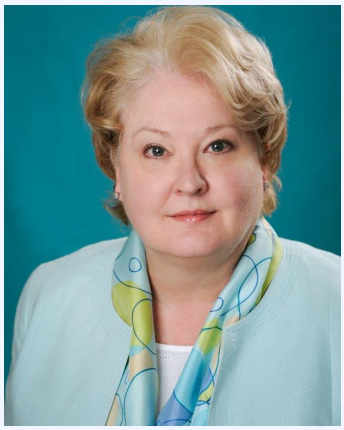
Editor: Angelita Fisher
Law Office of Angelita E. Fisher

August, 2020

Fair Housing Newsletter

Keeping you current on fair housing news and issues



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Angelita Fisher is an attorney in the Nashville,TN area. She has over 18 years experience in representing companies in fair housing law and employment law matters. Angelita is licensed to practice law in Alabama, Texas, Mississippi and Tennessee.

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Tenant with Allergies vs. Tenant with ESA

The Iowa Supreme Court was faced with the question of whose accommodation wins? The tenant with a severe dog allergy or the tenant with an emotional support dog? The answer: the first-in-time…at least this time.

The case involved a tenant with dog allergies who moved into an apartment building due to its No-Pet Policy and a neighboring tenant who sought a waiver of the No-Pet Policy for his emotional support dog. In an attempt to accommodate both parties, the landlord allowed the emotional support dog on the premises while requiring the two tenants to use different stairways and providing an air purifier for the tenant with pet allergies. These measures failed to prevent the tenant from suffering allergic attacks.

The first tenant sued the landlord and her neighboring tenant in small claims court for breach of the lease's no-pet provision and interference with the quiet enjoyment of her apartment. As a defense, the landlord claimed its waiver of the No-Pet Policy was a reasonable accommodation it had no choice but to grant under the Iowa Civil Rights Act.

Allergies vs. ESA Continued on Page 2

Note From the Editor: Landlords are likely to see an up-tick in fair housing complaints when the courts open up for evictions. The complaint process stops most evictions - even those for non-payment. If you receive a complaint and have questions, feel free to call.

Allergies vs. ESA Continued from Page 2

The small claims court dismissed the case, concluding the landlord's accommodations were reasonable. On appeal, the district court held the landlord should have denied the emotional support dog request due to the other tenant's dog allergies, but dismissed the case due to the uncertainty of the law governing reasonable accommodations for emotional support animals. The parties asked the Iowa Supreme Court to review.

Balancing the parties' needs, the Iowa Supreme Court held the landlord's accommodation of the emotional support dog was not reasonable because the tenant with dog allergies was living there first and the dog's presence was a direct threat to her health. The tenant suffering allergic attacks was entitled to recover on her claims of breach of the lease and breach of the covenant of quiet enjoyment. The case was sent back to the lower court for an award of damages.

The court warned this ruling was very fact specific and is not a "one-size-fits-all test." Different facts – like if the animal were a seeing eye dog – would change the results.

NFHA Settles Voucher Lawsuit

The National Fair Housing Alliance (NFHA) settled a lawsuit it brought against a D.C. landlord accused of discriminating against people with Housing Choice Vouchers.

The landlord is a privately-owned development company which owns and manages multi-family properties in Washington, D.C. Over the course of several years, the NFHA investigated and found the landlord used its website to discourage applicants who intended to use Housing Choice Vouchers. When applicants visited the company's website and attempted to schedule an apartment viewing, they were required to identify whether or not they intended to use a "Section 8" voucher to pay rent. If they selected "yes," the system prevented them from scheduling an interview. The investigation also found when testers called the company to inquire about viewing an apartment, the company's owners consistently indicated they did not accept Housing Choice Vouchers.

NFHA sued alleging the landlord's practice of denying tenants with vouchers caused residential segregation and had a disparate impact based on race, color, national origin, sex, and familial status in violation of the federal Fair Housing Act. According to the lawsuit, the landlord's policy was four times as likely to result in a Black prospective renter being turned away and more than three times as likely to result in a Latino prospective renter being turned away, than a White prospective renter. Additionally, a family with children was twice as likely to be turned away, than renters without children.

