



# FAIR HOUSING IS EVERYWHERE

*Fair Housing complaints are alive and well in the USA. Texans can learn a few things from Fair Housing cases that either resulted in charges of discrimination or settlements.*

THE DEPARTMENT OF Housing and Urban Development (HUD) is the federal agency that investigates Fair Housing complaints nationally, and HUD has been busy! Several complaints resulted in charges of discrimination (in which HUD determines reasonable cause to believe a discriminatory housing practice has occurred or is about to occur) or settled in the past year.

Many of these cases involved the type of issues owners and managers in Texas deal with on a day-to-day basis. Though these were not local cases, as word of charges and settlements spread, you can bet that Texas Fair Housing advocates are paying attention. We can all learn from these cases to minimize our exposure.

## **Disability-related request to move to a non-smoking unit (California, June 2018).**

**What happened?** A family filed a complaint against the apartment owner and manager for allegedly denying their request to move to a unit in a non-smoking building as a reasonable accommodation. Allegedly, the family's infant has a disability, which affects his breathing. Instead of transferring them to a smoke-free building, the family said the property manager provided them with an air purifier.

**Disposition:** Settled. The settlement agreement included a requirement that the manager pay the family \$12,000.

**Comment:** If a resident wants to transfer due to a disability, take the request seriously. Whether or not the resident puts the request in writing, you should respond in writing. If you do not grant the request, either ask for more information to verify whether the resident has a disability under the Fair Housing Act or a disability-related need for the requested accommodation. If you are going to deny the request, be sure that your denial is in writing and is supported by the Fair Housing Act. If you want to engage in a discussion with the resident about alternatives to transferring (such as putting in an air purifier), communicate that alternative to

the resident while leaving open the possibility of granting the request, if the alternative is not acceptable to the resident or does not work.

## **Request to keep an assistance animal (Nevada, May 2018).**

**What Happened?** An applicant alleged that the apartment owner and manager denied her request to keep an assistance animal in the apartment she was attempting to rent even though she provided documentation from her doctor attesting to her need for the animal due to her disability. The applicant claimed that the leasing agent told her the owner didn't allow pets because the floors were recently ungraded to hardwood.

**Disposition:** Settled. The settlement agreement included a requirement that the owner pay the applicant \$6,000 and adopt reasonable accommodation policies that assess requests on a timely basis.

**Comment:** Remember, breed, size, weight, number limitations, fees and deposit requirements do not apply to assistance animals. Similarly, requests for assistance animals should not be denied on mere speculation that the assistance animal would damage property (or be a threat to others). However, a request for an assistance animal may be denied if the specific animal in question would cause substantial physical damage to the property of others or pose a direct threat to the health and safety of others that cannot be reduced or eliminated by another reasonable accommodation.

## **Discrimination based on criminal records screening policies (Washington D.C., January 2018).**

**What Happened?** An equal rights center alleged that a company maintained and enforced a criminal record screening policy that categorically barred an untold number of individuals with criminal records from living at its properties. The complaint alleged that the company's criminal record screening policy had an illegal

and disproportionate effect on African-American and Latino applicants without a substantial, legitimate business justification, and therefore violates the federal Fair Housing law. According to the complaint, African-Americans and Latino housing applicants were between two and 12 times as likely to be prevented from applying for an apartment due to the policy.

The complaint claimed the company forced the criminal record screening policy at more than 55 properties in 15 cities. According to the complaint, applicants who disclosed a felony conviction through the company's online application portal were not even able to submit an application for review because a felony conviction worked as an absolute bar to apply for an apartment.

**Disposition:** The Equal Rights Center in Washington D.C. filed a lawsuit. The suit argues that blanket bans that automatically deny housing to people with criminal records without regard to factors like the nature of the crime or its severity, the time passed since the crime, or demonstrated rehabilitation can be discriminatory under the Fair Housing Act and is inconsistent with the guidance issued by HUD in April 2016, addressing how the use of criminal history criteria can result in a Fair Housing violation (discussed in It's the Law in the May 2016 issue of ABODE).

