Fair Housing Newsletter

Keeping you current on fair housing news and issues

Angelita Fisher is an attorney in the Nashville,TN area. She has over 14 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.

6688 Nolensville Road
Suite 108-161
Brentwood, TN 37027

615-305-2803

afisher@angelitafisherlaw.com

www.angelitafisherlaw.com

Denial of an Extra Bedroom Results in $3M Settlement

The Housing Authority of Santa Clara County, California, has reached a settlement with a class of individuals claiming they were discriminated against when the Housing Authority denied them an additional bedroom to accommodate their disability. The class consisted of Santa Clara County Section 8 voucher holders who have disabilities and/or have family members with disabilities who:

(1) made a reasonable accommodation request to the Housing Authority for an additional bedroom;

(2) had documented and undisputed need for a separate bedroom;

(3) were denied a disability related increase in the number of bedrooms by the Housing Authority;

(4) were not previously granted a permanent reasonable accommodation request;

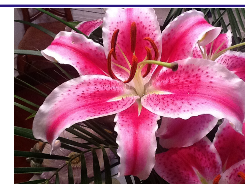
(5) did not request the additional bedroom for a live-in caregiver or for storage of medical equipment; and

(6) have at least one family member who is not disabled.

The settlement provides for an injunction requiring the Housing Authority to change its policies regarding reasonable accommodation requests and distributes $3,200,000 to the class members. The individual awards will be between $916 and $25,406 depending on the length of time each class member was forced to accept the reduced voucher size after requesting a reasonable accommodation.

All in all - that is an expensive extra bedroom.

Note from the Editor:
Spring has finally arrived and spring cleaning means discarding old files around the office. Do you know how long you should keep your files?



In the News

Service Dog Preference Case Survives

In a recent case, a federal district court was asked to dismiss a claim that a Homeowner Association violated the Fair Housing Act by preferring a Service Animal over an Emotional Support Animal. The

court refused to dismiss the claim holding that a newsletter statement that "when considering requests for exceptions to the Association's 'no dog' policy, the Association prefers to grant such exemptions to residents who need "true service dogs"' may show a preference which would violate the Fair Housing Act.

Lending Discrimination Case Settles

An Illinois-based lender and the U.S. Department of Housing and Urban Development have settled a claim that the lender discriminated against African American and Hispanic mortgage applicants. The complaint alleged the lender lacked a presence in communities with a majority of African-American and Hispanic residents which made financial products less available to potential applicants based on their race or national origin. Of the lender's 14 locations, only one is in a Census tract that is more than 10% African American.

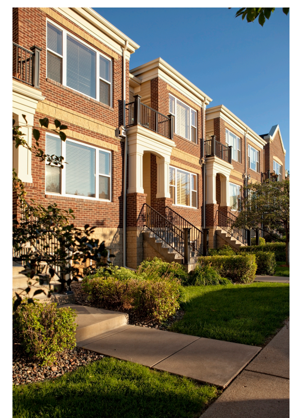
As part of the settlement, the lender will:

- Establish a $1 million loan program to increase lending to residents in minority neighborhoods;
- Pay $75,000 to an Illinois fair housing center;
- Offer targeted community outreach to minority areas, including seminars, credit counseling, and direct mailing campaigns in majority African-American areas;
- Provide fair lending training to staff; and
- Research the possibility of opening new automated serves branches in majority-minority neighborhood in the Rockford metropolitan area.

In addition, the complaint alleged the lender provided white applicants with better information and more favorable terms - which if proven, would have violate fair housing laws.

Condo HOA Sued for Hostile Environment

A New Hampshire Homeowner Association and the President of the HOA Board have been sued by one of the condominium owners who alleged race and sexual orientation discrimination. The alleged incident at the heart of the lawsuit alleged the President of the HOA Board forced his way into the owners residence and shouting obscenities at the owner calling him a "faggot" and a "sand n---er."



The HOA and the President asked the court to dismiss the claim because the Fair Housing Act's provisions do not apply to post-acquisition conduct. The court refused holding that the Fair Housing Act does apply after a homeowner has bought his/her home. Specifically, it prohibits others from creating a hostile housing environment based on a protected class regardless of whether the person has already bought their home.

Dr. Carson is Sworn in as New HUD Secretary

On March 2, 2017, Dr. Ben S. Carson, Sr. was sworn in as the 17th Secretary of the U.S. Department of Housing and Urban Development. Secretary Carson will lead the agency which has approximately 8,000 employees and an annual budget of more than $40 billion. As the Secretary of HUD, Carson has power over the organization of the Department subject to certain legislative restrictions. Congratulations, Secretary Carson.

HOUSING CROSSROADS

WHERE FAIR HOUSING AND LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar

Roadmap to Managing Difficult Residents

Wednesday, May 31, 2017
10:00 a.m. - 11:30 a.m. Central

Managing residents who are threatening, belligerent and just down-right hateful is difficult. Maneuvering the landmines of landlord tenant law and fair housing law while dealing with these same residents is even more of a challenge. What should you do first?

In this webinar, we will walk through different scenarios dealing with difficult residents. We will give you a practical roadmap of how to navigate the landmines. Specifically, we will discuss:

- What behavior violates the lease?
- What notice is appropriate?
- What to do if the behavior is caused by a disability.
- When you can evict.

