

Fair Housing Best Practices in Residential Sales and Rentals

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Our Focus Today includes:

- Best practices for Fair Housing compliance when working in the rental market;
- Best practices for Fair Housing Compliance when working in the sales market;

The review of best practices will include:

- Common fair housing violations observed in today's housing markets;
- How fair housing leads to greater production



Agenda

- Basics of Fair Housing For Landlords and Realtors
- The New Anti-Harassment rule for Landlords and Realtors
- Screening for Rentals
 - People with disabilities
 - Families (with children) protected under familial status
 - People with a criminal history
 - People from other countries
- Realtor Best Practices
- Marketing Best Practices



Fair housing laws prevent discrimination in how housing is

- sold
- rented
- appraised
- financed
- insured
- inspected
- serviced by vendors or municipalities
- and advertised.



Fair housing laws regulate

- Property owners
- Landlords
- Lenders
- Realtors
- Appraisers
- Newspapers/publishers/advertisers
- Municipalities
- And any business that intersects with the provision of residential housing



Fair Housing Laws utilize named protected classes

- Race**
- Religion**
- Color**
- Sex**
- Familial Status**
- Disability (Handicap)**
- National Origin**



Other Common Protected Classes

- Age
- Marital Status
- Sexual Orientation
- Gender Identity/Expression
- Ancestry
- Military Status
- Source of Income



Fair Housing Laws have specific Prohibitions

- Refuse to sell or rent
- Discriminate in the terms, conditions
- Discriminate in advertising
- Misrepresent the availability of housing
- Engage in blockbusting or steering
- Refuse people w/disabilities accommodations
- Discriminate in making loans, insurance policies, appraisals, & other real estate transactions
- To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of a fair housing right
- Racial or sexual harassment



Exemptions

- Religious Groups and Private Clubs
- Advertising for gender specific roommates
- Senior Complexes
- Commercial Zoned Land/Dwellings
- owner-occupied buildings with fewer than four rental units – federal only but are not exempt from the State of Ohio law, which does not allow for such an exemption. This is sometimes referred to as Mrs. Murphy’s exemption.



Major Elements New Anti-Harassment Rule

- “quid pro quo harassment” occurs when a person is subjected to an **unwelcome request** or demand because of the person’s protected characteristic
- “hostile environment harassment” occurs when, because of a protected characteristic, a person is subjected to **unwelcome conduct** that is sufficiently severe or pervasive such that it interferes with or deprives the victim of his or her right to use and enjoy the housing ...



Final Rule – Neighbor on Neighbor Harassment September 14, 2016

- rule says that a person who knew or should have known of the harassment and has the power to do so must take corrective action to end the harassment.
- Landlords have the authority, usually under leases or local laws that say that they provide a quiet habitat or similar obligations. That gives them the power to do something about harassment and makes them liable if they don't.



Final Rule

- Corrective actions must end the harassment
- “HUD has reworded the provision in the final rule. Proposed § 100.7(a)(1)(iii) stated that a person is directly liable for “failing to fulfill a duty to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct. The duty to take prompt action to correct and end a discriminatory housing practice by a third-party derives from an obligation to the aggrieved person created by contract or lease (including bylaws or other rules of a homeowner’s association condominium or cooperative),”



Unwelcome Conduct can be:

- written, verbal, or other conduct and does not require physical contact.
- threatening imagery (e.g., cross burning); damaging property;
- physical assault;
- threatening physical harm to an individual, family member, assistance animal or pet; or
- impeding the physical access of a person with a mobility impairment
- could be spoken or written, such as requests for sexual favors.



Unwelcome Conduct may include

- gestures, signs, and images directed at the aggrieved persons.
- use of racial, religious or ethnic epithets,
- derogatory statements or expressions of a sexual nature,
- taunting or teasing related to a person's disability, or
- threatening statements.
- the use of email, text messages, or social media.



Best Practices

• Anti-Harassment Training!!

- Don't think about training as a onetime, check-the-box task. Engaging content, repeated exposure and a consistent message that takes into account different perspectives will be most successful.
- Some companies execute agreements with vendors



Suggested Best Practices on The Application Process

- **Property Managers should decide** what their acceptance criteria is PRIOR to advertising the unit for rent and
- Share the acceptance criteria with all callers and people who actually view the unit;
- When completed applications are received, a manager/staff person should write the date & time received on each application,



Suggested Best Practices on The Application Process

- "Screen" (credit, criminal background, former LL references, etc) in the order that applications are received **using this information to make informed decisions via an individual assessment** about **each** applicant's suitability for residence
- and **offer** the unit to the **applicant(s)** who meet the pre-established acceptance criteria in the same order that the completed applications were returned to the manager/staff.