The settlement terms include a requirement the landlord adopt an affirmative non-discrimination policy, end policies and practices that discriminate on the basis of source of income, and mandates fair housing training for all staff. The landlord will also be required to run ads and display signage stating the landlord accepts vouchers. The news release did not include information on any monetary terms of the settlement. The NFHA believes this settlement will help expand housing options for Black, Latino, and female-headed households with children throughout the District.

HOUSING CROSSROADS
WHERE FAIR HOUSING AND LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar

"You are not on the lease."

Addressing Non-Residents on the Property

Wednesday, August 26, 2020
10:00 a.m. - 11:30 a.m. central

When dealing with a resident – the lease is the governing document. But, what happens when you need to deal with a non-resident? There is no lease to point to for guidance. It is hard to know what you can and cannot say.

In this webinar, we will discuss issues that arise when addressing non-residents on the property. Our discussion will include:

- Towing a non-resident's car
- Talking to the family of a sick or deceased resident
- Banning a non-resident
- Trespass laws
- Caregivers rights
- Unauthorized tenants
- Talking to 3rd parties

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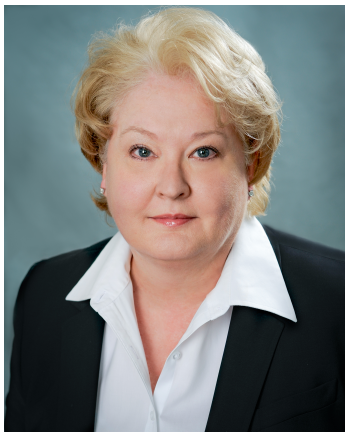
Nathan Lybarger
Law Office of Hall & Associates

Speakers



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HUD Terminates AFFH Rule for Communities

The U.S. Department of Housing and Urban Development (HUD) Secretary Ben Carson announced HUD will ultimately terminate the Obama Administration's Affirmatively Furthering Fair Housing (AFFH) regulation issued in 2015. The Rule proved to be complicated, costly, and ineffective. Secretary Carson removed the Rule's burden on communities in January, 2018, by suspending the regulation's 92 question grading tool.

A new rule, called Preserving Community and Neighborhood Choice, defines fair housing broadly to mean housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible under civil rights laws. It then defines "affirmatively furthering fair housing" to mean any action rationally related to promoting any of the above attributes of fair housing.

Now, a grantee's certification that it has affirmatively furthered fair housing would be deemed sufficient if it proposes to take any action above what is required by statute related to promoting any of the attributes of fair housing. HUD remains able to terminate funding if it discovers, after investigation made pursuant to a complaint or by its own volition, that a jurisdiction has not adhered to its commitment to AFFH.

Delay Installing Grab Bar Costs Housing Authority $7,500

A delay in approving or implementing an accommodation may be considered a denial of the accommodation. This was the situation a California Housing Authority found itself in when it delayed installing additional grab bars for one of its tenants with disabilities. When the U.S. Department of Housing and Urban Development got involved, it ended up costing the Housing Authority $7,500 to settle the case. Lesson learned: Don't put off until tomorrow, what should be done today.

Georgia Landlord Charged with Discrimination for Late Fees

The U.S. Department of Housing and Urban Development has charged a Georgia landlord with discrimination after it allegedly refused to grant the accommodation of allowing a disabled resident to consistently pay rent late without penalty.

The resident and received his disability pay on or after the second Wednesday of every month. He asked his landlord if he could pay his rent late every month because of the timing of his disability pay. The landlord agreed and the resident consistently paid his rent on the second Wednesday of every month.

When a new owner bought the property, the resident was charged $100 late fee because he did not pay within the first five days of the month. The resident told the new owner about his arrangement with the previous owner. However, the new owner was not willing to grant the same accommodation. A discrimination complaint was filed with HUD. After an investigation, HUD found the landlord violated the Fair Housing Act by refusing to grant the resident the accommodation.

HUD's charge will be heard by a U.S. Administrative Law Judge unless either party chooses to go to federal court or the case is settled. If the landlord loses, he may have to pay the resident and the resident's attorney fees.

