

PRACTICAL APPLICATION OF THE FAIR HOUSING LAWS

Editors note: The information presented here is courtesy of Northwest Fair Housing Alliance from their training materials for Rental Managers. They can be contacted at: 35 W. Main Ave, Ste 250, Spokane WA 99201, nwfairhouse@nwadv.com or 325-2665

The purpose of this training is to let those who are responsible for rental housing know of policies and procedures which comply with the fair housing laws, and, in the process, help them avoid not only discrimination but also the inadvertent appearance of discrimination.

The material will not set standards or recommend specific policies, but it will suggest an approach, which will make violation of the fair housing laws much less likely.

To make sure that your practices comply with the law, you must consult an attorney who has expertise in this area.

The message of this training can be summarized in four lines:

- **BE CLEAR**
- **BE CONSISTENT**
- **MAKE NO ASSUMPTIONS**
- **MAKE NO EXCEPTIONS**

Clarity is essential. First and foremost, you must determine and express clearly *in writing* what your policies are.

Consistency means that you apply the same standards – whatever they are – to everyone.

Make no assumptions is another way of saying be consistent. Decisions based on assumptions rather than facts are likely to be poor decisions and are likely to leave you open to charges of discrimination. *This is true no matter how many years of experience you have or how good a judge of people you believe you are!*

Make no exceptions. It can be tempting to make an exception for someone to whom you react positively. However, what you are willing to do for one person, you must be willing to do for everyone.

REMEMBER – RESPONSIBILITY FOR COMPLIANCE WITH THE LAW CANNOT BE DELEGATED. If an agent acts in a discriminatory manner, his or her superiors can be held legally accountable. By the same token, simply following instructions is not an excuse for breaking the law.

In addition, it does not matter whether you intend to discriminate or not. **If the effect of your actions is to deny someone equal access to housing based on his/her membership in a protected class, you have broken the law.**

GUIDELINES FOR ACTION

In many ways, good business practices are indistinguishable from non-discriminatory management. Good business dictates that you have the largest pool of

applicants from which to select your tenants (based on clearly defined standards), that you are courteous to all potential applicants, that you are consistent and fair in the application of your policies, and that you communicate clearly with people so that misunderstandings and ill will are not created.

ADVERTISING: The goal of non-discriminatory advertising is to make clear that your housing is open, without restriction, to all persons, and to make sure that persons of all kinds are aware that the housing is available.

The first issue is accessibility. If your rental office is open only sporadically, if you do not return phone calls, and if no one knows that you have anything to rent except by word of mouth, eventually someone will wonder why it is never possible to get any information about your rentals. **BE OPEN!** If your vacancy rate is so low that you do not need to spend money advertising, at least post notices visible from the street when a unit is available. Return phone calls. Do not isolate yourself.

Choose your advertising media carefully and make sure that you are not excluding certain segments of the population who might be interested.

Choose our geographic area carefully. Make sure that it covers a broad spectrum of people.

Do not use words, phrases or symbols, which convey any kind of discriminatory preference or limitation.

Do not use descriptions of a locality or directions, which send a signal to particular groups.

If you use human models in your advertising, be sure that your choice of models does not indicate a preference based on one or another of protected classes. The overall effect of your advertising must be to indicate that your housing is open to all. You should not, for example, advertise one complex with models including children and exclude them from ads for another. Unless one complex falls under the 62+ or 55+ exemptions, your advertising should not steer families with children to one place and away from another.

Use the Equal Housing Opportunity logo and statement and post the Fair Housing poster in a conspicuous place.

THE APPLICATION PROCESS: Nothing in the law says that you must rent to people who would not be good tenants, no matter who they are. *However, it is not your job to discourage people from applying for your housing!* This may be the most difficult concept for rental managers

who may have been trained to see their job as weeding out inappropriate applicants.

You may not make assumptions about people because of their race, color, religion, national origin, sex, disability, or familial status.

You do not have the right to make someone else's choice for him/her.

You may not restrict someone's choice of a place to live within the housing, which you have available, if that restriction is based on membership in a protected class. You may not make these restrictions whether you believe it is for the good of the prospective tenant, or because you believe that your other tenants would prefer this arrangement.

Treat everyone with equal courtesy. Remember, however, that courtesy cannot be used to disguise discrimination.

Inform all applicants exactly what your policies and procedures are at the beginnings of the process. Obviously, this means that all of your employees, including new hires and temporary substitutes or stand-ins, need to know this information!