Individualized Assessment is important

- Keep in mind that your screening policy
 - is subject to the provision of reasonable accommodations for people with disabilities
 - is subject the Keating Memorandum mandating a flexible occupancy policy when screening families with children
 - is subject to a disparate impact review when screening people with a criminal history
 - is subject to a disparate impact review when screening people from other countries



Screening Tips and Reasonable Accommodations

- All applicant screening process are subject to fair housing provisions of making reasonable accommodations in policies, rules, procedures and common practices
- and/or reasonable modifications of the physical structure in order to welcome people with disabilities



Screening Tips and Reasonable Accommodations

- For example, a landlord might have a financial requirement upfront to pay deposits or applications fees in advance of letting a prospect see a unit –
- IF, due to a mobility impairment, a tenant requests a landlord to waive some of those conditions to see the unit and verify it will be suitable for their particular situation in advance of a payment, the landlord should do so because it does not cost the landlord a lot of money nor does it change the nature of their business – two elements required in a refusal of an accommodation.



Disability

- In some cases, a housing provider must consider alternative criteria as a reasonable accommodation to enable an applicant with a disability to establish eligibility.
- These applicants may have special needs due to their disabilities, so simply treating them the same as others may not ensure that they have an equal opportunity to use and enjoy the housing.



Examples of reasonable accommodations

- Allowing a co-signer or third-party payee
- Waiving a garnishable income requirement for those receiving SSI/SSDI
- Waiving an employment requirement for those receiving fixed disability benefits
- Overlooking past tenancy, credit, and/or criminal issues if the issues are related to the person's disability and have been or will be mitigated



Processing a Request for RA/RM

- Developing a standard procedure is a best practice
 - Keep in mind what needs to be clear:
 - You are happy to process the request for a disability-related need
 - Forms that can be used to facilitate the request
 - What exactly is being requested?
 - Does request warrant a third-party verification?
 - Who pays
 - When a decision will be made if not made at time of request
 - Other allowable requirements particular to your process
(e.g. your firm prefers to do construction to keep costs down)



The Keating Memorandum

- Found at www.mvfairhousing.com/rental Click on *Link to HUD Policies*.
- The Keating Memorandum states that **2 persons per bedroom** can be considered a reasonable policy, unless there are special circumstances that apply to the apartment.
- **This policy is what HUD uses for enforcement purposes.**



Examples from Keating Memo

- **Configuration of the Unit**

- Example: In the case of a family of five wishing to rent a unit of two bedrooms plus den, a strict two person per bedroom occupancy standard could be regarded as over-restrictive if the rooms are spacious and the den is a separate room.



Examples from Keating Memo

- **Age of Children**

- Example: It may be an acceptable standard to allow two adult parents to rent a one-bedroom apartment with their infant child, but not if the child is a teenager.



Assessing Risk with Criminal Background Checks: Advice from HUD's Guidance April 4, 2016

- “ While having a criminal record is not a protected characteristic under the Fair Housing Act, **criminal history-based restrictions** on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).
- Additionally, intentional discrimination in violation of the Act occurs if a housing provider **treats individuals with comparable criminal history differently because of their race**, national origin or other protected characteristic (i.e., disparate treatment liability).”



Advice from HUD's Guidance



- **By delaying consideration of criminal history until after an individual's financial and other qualifications are verified**, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process.
- Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and **take into consideration** such factors as the type of the crime and the length of the time since conviction.



Relevant individualized **considerations** might include:

- the facts or circumstances surrounding the criminal conduct;
- the age of the individual at the time of the conduct;
- evidence that the individual has maintained a good tenant history before and/or after the conviction;



Relevant individualized **considerations** might include:

- evidence of rehabilitation efforts (drug/alcohol treatment, community supervision completion);
- community ties/support (is an applicant in a family re-unification project or a re-entry program?);
- employment/training history.



Best Practices include but are not limited to:

- Abandoning a blanket policy that a “business does not accept felons” or “refuses an applicant based solely on an arrest record.”
- Implement a policy that your business conducts criminal background checks in order to make **informed decisions** about applicants suitability.
- Keep this policy: Management reserves the right to refuse any applicant who poses a health or safety threat to other residents



With immigrant families, landlords tell us

- About problems verifying all adults residing in a unit when some of the residents have complete documentation and others are just in the process of getting documentation.
- Yet, the landlords we have spoken with, don’t want to miss out on the opportunity to have good tenants and broaden their markets.



