



Fair Housing Newsletter

Keeping you current on fair housing news and issues



LAW OFFICE OF
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The Fair Chance at Housing Act

Federally assisted properties may have something else to worry about. A bill has been introduced in the U.S. House of Representatives (H.R. 5085) that would limit the use of criminal convictions as selection criteria for federally assisted properties.

According to a bulletin prepared by the House Financial Services Committee's Democratic staff: "This bill represents a comprehensive reform of the eviction and screening policies for federal housing assistance." "It would roll back the harmful War on Crime and War on Drugs era policies that continue to unfairly threaten tenants with eviction for minor crimes in the absence of sufficient evidence, and continue to create unfair barriers to federal housing assistance for individuals who are trying to rebuild their lives."

Again, according to the Democratic staff bulletin, this bill would:

- "Ban blanket '1-strike' policies, which allow tenants to be evicted for a single incident of criminal activity, no matter how minor;"
- "Ban "no-fault" policies, which allow an entire family to be evicted for criminal activity by a guest of a household member even without the knowledge of anyone in the household;"
- "Raise the standards of evidence to be used by public housing authorities (PHAs) and owners and require a holistic consideration of all mitigating circumstances when making screening or eviction determinations based on criminal activity;"
- "Ensure that tenants who are evicted for criminal activity and applicants who are denied admission for criminal activity are given adequate written notice of the reasons for the decision, and the opportunity to present mitigating evidence or appeal a decision;"
- "Prohibit the use of suspicionless drug and alcohol testing by owners and PHAs,"



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

Minnesota Landlord Pays \$44,000 Fine

An administrative law judge with the U.S. Department of Housing and Urban Development, ruled against a Minnesota landlord charging him with refusing to rent to prospective tenants because of a mental disability. The HUD complaint alleged that the property manager agreed to rent a home to a woman and her roommate and had even given them a key. However, when the manager met the woman and her roommate to accept the security deposit and begin the move-in process, the manager told the women she would not rent to them because the owner believed one of the women was bipolar. She said the owner "did not want a bipolar." The landlord was ordered to pay \$27,000 to the woman, a \$16,000 civil penalty and \$1,000 in sanctions.

Fair Chance at Housing Act: Continued from page 1

- "Provide PHAs with additional administrative funding for helping to house ex-offenders through the Section 8 Housing Choice Voucher program;"
- "Authorize \$10 million in bonus funding for homeless service providers through the Continuum of Care program to serve ex-offenders."

At the time of this publication, the bill is in the House Financial Committee. For more information or to read the text of the bill, go to: <https://www.govtrack.us/congress/bills/114/hr5085/text>

Condo Developer & Architect pay \$160,000 to Settle Fair Housing Complaint

An Ohio Developer and Architect were sued by the U.S. Justice Department for failure to design and construct two condominium complexes in accordance with fair housing laws. They failed to make the units accessible to persons with disabilities. The Developer and Architect have agreed to settle the complaint.

Under the agreement, the developer and architect will pay \$100,000 to current condo owners who choose to make accessibility modifications to their units. Modifications included: elimination of steps and excessive slopes in the walkways to the front entrances; widening doorways; removing or lowering thresholds; installing removable cabinets in kitchens and bathrooms to increase maneuvering space; and relocating toilets, showers and sinks to provide access to wheelchair users. Additionally, the Developer and Architect will pay \$10,000 to a center for independent living, \$10,000 to fair housing advocacy organizations and a \$40,000 civil penalty.

Realty Company Fined for Refusing Vouchers

A Brooklyn realty company was accused of housing discrimination after it refused prospective tenants who were using rental assistance vouchers. Following a report, the New York Attorney General's office conducted phone tests to see if landlords were violating city law which prohibits discrimination on the basis of source of income. A representative from the realty company in question, told the tester that the "listings that I have don't have anything to do with programs," and the landlords she worked with do not "deal with programs at all." The realty company defended the representative's statements by claiming the listings they had did not fall under the category of rent prices that would allow a tenant to rent the apartment with a voucher. The voucher amount was much lower than the price of the apartments. Ultimately, the company agreed to pay a \$1,500 fine.

Lesson learned: Train all your managers and leasing agents on fair housing laws. Be sure they all know how to answer questions about what units are available. Answering questions consistently will help avoid fair housing claims when testers come calling.



*We offer regular webinars on a variety of fair housing subjects.
Check out our website to find out more.*

www.angelitafisherlaw.com

In the News

Court Refuses to Dismiss Harassment Complaint Against Neighbor

A U.S. District Court in Montana, has refused to dismiss a fair housing lawsuit filed by a mixed-race family against their White neighbor who lived in the same subdivision. The mixed-race family claims that for three years, their White neighbor harassed them based on their race.

The White neighbor asked the court to dismiss the fair housing claim because she had not interfered with the neighbor's right to own the home. The court refused holding that the Fair Housing Act also applies to a person's right to "hold" a home. The White neighbor then alleged the mixed-race family could not bring the claim because one member of the family was also White. Again, the court refused to dismiss the claim holding that plaintiffs who are not members of the protected class have standing to challenge racially discriminatory conduct in their own right when they are the target of the discrimination. In this case, the White neighbor was harassing the White woman and her three children because the family was of mixed race.

In covered multifamily housing without an elevator that consists of four or more units built for first occupancy after March 13, 1991, all ground floor units must comply with the Fair Housing Act seven design and construction disability/ accessibility requirements.