BEFORE THE INITIAL CONTACT WITH A PROSPECTIVE TENANT (WHETHER IN PERSON OR ON THE TELEPHONE) YOU WILL NEED TO HAVE DETERMINED YOUR POLICY IN EACH OF THE FOLLOWING AREAS:

At what point will you tell those who inquire what your requirements for tenancy are?

What will you tell prospective tenants about the unit?

If you have something available, will you offer to show it? At what point in the process?

Will you take applications over the phone?

What will you do if you have more than one applicant?

Should everyone who inquires in person be asked to fill out a guest card and given a brochure if you have one?

At what point will you offer an application form?

Will you allow an application to be taken home to be mailed in or returned in person?

Do you charge application fees? If so, how much and for what purpose?

How far in advance will you take an application?

What about waiting lists?

What will you do if you have more than one qualified applicant for a unit? If you have clearly stated and well thought out criteria (rental history, credit history, employment history and/or good personal references), anyone who passes those tests should be a good tenant. If you try to pass judgment beyond these criteria, these judgments are likely to be subjective and may result in a discriminatory decision. The best way to handle this decision is to select tenants by date of application. *The first fully qualified applicant should be offered the unit.*

TENANT SELECTION CRITERIA: You are allowed to create your own selection criteria and screen out those who do not meet your standards; those criteria should be objective and based on verifiable fact, not on opinion or judgment. *They must not be based on someone's membership in a protected class, nor may they have the effect of excluding the members of a particular protected class.*

Income – amount and source: You may set your own income standards. Whatever they are, they should be written down and you should not make exceptions.

Source of income is more complicated. For example, a refusal to rent to persons on public assistance will have the effect of screening out many persons with disabilities. A refusal to accept child support as a source of income tends to discriminate against women with children (sex and familial status).

Employment standards: In cases in which the source of income is employment, you may set your own standards about issues such as length of time in a job or whether a job is full-time. If you have standards about length of employment but are willing to waive these for persons recently relocated from another area, be sure that these exceptions are clear and in writing in advance and that they apply to all applicants in these circumstances.

Credit: You may certainly investigate an applicant's credit history and require that certain standards be met. Just be sure that your standards are specific and objectively verifiable and that they are applied to all applicants.

Students: The decision about whether you will accept students is entirely up to you. You may choose not to rent to students or set some additional requirements for them as long as these standards are applied without regard to membership in a protected class.

Co-signers: You should decide under what circumstances, if any, you will accept a co-signer and what the qualifications for the co-signer will be. This decision should be made in advance of considering any particular applicants and the standards should be clear and in writing.

Personal references: You may require whatever you like in the way of personal references as long as your standards are in writing and apply to all applicants.

Criminal convictions: You may screen out applicants based on criminal convictions. Just be sure that, before you ask the question, you know what your standard is and apply it equally without regard to membership in a protected class. *Do not screen applicants based on arrest records as statistics show that far more persons of color than white persons are arrested in this country; screening on this basis would, therefore, have the effect of discriminating base on race or color.*

Age: You may choose to establish a minimum age for your tenants if you wish.

Children: You may not exclude children under the age of 18 from your housing unless it comes under the 55+ or 62+ exemption in the Fair Housing Act. And, if you are setting occupancy standards, these should refer to maximum numbers *of persons, not children.*

Who makes the decision? A major advantage of having clearly defined application standards is that the decision to rent can be made on a lower level, avoiding unnecessary delays in the leasing process. If you do require that a higher-level individual approve each decision to rent, be sure that individual is going to be using the same written standards everyone else uses. All too often, the “experienced” manager turns out to be the one who wishes to substitute his/her personal judgment for the established objective screening criteria, sometimes with disastrous results!

LEASING THE DWELLING:

Notification: Notification of a decision on an application should not be made until all of the information has been obtained and verified according to your policies and procedures. Then the applicant should be notified promptly; if the application has been rejected, the decisions should be based on your tenant selection criteria and the applicant should be told the reason(s) for the denial.

Deposits and fees: These should be collected in accordance with the Landlord-Tenant Law and procedures for collecting these should be applied without regard to membership in a protected class. Needless to say, you should not charge higher fees or deposit amounts to certain protected classes, such as families with children. If you charge a pet fee or deposit, this charge should not apply to a service or therapy animal belonging to a person with a disability.

