



Fair Housing Newsletter

Keeping you current on fair housing news and issues



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Nebraska Court Affirms Fence is Not Necessary for ESA

A request for an accommodation to your policies for emotional support animals is common. But what do you do when the ESA needs a fence? This was the question posed to the Nebraska Supreme Court recently.

The case began with a purchase of a duplex. The owner lived with her daughter's ESA dogs. Her daughter was in college and had been diagnosed with major depressive disorder and anxiety disorder. The owner made the request to construct a fence thorough part of the common area behind her duplex. The owner alleged building the fence would alleviate her daughter's anxiety regarding the dogs' safety because the daughter's first ESA was killed shortly after they moved into the duplex. It was unclear if the first ESA was killed by a car or another dog.



The HOA denied the owner's request and instead suggested the owner put in an underground invisible fence, construct a privacy fence around her patio, or tether the dogs while outside. Instead of accepting an alternative, the owner filed a fair housing lawsuit.

The lower court dismissed the lawsuit based in part on the fact that the fence was not necessary to afford the daughter an equal opportunity to use and enjoy the home. The owner appealed. The Nebraska Supreme court upheld the dismissal.

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Note From the Editor: Summer is almost over and the holidays are right around the corner. Be sure your Fair Housing training is caught up before it is too late. This month's webinar is Fair Housing for Maintenance. For more information, turn to page 5.

Fence: Continued from Page 1

The court held the daughter still freely enjoyed the use of the animals when at home. As such, the owner failed to prove that the fence is indispensable or necessary to give the daughter peace of mind. To prove that theory, the owner would have to show that without the fence, the animals would be at risk of being attacked by other dogs. There was no evidence of that claim. Dismissal affirmed.

Federal Court Uphold Seattle's Ordinance Prohibiting Landlords from Inquiring about Criminal History

In late 2017, the City of Seattle enacted the Fair Chance Housing Ordinance, Seattle Municipal Code § 14.09 *et seq.*, which, at its core, prohibits landlords from asking anyone about prospective or current tenants' criminal or arrest history and from taking adverse action against them based on that information. A few months after the Ordinance took effect, three landlords and the Rental Housing Association ("RHA"), a trade group comprised of "over 5,300 landlord members," filed a lawsuit alleging the Ordinance violates their federal and state substantive due process rights and their federal and state free speech rights.



The section of the Ordinance Plaintiffs challenge contains three provisions referred to as the "adverse action provision," the "requirement provision," and the "inquiry provision." The adverse action provision prohibits "any person" from "tak[ing] an adverse action against a prospective occupant, a tenant, or a member of their household, based on any arrest record, conviction record, or criminal history." The requirement provision prohibits "any person" from "[r]equir[ing] disclosure" of "a prospective occupant, a tenant, or a member of their household[s] . . . arrest record, conviction record, or criminal history," and the inquiry provision prohibits "any person" from "inquir[ing] about" the same information, even if it is not required.

The landlords argue that the adverse action provision violates their federal and state substantive due process rights and that the inquiry provision violates their federal and state free speech rights. The landlords also argue that both provisions are unconstitutional on their face, and that the Court should prohibit the City from enforcing them against anyone.

The court dismissed the landlord's lawsuit holding the Ordinance is constitutional. It regulates commercial speech and the City has a legitimate interest in regulating commercial speech. The Ordinance advances two interests: reducing barriers to housing faced by people with criminal records and . . . lessening the use of criminal history as a proxy to discriminate against people of color disproportionately represented in the criminal justice system.

These types of Ordinances are being passed across the country. Look for a similar ordinance to be coming to your city soon.



HOUSING CROSSROADS

WHERE FAIR HOUSING AND
LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar

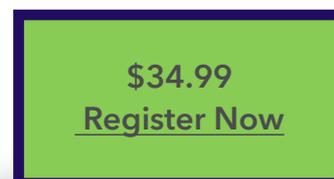
Top 10 Ways to Lose Your Lawsuit

Wednesday, August 25, 2021
10:00 a.m. - 11:30 a.m. central

No one wants to lose a case in court. It is expensive, it is time-consuming and it is down-right embarrassing. Yet landlords continue to make the same mistakes over and over. These mistakes make a difference when you get to court.