Restoration Ordinance Questioned

The U.S. Court of Appeals for the Second Circuit has revived a lawsuit over a restoration ordinance which required a family to restore a property to its previous condition after it was altered for a disabled child. The lawsuit alleged that a Farmington, New York family who had a son with cerebral palsy, were discriminated against under fair housing laws. The family bought a house in a development that was subject to a town ordinance barring accessory structures such as pools and fences to "patio lots." The family obtained two variances from the city: one to build a fence and install an above-ground pool; and a second to construct a deck – all for the disabled child.

As part of the variances, the Town Board included a "restoration provision" requiring the family to remove the structures within 21 days after the child ceased to live on the property. The family would be responsible for the total cost of restoration. Several years later, the family sued alleging the Town Board failed to make a reasonable modification under the Fair Housing Act and the town retaliated against them for asserting their rights under federal law.



The lower court dismissed the claims finding there was no discriminatory intent and no action taken based on the son's disability. The family members were also not victims of disparate impact because there was no evidence the restoration requirement would not apply to other individuals. The family appealed.

The U.S. Court of Appeals for the Second Circuit revived the claim. It held that the restoration provisions did not directly deprive the child of his rights under the Fair Housing Act, but a jury could find that the restoration requirement in some circumstances would be so burdensome, that it might be considered a refusal of a reasonable accommodation. In sum, a jury could find that requiring a family to pay for the modification and pay for the restoration might be so expensive that it would stop the family from obtaining the accommodation.

Over 50% of fair housing complaints filed with HUD and state agencies are based on disability.



In the News

Sexual Orientation Added to County Ordinance

Howard County, Indiana Commissioners have agreed to amend the county's fair housing ordinance to modify the definition of family to include "sexual orientation, gender identity, or marital status of its members." The motivation – grant money from the Department of Housing and Urban Development. The grants included about \$300,000 in funding through the North Central Indiana Regional Planning Council but required a change in the language of the ordinance. Some argue this is extortion by the federal government. Neither Congress nor the state of Indiana has adopted the same language.

New Rule to Calculate Rental Subsidies

HUD is proposing a new method to calculate rental subsidies in a manner that would expand neighborhood options for households living in areas with particularly restrictive housing markets. The proposal would change the geography HUD uses to calculate Fair Market Rents. It would transition the calculations from a metropolitan area-wide approach to a small area fair market approach. Basically, it would set Fair Market Rents down to the zip code level. As proposed, the new rule would impact 31 metropolitan areas. HUD will be taking comments for 60-days beginning June 15, 2016.

HUD Awards \$42 Million in Grants

On June 21, 2016, the Department of Housing and Urban Development awarded more than \$42 million in housing counseling grants to hundreds of national, regional and local organizations to help families and individuals with their housing needs and to prevent foreclosures. Grant recipients will help with a range of housing counseling needs including:

- Helping homebuyers evaluate their readiness for a home purchase;
- Helping homebuyers understand their financing and down payment options;
- Helping homebuyers navigate the buying process;
- Helping to find affordable rental housing;
- Offering financial literacy training to families and individuals struggling to repair their credit problems;
- Assisting homeless persons in finding the transitional housing they need; and
- Assisting senior citizens seeking reverse mortgages.

You can visit HUD's website at www.hud.gov for a full list of grant recipients.

LGBT Discrimination Webinar

Wednesday, August 17, 2016
10:00 a.m - 11:00 a.m. CDT

The Federal Fair Housing Act does not specifically list sexual orientation as a protected class. However, it may still be unlawful to discriminate against someone because they are gay, lesbian, bi-sexual or transgender. Many state laws and federal regulations for housing programs prohibit sexual orientation discrimination. Even courts have recognized discrimination and harassment claims against gays and lesbians because they do not meet the stereotype of a traditional male or female.

In this month's webinar, we will discuss issues that will provide landlords with a better understanding of their obligations to the LGBT community members. Our discussion will include:

- Understanding the terms
- Knowing which law applies to you
- HUD's Final Rule
- Stereotyping discrimination
- Avoiding Harassment

Register at:

www.angelitafisherlaw.com/fair-housing.html

\$9.2 M Awarded to Provide Housing to Victims of Domestic Violence Living with HIV/AIDS

The Department of Housing and Urban Development and the U.S. Department of Justice have awarded more than \$9 million to support eight local programs across the county working to protect and house victims of domestic violence living with HIV/AIDS. The recipients include:

- Volunteers of America of Los Angeles
- City of San Jose, California
- DC Department of Health
- UNITY of Greater New Orleans
- City of Kansas City, Missouri
- Gay Men’s Health Crisis, Inc. in New York
- UNITY House of Troy, Inc. in New York
- City of Portland, Oregon



These grants are provided under the Violence Against Women Act and HUD’s Housing Opportunities for Persons with AIDS program.



HOUSING CROSSROADS

WHERE FAIR HOUSING AND LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar Understanding Your Lease

Wednesday, July 27, 2016
10:00 a.m. - 11:30 a.m. CDT

\$34.99

The most important document in the landlord tenant relationship is the lease. The lease outlines the rules and expectations for each party. Get the lease wrong, and the entire rental experience may be doomed. In this webinar, we will discuss common lease provisions and why they are in the lease as well as how fair housing laws overlap the lease provisions. Our discussion will include:

- Move-Out inspection language
- Late Charges
- Sutton Rule
- The Correct Font
- Accommodating the Applicant
- Automatic Renewals
- Deciding Who Signs the Lease
- And much, much more.

Register at:
www.angelitafisherlaw.com/fair-housing.html

Join us for what is sure to be a lively discussion with three of Nashville's leading attorneys on the subject.



M. Wesley Hall, III
Hall & Associates



Nathan Lybarger
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