



# Fair Housing Newsletter

*Keeping you current on fair housing news and issues*



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## New Limited English Proficiency Guidance

Ever wonder how fair housing laws apply to individuals with limited English proficiency? Well now we know HUD's opinion on the subject. The U.S. Department of Housing and Urban Development published Guidance on fair housing protections for people with limited English proficiency on September 15, 2016. The Guidance covers how the Fair Housing Act applies to a landlord's consideration of a person's limited ability to read, write, speak or understand English in the rental process.

To be clear, English proficiency is not a protected class. However, there is a close nexus between limited English and national origin. National origin discrimination includes discrimination because an individual has the physical, cultural or linguistic characteristics of persons from a foreign geographic area. Courts have also recognized that an individual's primary language skill generally flows from his or her national origin.

According to the Guidance, in the U.S., 25 million people have limited English proficiency. Over 16 million speak Spanish, over 1.5 million speak Chinese and almost one million speak Vietnamese. The numbers are greater for non-citizens. Again, according to the Guidance, 63% of non-citizens who are 18 years or older have limited English compared with 1% of native-born citizens.

Advertisements that contain blanket statements that "all tenants must speak English," or the practice of turning away all applicants who are not fluent in English are examples of discrimination used by the Guidance. If the landlord or the resident can obtain free or low-cost language assistance, any cost-based justification the landlord might have for denying the resident because of language, would be suspect.

What does this mean for landlords? Any decision involving applicants and residents with limited English proficiency will be closely evaluated to see if limited English had anything to do with the decision. Programs that receive federal funding already have greater obligations to provide meaningful access applicants and residents with limited English proficiency.

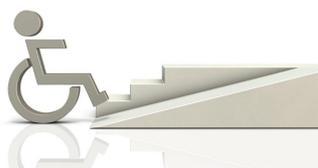
Note from the Editor: This month's newsletter is a collection of articles on fair housing cases, settlements and newsworthy events. If you are interested in learning about a particular topic, please let me know and I will consider your topic for an article or webinar.



## In the News

### Final Harassment Rule

The U.S. Department of Housing and Urban Development announced it has published a final rule on the legal standards for harassment under the Fair Housing Act. The final rule is titled Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act. The rule defines harassment and explains how HUD evaluates claims of harassment on the basis of all protected classes. This final rule does not change the current status of the law. It simply defines the terms and clarifies HUD's position on who can be held liable for harassment of a resident. Heads up: HUD believes landlords should be liable when one resident



### HUD Issues Final Rule on Equal Access Regardless of Gender Identity

In 2012, the U.S. Department of Housing and Urban Development published an Equal Access Rule that prohibited properties which are assisted or insured by HUD, from discriminating against individuals because of gender identity. However, the 2012 rule excluded single-sex emergency shelters with shared sleeping areas or bathroom. On September 20, 2016, HUD closed the gap. HUD published a final rule to ensure that the Department's core shelter programs were accessible to individuals regardless of their gender identity.

### HUD Guidance on the Application of Local Nuisance and Crime-Free Housing Ordinances

On September 13, 2016, the U.S. Department of Housing and Urban Development, Office of General Counsel, published Guidance on the Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services. The Guidance discusses the disparate impact many nuisance ordinances have on victims of domestic abuse – which are many times women. For example, an ordinance that penalizes landlords unless they evict residents who have been involved in excessive calls to emergency services or involved with some criminal activity – regardless of whether or not they were in fact the victim, is considered a violation of fair housing laws because it disparately impacts women. In this example, a victim of domestic abuse may be evicted because she called the police to report her spouse or boyfriend for domestic violence. HUD has filed numerous complaints against municipalities for these types of ordinances in the past and will likely step-up its efforts to file these claims in the future.

### Design Charge Filed Against Small Washington State Owners and Developers

The U.S. Department of Housing and Urban Development has filed a charge of discrimination against owners and developers of a 27-unit Washington complex. The allegations are that the owners and developers did not build the complex according to the fair housing design and construction standards. Because of this, the complex is not fully accessible to residents with disabilities. The charge alleges the bathrooms and closet doors are not wide enough, there is insufficient floor space in the bathroom, and there are no accessible entrances, parking spaces or accessible curbs or ramps.

Remember, even if you are a small property, HUD can come knocking. And, it appears HUD is looking to nail smaller and smaller complexes on design issues.

### On-Line Application Process Should be Accessible to All

The City of Phoenix, Arizona has settled a fair housing claim alleging it failed to make its online pre-application process accessible to the disabled, provided vital documents in English only, and failed to notify applicants with limited English proficiency that they could request language assistance. The case came to the attention of the U.S. Department of Housing and Urban Development after two housing agencies complained the City was discriminating in the application process. After the Complaint was filed, the City immediately changed its application process to ensure compliance with fair housing laws. Under the terms of the agreement, the City will continue to accept both on-line and paper pre-applications for the Housing Choice Voucher Program; provide accommodations to the disabled; provide oral language assistance; and post the application particulars on its website in multiple languages. Lesson Learned: Just because it is on-line does not exempt you from fair housing requirements.