**Comment:** Your criminal background screening policy should be reviewed in light of HUD's guidance if it has not already been. In reviewing the policy, you may need to strike a balance between protecting yourself from liability relating to security issues (relating to who you let on your property) and Fair Housing complaints. Whichever approach you take, it will be beneficial to review and analyze your policy and understand what risks you are taking.

## **Claim of discrimination after the owner allegedly sexually harassed two female residents (Kansas, December 2017).**

**What Happened?** Two female residents filed

HUD complaints, accusing the owner of making unwanted sexual advances toward them, harassing them and evicting them, because they refused his advances. The allegations included the owner subjecting one of the women, who was also working as a manager, to a hostile environment, including entering her apartment uninvited, sexually harassing her and requesting sex in exchange for allowing her to stay in her apartment home. The owner was also alleged to telling the manager that he could be her “sugar daddy,” grabbed her buttocks and made comments about her body to others. On one occasion she claimed she woke up to find him in her bedroom on her bed.

The owner was also alleged subjecting a second resident to a hostile environment by making numerous requests for sex when he picked up her rent payments. Once, when she was late paying a portion of her rent, the owner allegedly asked her if she wanted to have sex with him instead of paying the \$150 she owed. She said that when she refused the offer, the owner became very upset and gave her a three day notice to vacate.

**Disposition:** HUD charged the owner with discrimination finding reasonable belief that discriminatory conduct occurred.

**Comment:** As reported in the It’s the Law in

the April 2017 issue of ABODE, HUD amended the Fair Housing Act’s regulations to specify how HUD will evaluate complaints related to quid pro quo and hostile environment harassment. Since many who work in the apartment industry live amongst their customers (the residents), allegations of misconduct could arise out of normal interaction between persons who live (and work) in the apartment community. Special consideration should be given to adopting non-fraternization employment policies that focus on the sensitive nature of maintaining a professional landlord-tenant relationship with residents.

**Complaint based on inability to speak English (Massachusetts, December 2017).**

**What Happened?** Apartment properties in Massachusetts were found to show preferential treatment of English-speaking White applicants when compared to Spanish-speaking Latino applicants. The complaints alleged the owners (four public housing authorities) discriminated against Latino applicants by failing to offer applications in Spanish and, in some cases, referring Latino applicants to seek language services from another agency when they needed assistance.

**Disposition:** Settled. Under the settlement

agreements, the housing authorities agreed to provide notice of the availability of interpreters, provide applications in Spanish, Chinese, Haitian Creole, Khmer and Portuguese, create and maintain a Language Access Plan that is available to the public, mandates staff training and appoints Language Access Coordinators.