$34.99
Register

M. Wesley Hall, III
Hall & Associates

Nathan Lybarger
Hall & Associates

Angelita Fisher
Law Office of AEF

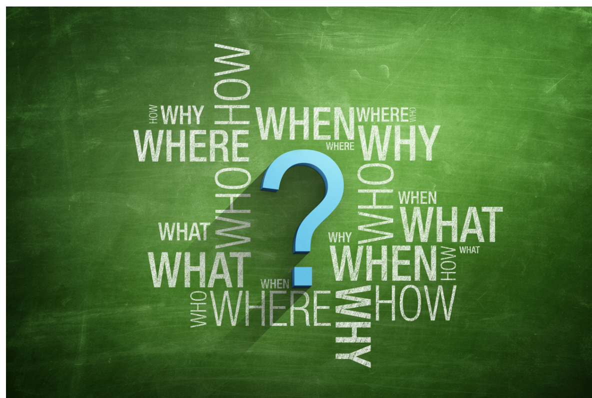
Expansive Document Request is Granted

In a Michigan fair housing case, a judge has ordered a property management company and development company to disclose three years of documents for every property the companies own or operate. The case began when a mother applied for an apartment and was allegedly told by the rental agent that the property has a "no kids in this building" policy and that her son was a "little bit too young." The mother reported the incident to the Fair Housing Center of Metropolitan Detroit. The Center sent out testers who got similar answers when they asked if children were allowed to live at the apartment complex.

The Center sued on behalf of the mother. During litigation, the Center asked the management company and development company to provide "applications, leases, rental agreements, criminal background checks, security deposits, and other receipts, correspondence, and notices of intent to evict" on all housing property/communities owned or operated by the management or development company and any past or present members of the board of directors for the development company.

The management and development companies objected to the request. One ground for the objection was that it would be extremely burdensome for the companies to produce that many documents. This argument did not persuade the judge. The judge ordered the companies to provide all the requested documents to the Center.

Lesson Learned: Keep your documentation. You may be asked for it one day.



Fair Housing Webinar

Investigating and Responding to Resident Complaints

Wednesday, April 19, 2017

10:00 a.m. - 11:00 a.m.

How a landlord investigates and responds to a resident's complaint can mean the difference between winning and losing a case in front of a court or agency like HUD.

In this webinar, we will discuss a step-by-step process to investigating and responding to a resident's complaint. Our topics will include:

- Recognizing when a complaint involves fair housing laws
- Asking the right questions
- Making the decision
- Following up
- Documenting the process

Register Now
$24.99

Fair Housing Policy Review

Start spring with a quick review of your fair housing policies. Here is what to look for:

✔ **Fair Housing Policy**. Every property should have a Fair Housing Policy in the Employee Handbook and posted on the property. Make sure every protected class is listed as well as a complaint procedure.

✔ **Assistance/Companion/Service Animal Policy**. Assistance, companion, and service animals are not pets. The pet policy does not apply. Properties should have a separate Assistance/ Companion/Service Animal Policy outlining issues such as vaccinations, noise, dog walking areas, and cleaning up after the animal.

✔ **No Dating Policy**. Employees and residents should be prohibited from dating or having a sexual relationship. Housing providers need a written policy in their Employee Handbook outlining the policy and new employees should be specifically informed of the policy when hired.

✔ **Background Check Policy**. If you have a blanket policy prohibiting anyone with any type of criminal conviction from living on the property, it may be violating fair housing laws. Review NOW!

✔ **Child Restrictive Policies**. Any policy which prohibits children from using the pool, fitness room, or common areas may violate fair housing laws. Review and revise accordingly.

Property Meets the Carriage House Exception

By now, we know that multifamily housing built for first occupancy after March 13, 1991, must comply with the Fair Housing Act design standards. But, did you know there is an exception? It is called the carriage house exception and it recently became an issue in an Ohio case.

The dwellings in question are three stories high with one apartment on the second floor and one apartment on the third floor. The first floor is located at grade-level. The first floor contains two garage units and two storage units so that each apartment on the second or third level has one parking spot and one storage unit. Stairs lead from the garage to the second and third floor units. There is no elevator.

The Housing Research and Advocacy Center brought a lawsuit against the developers, construction company and architects claiming the units violated the Fair Housing Act because they have features like steps, thresholds, doors, inaccessible bathrooms and kitchens, and passageways that are too narrow for wheelchairs. These barriers prevent people who use wheelchairs or other mobility aids from using and enjoying residential units.

The developers, construction company and architects claimed the carriage house exemption applied and therefore, the units were not subject to the Fair Housing Act design rules. The carriage house exemption is used when "stacked housing units are designed to incorporate parking for each unit into the dwelling unit design in non-elevator buildings." It applies when the garage footprint is used as the footprint for the remaining floor or floors on the units.

The Center claimed the carriage house exemption did not apply because the second-floor unit did not sit in the exact footprint over its own garage. Each second-floor apartment takes up space beyond a single garage unit's exact footprint.

The court disagreed with the Center's argument. It held the carriage house exemption does not mean the unit must have the exact footprint as the garage - developers, construction company and architect win.