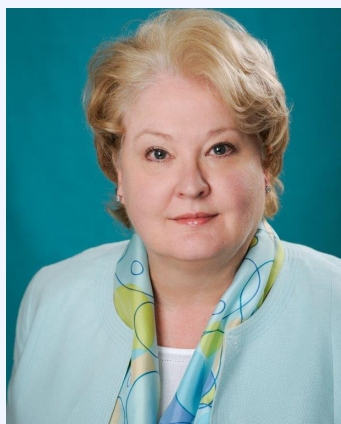




Fair Housing Newsletter

Keeping you current on fair housing news and issues



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Prematurely Asking for ESA Documentation Results in HUD Charge

Most landlords know they are entitled to documentation for an emotional support animal when the resident has an unobvious disability and/or unobvious need for the animal. But when should you ask? One New Hampshire landlord found out that asking before you agree to show the applicant an apartment is too soon. He now has a fair housing charge to defend.

The Charge of Discrimination, filed by the U.S. Department of Housing and Urban Development, alleges that during an initial phone conversation, an applicant told the property manager that she had an emotional support animal. The manager did not ask for documentation at that time. However, upon meeting at the property, the manager asked the applicant and her partner about the breed of their dogs and requested medical verification that they were assistance animals. The applicant explained that she had medical verification that she was willing to provide but that she did not bring it to the appointment. The manager told the applicant that the meeting was over and walked away without showing or discussing the rental of the property.

The applicant filed a fair housing complaint with HUD. During HUD's investigation, it was discovered that the landlord did not require tenants without emotional support animals to provide verification of eligibility prior to viewing or applying for an apartment. Following the investigation, HUD filed a Charge of Discrimination. An administrative law judge will hear the charge unless any party to the charge elects to have the case heard in federal district court or the case is settled.

Note From the Editor: Happy Thanksgiving to you and your family. With Thanksgiving in only a few weeks, we know the end of the year is quickly approaching. If your to-do list still has fair housing training, just let me know. Happy to help!



HUD Files Retaliation Charge against NH Landlord

A New Hampshire landlord found out the hard way that evicting a tenant because he filed a fair housing complaint violates the Fair Housing Act. The U.S. Department of Housing and Urban Development has filed a Charge of Discrimination.

The case started when a tenant from the Dominican Republic filed a fair housing complaint with HUD alleging he was being discriminated against because of his national origin and color. During the HUD investigation, the property manager told the investigator that the tenant was causing him to incur legal fees and that he needed to “get rid” of the tenant. The manager also stated that he intended to get the local news involved if the case continued.

After the statement, the landlord turned the matter over to an attorney who sent the tenant an email. The email stated that the landlord was terminating his tenancy for materially false statements made on his rental application. These statements had been recently discovered when the landlord completed a background check on the tenant. The tenant had allegedly failed to disclose a conviction for reckless road endangerment that took place in 2005 when the tenant was 19 years old. An eviction was filed.

The tenant amended his HUD complaint to include retaliation based on the fact the landlord waited four years after the tenant moved in to conduct a background check. While HUD was investigating the retaliation claim, the landlord admitted that in the past two years, there had been no other evictions based on a background check and no other tenants who had a background check conducted after the application process was completed. Based on this information, HUD filed a Charge of Discrimination for retaliation.



Did You Know?

Any animal can be an emotional support animal, but, unique animals need extra documentation?

Mortgage Co. to Pay \$9.9M for Redlining



Fairway Independent Mortgage Corp. has agreed to pay almost \$10 million to settle a lawsuit filed by the U.S. Justice Department and the Consumer Financial Protection Bureau. The lawsuit alleged Fairway unlawfully kept credit from predominately Black Birmingham neighborhoods through its marketing and sales actions. Simply put, it discouraged residents of Black neighborhoods from applying for mortgage loans.

To settle the case, Fairway has agreed to pay \$7 million into a loan subsidy program to offer affordable home purchase, refinance and home improvement loans in Birmingham’s majority-Black neighborhoods. They will pay an additional \$1 million which will be invested in programs to support the loan subsidy fund. Finally, Fairway will pay a \$1.9 million civil penalty for a total of \$9.9 million.



HOUSING CROSSROADS

WHERE FAIR HOUSING AND
LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar

2024 Year End Review

Wednesday, December 11, 2024
10:00 a.m. - 11:30 a.m. central

The year 2024 is almost gone. It went by so fast you may have missed a few things. Never fear - we are here to remind you of the 2024 changes you need to remember going into 2025.