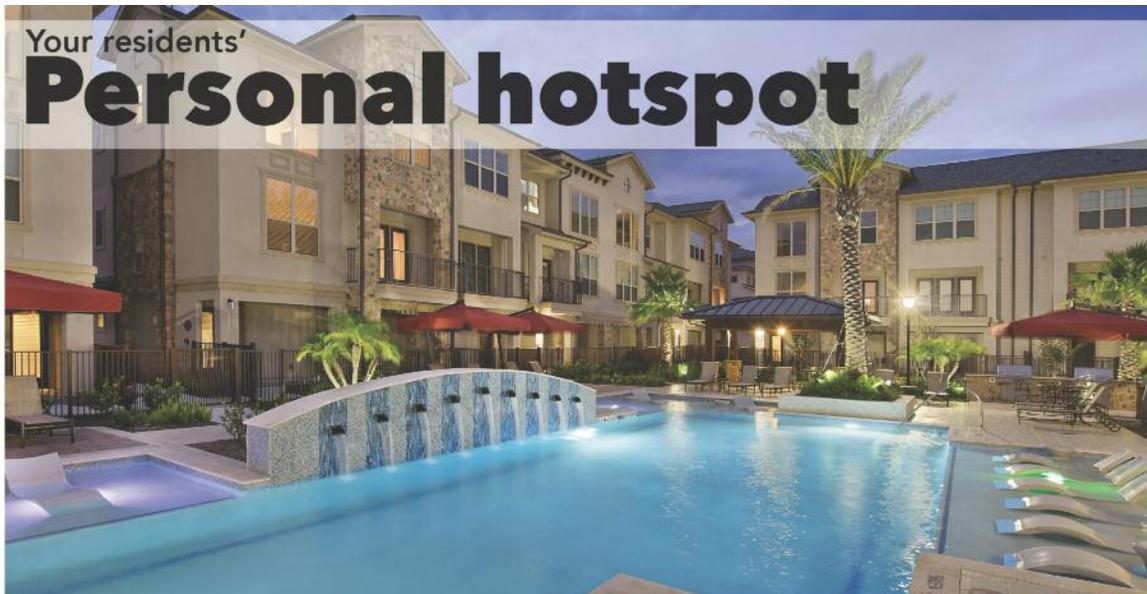
**Comment:** The HUD guidance on Limited English Proficiency (LEP) issued in September 2016 makes it clear that it is a Fair Housing violation to discriminate against someone because of their limited ability to read, write and speak English. Even though LEP is not a separately identified protected class, HUD has stated such conduct could constitute discrimination based upon national origin. Consequently, housing providers should be sensitive to not treat people differently because of a language barrier.

**Failing to grant an accommodation to transfer to another unit because of a disability (Washington State, December 2017).**

**What Happened?** In 2014, a resident submitted a reasonable accommodation request for a transfer because she experienced anxiety and depression due to a homicide that occurred in front of her apartment home. Two years later,

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according to the complaint, a physician diagnosed the resident with Post Traumatic Stress Disorder. Allegedly, the property denied the request after deciding it was "not reasonable."

**Disposition:** Settled. Under the settlement agreement, the property agreed to pay \$10,000 to the resident, provide employees with Fair Housing training and provide periodic reports to the Department of Justice. Prior to entering into the agreement, the property granted the resident's request for a unit transfer and paid all of her moving expenses.

**Comment:** As previously discussed, your responses to requests for accommodation should be in writing. You should respond to all requests knowing the possibility that a complaint could follow your response. If you take the position that a request is "not reasonable," be careful. If your reason for your position that the request is "not reasonable" is related to inadequate information you received to verify the resident had a disability under the act or had a disability-related need for the accommodation, you may want to ask for more information rather than deny the request.

## Refusal to rent unit with lead paint to a family (Massachusetts, November 2017).

**What Happened?** The Department of Justice alleged that the owner of a four-unit rental property refused to rent an apartment to a family because they had children under six years old and the units had no lead certificate. The family was already living in the building with the wife's mother and two-year-old child at the time when they attempted to rent their own unit. Allegedly, the owner told the family he would not rent an apartment to them because they had a child under the age of six and were expecting another baby. Also, allegedly, the property contained lead hazards and the lease included an addendum that prospective renters could not rent units if they had minor children or were or became pregnant.

After the complaint was filed, the owner allegedly retaliated by suing the couple in federal court, alleging, \$1,000,000 in damages. Furthermore, the complaint alleged the owner began eviction proceedings against the family and the wife's mother almost immediately after they filed their complaint with HUD.

**Disposition:** After a five-day trial, a jury found the owner interfered with the family's Fair

Housing rights and engaged in a pattern or practice of discrimination against prospects based on the familial status. The jury awarded \$8,500 in damages to the family, and imposed a \$35,000 civil penalty for the pattern and practice of discrimination.

**Comment:** Be careful! Don't put yourself in a position of "parenting" your residents by thinking you know what is best for them. Through proper disclosures and representations, you may be able to alleviate your potential liability concerns if you feel as though residents are making an unwise or potentially harmful decision in renting a unit. Communication should be made in writing so a response can be properly considered and reasoned.

Hopefully, this gives you a sense of what is going on nationally with respect to Fair Housing issues. Each case gives us something to think about and something to learn from. 🏠

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