable accommodation. Landlords may require a resident to pay for modifications to the property and require that those modifications be removed when the resident vacates the property. If the modification were for something that federal law already requires a landlord to have in place then the landlord would be responsible for the cost of the modifications. Landlords should check with you to determine where financial responsibility for common-area modifications lay, and whether the resident would be responsible for both the installation and removal of the modifications. As with accommodations, the modifications must be reasonable.

**8. RECORD KEEPING.** Landlords need to keep records on all prospective residents, in addition to current/past residents. Landlords can create a system of guest cards or logs with relevant information (i.e. date/time of visit, properties shown, prospective move-in date, etc.) as well as a log of all calls made by prospective residents, even if the resident never comes to see the property. Records regarding available properties also need to be kept and updated every time there is a change in availability. Additionally, all applications should be retained, even if the applications were rejected or withdrawn. Landlords should contact you regarding how long the records should be saved in order to comply with changing requirements in federal and state law, as well as what types of records to maintain. Being able to produce consistent records showing nondiscriminatory application of written screening criteria in every case can usually successfully defend a Fair Housing claim.

**9. EMPLOYEE TRAINING.** Landlords need to ensure that there is a written policy to avoid claims for harassment, particularly sexual harassment. Every time a new employee joins the staff there should be a training meeting about fair housing laws and how to comply with them. The meeting should include copies of all memos regarding policies about how to comply with fair housing, what can happen to the landlord for a violation and what will happen to the employee who violates fair housing.

**10. EVICTION.** Landlords should not be afraid to evict a resident for legitimate reasons because of a fear of a fair housing violation claim. The rules set by the landlord apply to all residents equally. When contemplating an eviction for other than non-payment of rent advise your client to ask themselves the following two questions: (1) Has there been a serious violation of the lease agreement? (2) Do you and have you evicted other residents for the same type of problems or behavior? If the answer to these questions is yes, then an eviction would be warranted under the circumstances. Resident files should contain records of all complaints against the resident and what has been done in response to each of the complaints. HUD has historically looked for five types of documentation when dealing with fair housing claims. Landlords should document and include in resident files the following information: (1) warning letters/eviction notices, (2) written complaints by third parties, (3) written logs kept by management, (4) police records and (5) photographs. Resident file documentation needs to be consistent for all residents. This documentation may prove there was a legitimate reason, unrelated to any fair housing claims, for evicting the resident.

All information contained in this article is consistent with the Fair Housing Act (42 U.S.C.A. 3601 *et seq.*) Information was also obtained from the Federal Housing and Urban Development website ( <http://www.hud.gov> ).