NY Landlord Charged with Discrimination Over Service Animal Policy

The owners of a New York apartment complex and its rental manager have been charged with discrimination by the U.S. Department of Housing and Urban Development. The charge alleges the landlord refused to grant the accommodation of allowing an assistance animal.

The resident had a cat. The landlord told the resident to get rid of the cat. The resident complied. Sometime later, the resident got another cat, but provided documenting stating the cat was and assistance animal. The cat died. The resident got a dog. The landlord then wanted the dog to go. The resident provided additional paperwork from her health care provider stating the animal was needed for emotional support. In response, the landlord gave the resident their Service Animal Policy, which required she provide additional paperwork and requested she pay $500.

The new Service Animal Policy requirements included indemnification for the landlord, proof of insurance, and certification of training for the animal. The resident was also required to provide intrusive medical information such as a Diagnostic and Statistical Manual of Mental Disorders diagnosis, a detailed description of symptoms, a history of treatments and hospitalizations, a list of medications, anticipated prognosis, and a signed HIPAA authorization for each treating healthcare professional permitting the landlord to contact the treating professional for any additional information.

The resident did not provide the information and ended up filing a fair housing complaint with HUD. After an investigation, HUD determined the landlord discriminated against the resident and filed a charge. The charge will be heard by an Administrative Law Judge or moved to federal court… unless the case is settled.

Fair Housing Webinar

Fair Housing Pitfalls When Terminating the Lease

Wednesday, August 12, 2020
10:00 a.m. - 11:00 a.m. Central

All good things must come to an end and so must a lease. How and why you terminate a resident's lease may land you in trouble with HUD. Terminating a lease may violate fair housing laws.

In this webinar, we will discuss a variety of reasons landlords terminate leases and what fair housing consequences you should consider. Our discussion will include:

- Non- Renewals
- Violence on Property
- Housekeeping
- Complaints from Neighbors
- Retaliation

$24.99
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Design Lawsuit Settled for $475K Plus Modifications

The U.S. Department of Justice and the U.S. Attorney's Office has settled a lawsuit filed against the owners, developers and builders of 82 multi-family housing complexes in 13 states. The settlement agreement resolves one of the largest housing accessibility lawsuits the DOJ has filed. The housing complexes at issue are located in Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas and West Virginia, and contain more than 3,000 units that are required to have accessible features.

The landlords have agreed to pay $400,000 to establish a settlement fund to compensate individuals with disabilities who were harmed by the accessibility violations and $75,000 in civil penalties to the government to vindicate the public interest.

In addition, they have agreed to make extensive modifications to their properties including replacing excessively sloped portions of sidewalks, installing properly sloped curb ramps and walkways to allow persons with disabilities to access units from sidewalks and parking areas, providing sufficient room for wheelchair users in bathrooms and kitchens, and removing accessibility barriers in public and common use areas at the complexes.

The settlement also requires the owners, developers and builders to receive training about the Fair Housing Act and the Americans with Disabilities Act, to take steps to ensure that their future multifamily housing construction complies with these laws, and to provide periodic reports to the DOJ.

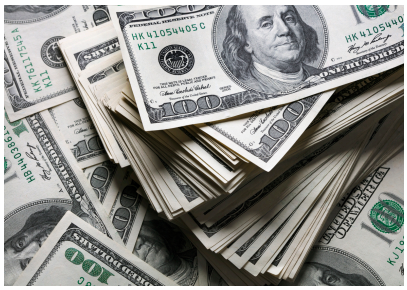
Did you know?

Residents may be responsible for paying for modifications if the property does not receive federal funds.

DOJ Settles Lawsuit Against Bank of America

The U.S. Department of Justice agreed to resolve claims Bank of America engaged in a pattern or practice of discrimination on the basis of disability, in violation of the Fair Housing Act.

The DOJ alleged the Bank had a policy of denying mortgage and home equity loans to adults with disabilities who were under legal guardianships or conservatorships. The Bank changed this policy in 2016 for mortgage loans and in 2017 for home equity loans.



The settlement provides money to victims of unlawful discrimination. The Bank will pay $4,000 per loan to eligible loan applicants who were affected by the Bank's prior policies. The DOJ anticipates the payments will total approximately $300,000. The settlement also requires the Bank to maintain non-discriminatory loan underwriting policies and train its employees on the new policies.