## In the News

### HUD Awards \$38 Million to Fight Discrimination

The U.S. Department of Housing and Urban Development announced on September 30, that it has awarded \$38 million to confront discriminatory housing practices. The money will help support 155 national and local fair housing organizations. The organizations will use the money for testing, to file fair housing complaints with HUD, to conduct investigations and for education.

The grants are provided under three categories:

Private Enforcement (\$30,350,000) – to help non-profits carry out investigations and other enforcement activities to prevent or eliminate discrimination;

Education Outreach (\$7,450,000) – to educate the public and housing providers about their rights under federal, state and local laws; and

Fair Housing Organization Initiative (\$500,000) – to help build the capacity and effectiveness of non-profit fair housing organizations.

In Tennessee, the TN Fair Housing Council and the West TN Legal Services each received \$300,000 of the grant money.

### Illegal Residents Win First Round of Discrimination Lawsuit

A Virginia judge has refused to dismiss a fair housing case after the landlord argued it is not a violation of fair housing laws to prohibit illegal aliens from renting. The case involves eight current or former residents of a mobile home park. The complaint alleges the landlord enforced rules at the park that discriminated against residents based on national origin. The rules required all adult residents living or seeking to live at the park present either: (1) an original social security card or (2) an original passport, U.S. visa and original arrival/departure Form I-94 or I-94W. Additionally, all residents over 18 must pass a criminal background and credit check. Some residents attempt to satisfy the landlord's requirements by offering a taxpayer identification number, an expired Form I-94 or old criminal background check reports. The landlord refused alternative documents. The residents sued.

In an effort to have the case dismissed, the landlord argued that if the court recognized the residents' fair housing claims it would be akin to recognizing illegal immigrants as a class protected under fair housing laws. The judge did not agree. The landlord also argued it would create a conflict among federal laws and pointed out that many of HUD's programs require proof the resident is legally in the country. Again, the judge did not agree. Fair housing laws prohibit discrimination based on race and national origin while federally funded housing simply prohibits certain expenditures of funds based on a resident's unlawful presence in the country.

In sum, the residents – legal or not – live to fight another day.

### South Dakota Landlord Prefers Bachelors

When a mother inquired about renting a one-bedroom apartment she saw on Craigslist, she mentioned to the landlord that the apartment's location was ideal because of its proximity to her daughter's school. After submitting all of the information, the mother received an email stating the landlord preferred to rent to a bachelor. The landlord eventually rented to a single male with no children. The results: the landlord will answer to a judge. HUD has filed a complaint.

## Service vs. Companion Animal Webinar

Wednesday, October 12, 2016  
10:00 a.m - 11:00 a.m. CDT

One of the more confusing issues for landlords today is whether or not to challenge a resident who claims to have a service and/or companion animal. More and more residents are purchasing on-line certificates and daring landlords to ask any questions. In this webinar, we will discuss a landlord's right to ask questions and require documentation. We will discuss:

- Understanding which law applies
- Legal Obligations to Accommodate
- Documentation you may require
- Authenticating the Documentation
- On-Line Certificates

\$24.99

Register at:  
[www.angelitafisherlaw.com/fair-housing.html](http://www.angelitafisherlaw.com/fair-housing.html)

### TN Human Rights Commission’s Annual Report

The Tennessee Human Rights Commission’s Annual Report for the FY of 2015-2016 is out. The report gives landlords a snapshot of what has happened at the state level over the past year. This past year, the highest percent of fair housing claims were based on disability (53%) followed by race (28%), familial status (9%), gender (7%), religion (2%) and national origin (1%).

The Commission had 382 housing discrimination inquiries and took 148 complaints. It conciliated 33 of the 148 cases and obtained over \$40,000 in monetary benefits for the complainants. The Commission found cause to believe discrimination occurred in only two cases which were both settled through the conciliation process.

Two housing cases were highlighted in the report. In the first case, the Complainant requested an accommodation to transfer to a first floor apartment. Her request was not granted and the landlord failed to enter into an interactive discussion with the Complainant. Additionally, the landlord required an accommodation request be put in writing which the Commission believes violated fair housing laws. The case settled for \$7,500 to the Complainant and \$1,500 to the Commission. In the second case, the Complainant was issued a notice to vacate shortly after informing the landlord that she would not dismiss her fair housing complaint. She also made an accommodation request the landlord change the due date of her rental payments to occur when she received her social security check. The landlord refused. The case settled for \$5,000 to the Complainant and \$2,000 to the Commission.



### Housing Crossroads Webinar Providing the Right Notice

Wednesday, October 26, 2016  
10:00 a.m. - 11:30 a.m. CDT

Sending a resident a notice of a lease violation is easy. The resident doesn’t pay the rent - send them a notice. The resident has an unauthorized occupant – give them a notice. But, can you back it up? Does it have fair housing implications? In this webinar, we will discuss the overlap of fair housing laws and landlord tenants laws in the area of notices. In this webinar, we will discuss whether they are legally enforceable, sending the right notice and when a notice may get you in trouble. We will cover:

- Curable Notices
- Non-Curable Notices
- Time Limits for Notices
- Non-Renewals
- 3-Day or 14-Day Notice

**\$34.99**  
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