Welcoming People from Other Countries - tips for Landlords:

- Application process that encourages all people to apply
- Application process that is flexible and allows for legal immigrants to use alternative forms of identification
- Consider adding International Background checks
- Incorporate the document “Tools for Welcoming Immigrants” at www.mvfairhousing.com/rental into one’s screening process.



We tell immigrant renters that landlords might want

- criminal history
- credit history and
- former landlord history
- And they should figure out ways to get this to the landlord that requests it

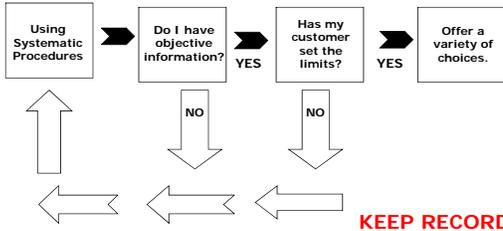


Avoiding problems in Real Estate Sales through best practices

- Use the Equal Service Model or a standard that achieves the same National Association of REALTORS® (NAR) objectives
- Collect & document information



Equal Professional Service Model



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    graph LR
      A[Using Systematic Procedures] --> B{Do I have objective information?}
      B -- NO --> A
      B -- YES --> C{Has my customer set the limits?}
      C -- NO --> B
      C -- YES --> D[Offer a variety of choices.]
  
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KEEP RECORDS!



Why collect & document information?

- A prospect database is created
- Follow-up information is recorded
- Information is readily available
- Documentation provides a defense against claims that fair housing laws have been violated
- Activities are recorded for future reference
- Fair housing compliance is monitored to make corrections (as necessary)



Video from Urban Institute



2012 HUD Report overall Conclusion:

- Two distinct results:
 - white home seekers are more likely to be favored than minorities and
 - minority home seekers are told about and shown fewer homes and apartments than whites.



Implicit Bias Can Play a role in not showing as many homes to minorities

- Implicit biases are pervasive. Everyone possesses them, even people with avowed commitments to impartiality such as judges.
- The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance.
- The implicit associations we hold do not necessarily align with our declared beliefs or even reflect stances we would explicitly endorse.
- Retrieved from <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>



Ads from the past

From the *Dayton Daily News*, Sunday, May 22, 1960, page 8B:

Apts, Duplexes, Unfurn'ed 53

BROWN ST., 819; large front room, kitchen, stove, refrigerator, bath; entirely private, 1st floor. Stores, bus at door. Ideal for employed or pensioned lady BA-2-114.

BEDFORD, 839; ranch apt., 2 bedrooms, liv. Room, kitchen, utility room, \$75, white. CR-7-2112.

(The rest of the page contains a dense grid of small, mostly illegible text advertisements.)



Ads from today online

I would love to house a single mom with one child; not racists, but white only

Room available to single white mother with child or younger to middle-aged white couple

Requirements: Clean Godly Christian Male,

"Will allow only single occupancy",

"African Americans and Arabians tend to clash with me so that won't work out".



Best practices in developing marketing strategies

- All marketing strategies should reach all of the protected classes under federal and local fair housing laws – fair housing compliance is not only about **actions** that discriminate but also **omissions** that cause either differing treatment or disparate impact.
- Illegal Steering occurs when an **action or omission** is based on a protected class status of the residents of a neighborhood or an individual.



Best practices in developing marketing strategies

- Marketing Strategies should be available to all sellers/buyers in all zip codes at all price points as a best practice.
- Human Models should reflect diversity of a metro area
- Pocket Listings – Coming Soon strategies cannot make Housing “unavailable” based on protected classes of individuals or neighborhoods.
- MLS Listings in a metro area should be reviewed for equal treatment from zip code to zip code – all like properties receiving equal treatment
- Pre-approval requirements must be used consistently for customers seeking lending products, regardless of protected class status.



HUD on Internet Ads suggests

- Screening
- Filtering
- Pop-up Warnings
- User self-certification



Word Usage Review for published advertisements

- Describe the structure
- Describe amenities/lack of amenities
- Use neutral language
- No explicit limitation on account of religion – no symbols
- Use of secularized terms ok
- Describe conduct not personal attributes
- Don't use phrases that deter inspection or application
- Use the best practice of “describing the structure and not the people you imagine in the structure”



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Thank You

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