In this webinar, we will review some of the cases, legislation, and trends that got our attention. Our discussion will include:

- Tennessee Legislative Update
- 2024 HUD Guidance on Applicant Screening
- Ongoing Rental Assistance
- Legal Representation for Tenants
- New Tenant Resource on Background Checks
- New Website Dedicated to Income Discrimination
- And much, much, more

\$34.99

Register Now



Nathan Lybarger
Law Office of Hall &
Associates

Speakers



Angelita Fisher
Law Office of Angelita E.
Fisher

Michigan Landlord Sued for Blanket “No-Felony” Policy

A Rochester Hills, Michigan apartment community is being sued by a fair housing group for its ban on leasing to any tenants with a past felony – regardless of the type or age of the felony. The non-profit group, the Fair Housing Center of Metropolitan Detroit, alleges the property’s policy violates federal fair housing law.



The case was filed after the fair housing group conducted testing. The testers called the property on multiple occasions and were told each time that the property does not rent to anyone with a felony record, no matter the circumstances of the crime or how long ago it happened. The property’s excuse was that they are a Low Income Housing Tax Credit property and that the U.S. Department of Housing and Urban Development does not allow them to accept residents with a prior felony.

When asked, HUD said it has no such restrictions on tenants with past felonies living at the apartment community, and that the property no longer has a mortgage or assistance contract with HUD. When the apartment community’s owner was asked, he stated that in addition to the HUD rules, there were also state restrictions within their affordable housing program that prohibited them from accepting tenants with felony convictions. However, the state housing authority denied they have any rules that restrict tenancy based on criminal records.

The fair housing group is basing their lawsuit on the 2016 HUD guidance Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions. The guidance states that a "blanket prohibition" against all prospective tenants with criminal records that doesn't consider an individual's circumstances, such as the type of crime and when it occurred, is a violation of the Fair Housing Act. Such a policy would cause a disparate impact on some protected classes including race and people with past drug convictions who may be considered disabled.

The lawsuit seeks to force the apartment community to drop its policy and pay punitive damages.

Fair Chance Ordinances

Many cities are adopting "Fair Chance" ordinances. These laws are designed to make it easier for those with past criminal records to get their housing applications accepted.



In general, these ordinances prohibit landlords from asking about applicants’ criminal records during the initial screening process. Only after determining that the applicant is otherwise qualified and, after they have been offered a conditional lease, can the landlord run a background check.

An applicant can still be turned down because of their criminal record, but the landlord must first allow them to show evidence of rehabilitation, such as alcohol or drug treatment, or a letter of recommendation from an employer. Some laws still allow a blanket ban of sex offenders.

While you may not currently have one of these ordinances in your city, you will certainly need to keep informed about all new legislation. You may soon see a similar law in your city.

THRC Publishes FY 2023 - 2024 Report



The Tennessee Human Rights Commission has published its FY 2023 – 2024 Annual Report. The report gives details on fair housing complaints received by the THRC. This year, the most notable change is that the number of race claims fell.

In the FY 2023 – 2024, the THRC accepted 142 complaints and closed 88 complaints. This was down from last year when the THRC accepted 196 cases and closed 128 cases. The largest percentage of claims in 2023 – 2024 were based on the protected class of disability. The percentage of disability claims rose slightly from 38% to 39%. The percentage of race claims dropped from 25% to 19%. The number of retaliation claims were up from 9% to 14% as were the number of familial status claims which rose from 8% to 10%. The percentage of gender and color claims stayed the same.

As for monetary benefits, in the FY 2023- 2024, the THRC settled 15 cases for \$49,000. This was a drop from last year when they settled 30 cases for \$68,819 in monetary benefits.

If you are interested in finding out more, you can go to THRC's website at: <https://www.tn.gov/content/dam/tn/humanrights/FY24%20Annual%20Report.pdf>

Fair Housing Webinar

Common Fair Housing Mistakes

Wednesday, November 13, 2024
10:00 a.m. - 11:00 a.m. Central



We all make mistakes now and again. For landlords, those mistakes can cost a lot of money if they violate fair housing laws. That is why it is important you not make the same mistakes over and over. In this webinar, we will discuss some of the more common fair housing mistakes landlords make every day. Our discussion will include:

- Failing to recognize a fair housing complaint
- Asking for too much accommodation proof
- Making broad policies on restricting children
- Applying pet policies to emotional support animals
- Failing to document problems on the property
- Allowing retaliation
- Forgetting to train employees

\$24.99
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