Signing the lease: The lease should be signed by all parties only when all approvals are final. Nothing makes a tenant angrier or more suspicious than being told there is a problem with his/her qualifications for tenancy *after* the lease is signed and the tenant is getting ready to move in!

In addition, please be sure that the tenant gets a clear, legible copy of the fully executed lease!

OPERATING POLICIES: Your operating policies may be as simple or as complex as you like. What’s important is that they exist in clear, written form and that they are given to all appropriate staff and all tenants, and made available to all prospective applicants. If there is extenuating circumstances, which you believe, warrant the granting of an exception (to grant a reasonable accommodation for a person with a disability, for example), document carefully your reasons for making the exception. When a decision is made to change a policy, be sure that change is examined in terms of its potential discriminatory impact, and be sure that tenants are informed of the change in writing well in advance, in accordance with the Landlord-Tenant Law.

Occupancy standards: Nothing in the law says that you can’t establish reasonable occupancy standards in accordance with HUD’s guidance. Be sure that your standards are the same for families with children as they are for adults.

Curb appeal: This term refers to requirements you may to be sure that your property looks attractive. Such standards are perfectly fine as long as they are not applied in a discriminatory way - making written rules about toys left outdoors, for example, without similar restrictions on items left out by adults. Or refusing to allow the construction of a ramp by a tenant with a disability because you don’t like how the ramp will look.

Pets: You may make whatever pet policy you wish. Just remember that service and therapy animals for persons with disabilities are not pets!

Maintenance: All tenants are entitled to the same terms and conditions of rental, including how quickly and how well their maintenance needs are addressed. Maintenance personnel who do not treat everyone equally can completely undermine a company’s efforts not to discriminate. Be sure that your maintenance personnel are trained about the fair housing law and that they have written policies and procedures to follow in order to ensure consistent service delivery. When complaints about maintenance occur, be alert for possible fair housing issues.

Tenant-tenant disputes: You should have written policies about how you handle these issues so that your tenants know what steps they can take if problems develop. In addition, your policy should state clearly that you are an equal housing provider and that you will not tolerate *discriminatory* harassment or coercion by one tenant towards another. Your staff should have written procedures to follow when this type of complaint is received; above all, they should not tell the complaining tenant that the management would take no action in this

type of situation. Failure to respond to such a problem may lead to a complaint against you and/or your company.

RECORD KEEPING: The purpose of record keeping is not to bury you under an avalanche of paperwork, but to ensure that you are applying your policies consistently and to provide proof that you have done so. You should keep the records described below for two years.

Availability list: The maintenance of an up-to-date written list of available units, whether automated or hard copy, can go a long way toward the prevention of unintended differential treatment of applicants. Just be sure that the updated information is made available to all staff including those who come in to replace an absent worker.

Inquiry records: You should keep a written record of all inquiries received, whether in person or over the phone. Phone calls can be maintained on a simple log sheet and only a few words need to be recorded to show the name of the caller, the date and time of the call, what he/she asked for, what the caller was told, and the initials of the person taking the call. Guest cards to be completed by those visiting the office can serve the same purpose.

Application records: Everyone who applies for housing should have a written application on record (one you had dictated to you over the phone is fine). The form should include the time and date, the type of unit desired, personal information you require, number of people who will live in the dwelling, date they wish to move in, and a record of any fees paid. If the application was denied, the reason for denial should be indicated on the form.

Waiting lists: Whether you keep a waiting list or not is entirely up to you, but BE SURE THAT YOUR STAFF

HAVE CLEAR WRITTEN PROCEDURES TO FOLLOW IF YOU DO! You must decide when you will place a person on the list – before or after their application has been approved? How long will a name stay on the list? How often will you try to reach that person before his/her name is dropped? Will you just call on the phone or do you send written notice as well? How long will you wait for a response before going on to the next name on the list?

Maintenance records: You should keep records of all maintenance requests and how they were handled. These should show the name of the person who made the request, date and time, nature of the problem (including whether it was an emergency), corrective action taken and the date and time of that action. The name of the maintenance staff performing the work should also be shown. If there were any unusual delays, the reason(s) for these should also be noted.

If, in spite of your best efforts, there is a housing discrimination complaint filed against you or your company, your best (and often your only) defense will be your ability to document the fact that you have treated everyone equally without regard to their membership in a protected class. The procedures outline above are designed to help you ensure that you support equal housing and that you have the documentation to prove it.