In this webinar, we will discuss the top ten reasons landlords lose their case when they get to court. Our discussion will include:

1. Enforcing the Pet Policy Against an Emotional Support Animal
2. Taking Rent
3. Not Responding to Resident Complaints
4. Failing to Bring Proof
5. Making Inappropriate Comments about Residents
6. Detrimental Emails & Text Messages
7. Having a No-Felony Policy
8. Improper Courtroom Decorum
9. Failing to Discuss Accommodation Issues with a Resident
10. Bad Luck



Nathan Lybarger
Law Office of Hall &
Associates

Speakers



Angelita Fisher
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Fisher

NFHA Publishes Annual Fair Housing Report

The National Fair Housing Alliance released its annual trends report on complaints of housing discrimination filed in 2020, at the local, state, and national levels. Some of the highlights from the report include:

- The overall number of housing discrimination claims remained consistent in 2020.
- Asian American and Pacific Islander communities reported a rise in harassment claims.
- Sexual harassment claims rose among tenants who were unable to pay their rent due to job loss or unemployment.
- 1,071 complaints of harassment were reported, an increase from the 761 complaints reported in 2019.
- The number of source of income claims rose.
- The southeast region which includes Tennessee, Alabama, Kentucky, Mississippi, Florida, Georgia, Indiana, South Carolina and South Carolina, had the most complaints filed.
- Private fair housing organizations processed almost three times the number of complaints processed by state, local, and federal government agencies combined.
- Complaints alleging discrimination because of disability continue to account for the largest number of complaints, at 54.56 percent.
- Race-based claims constituted 16.79 percent of complaints.
- Familial status discrimination claims accounted for only 7.93 percent of complaints.

For more information, you can read the full report at: https://drive.google.com/file/d/1-qkD1FQj8GjOT2UdF4buBaJ74or56_qn/view



Attorney Fees Break the Bank

A Washington State jury recently returned a jury verdict in favor of a resident's fair housing retaliation claim. The resident claimed the landlord retaliated against her by evicting her after she requested an accommodation. The jury awarded the resident \$5,000. Sounds reasonable until you get to the attorney fees.

In this case, the court ordered the landlord to also pay the resident's attorney \$96,764. So, a case that seems reasonable, just got a lot more expensive. The landlord has to pay his attorney, the resident's attorney and the resident.



Construction Co. Owner Dismissed from Design Lawsuit

The Fair Housing Act imposes individual liability for those who violate the Act. However, the person sued, must have actually taken an action that violates the Act, as opposed to the company he owns.

This issue arose in a recent case before a Pennsylvania federal court. The case alleged a construction company was liable for constructing an apartment complex which did not comply with the Fair Housing Act Design Standards. The lawsuit also named the construction company owner, but did not allege he had individually violated the Act. All the allegations against the owner were derived solely from his position as an owner and director of the company.

The court dismissed the owner from individual liability. There were no facts alleged that gave rise to personal liability.



Fair Housing Webinar

Opening the Door to Trouble *Fair Housing for Maintenance*

Wednesday, August 11, 2021
10:00 a.m. - 11:00 a.m. Central

\$24.99

Did you hear the one about the maintenance guy that walked into the wrong apartment? He got sued for sexual harassment. Oh wait...that isn't funny. But, it can happen. Maintenance employees are the first in line for fair housing complaints because they have the most interaction with residents.

In this webinar, we will discuss the latest news and cases involving fair housing as it applies to maintenance employees. Our discussion will include:

- How Fair Housing Applies to Maintenance
- Harassment Cases involving Maintenance
- Common Fair Housing Maintenance Complaints
- Pointers on Staying Out of Trouble

\$24.99
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