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BE PREPARED WHEN A RESIDENT DISCRIMINATES AGAINST ANOTHER RESIDENT

One resident shouts racial slurs at another resident. This is a dispute among residents. You can't be held responsible, can you?



Yes, you can. The courts do not agree on resident-on-resident discrimination. But some courts have held owners and property managers liable for resident-on-resident discrimination. These courts have held that fair housing laws not only protect individuals from discrimination

in the acquisition of their residences, but also protects them from discriminatory interference with the peaceful enjoyment of their homes.

In some resident-on-resident discrimination cases, the courts declined to extend liability to owners and property managers under the Federal Fair Housing Act. No Colorado Court has ever issued a published opinion on the issue. **However, you don't want to be the test case.** Even if Colorado courts eventually rule that resident discrimination is not covered by the Federal or Colorado Fair Housing Acts, you still face potential liability. A skilled attorney could argue that your failure to prevent resident-on-resident discrimination violates other Colorado and federal civil rights laws. You could be liable based on the theory that you had notice of the resident's discriminatory conduct, and failed to intervene or stop the conduct.

You must have a clear policy to deal with resident discrimination prior to an incident. Your policy should address non-tolerance, documentation, including mandatory investigation, procedures for handling and investigating, clear and prompt communication of investigation results, and actions to be taken depending on results of investigation. Your staff should be regularly educated and trained on the policy. If you have no policy when an

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STATE SENATE MOVES TO INCREASE COURT FILING FEES AGAIN

On March 17th SB 08-206 Co-sponsored by Shaffer/ Penry was introduced. Primary House Sponsors are Carol/Marostica. This Bill creates a cash fund for a state justice center and a new Colorado state museum by increasing civil court fees. **This NEW INCREASE in court fees will have a direct impact on the fees charged to Multi-Family Housing Industry providers.** It has been assigned to the Senate Judiciary, Finance and Appropriation Committees.

This law, when passed, will increase County Court filing fees to a staggering \$110.00 per case, plus the forced electronic filing of fee of \$6.85, or a total of \$116.85. Filing fees are currently, \$60.00, plus \$6.85 for the electronic filing fee, or a total of \$66.85. Right now the total is \$66.85. **This would raise the total filing fee to \$116.85. This is an increase of 75%.**



This is, of course, on top of the 45% increase last year (last year fees, not including the electronic filing fee, went from \$46 to \$60). NOW when the forced electronic filing fee of \$6.85 is included, in less than a year-and-a-half, fees will have increased from \$46 to \$116.85 (including the forced electronic filing fee),

or to put it bluntly the fees will have increased a staggering 154% in a little over a year.

One of the primary House sponsors of this Bill is Representative Terrance Carol a Democrat from District 7 in Denver who is an attorney and minister and expected to be the majority leader in the next session. Ironically, Representative Carol is one of the legislators that industry lobbyists are counting on to help us with a warranty of habitability bill next year providing the current bill does not pass in this session. We cannot predict the future but it is apparent that Representative Carol has no reluctance to reach into your pockets to find money for the budget.

HTS believes this fee increase needs to be strongly opposed. We have prepared contact information for HTS clients to access so that they can express their concerns to the

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HUD AND DOJ ISSUE NEW JOINT STATEMENT ON FAIR HOUSING

On March 5th the Department of Housing and Urban Development (HUD and the Department of Justice (DOJ) released a joint statement on the subject of Reasonable Modifications Under the Fair Housing ACT. The HUD and DOJ are jointly responsible for enforcing the Federal Fair Housing Act that prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability. One type of disability



discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises

HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Joint Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.

The Act specifically makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions, placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.



This newly released joint statement sets out specific questions and answers with illustrations of specific scenarios and it is recommended that all of our multi-family housing providers take time to read and review this HUD/DOJ Statement on Reasonable Modifications. **A copy of the complete statement, which you can download, is posted on the HTS website www.htspc.com in the legislative link section.**

Reasonable Modification requirements under the

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STATE SENATE MOVES TO INCREASE COURT FILING FEES AGAIN *Continued From Page 1*

members of the legislature who are sponsoring this legislation in the House and Senate. You may be surprised to see some of your representatives on this list. To access and download the legislator information please go to our website www.htspc.com, legislative link and click on the link in the information on SB 08-206.



HUD AND DOJ ISSUE *Continued*

Fair Housing Act are covered extensively in our Advanced Fair Housing Workshop with specific examples of the right and wrong way to address this requirement of the law. For those who may be interested our next Advanced Fair Housing Workshop is Monday April 7th. For more information or to register please contact Matt at 303-699-3484 or e-mail matt@htspc.com.



LEGISLATIVE UPDATE

The proposed legislation on the warranty of habitability and penalties HB-1356 was introduced on March 7th and assigned to the House Business Affairs and Labor Committee. The bill does not require a tenant to provide written notice if a warranty of habitability claim is asserted.

Because of this, HTS and other industry leaders oppose the bill unless it is amended to require written notice.

We believe written notice is essential because it is the only reasonable method for tenants to communicate to property owners about habitability



issues. Property owners have a right to know about serious allegations and should have the opportunity to address these allegations before facing significant financial penalties.

A hearing on this bill is scheduled to be held on Thursday, April 3rd - 1:30 p.m., Room 0107
A downloadable copy of the bill is available on our website www.htspc.com in the legislative area.

IMPORTANT APRIL DATES

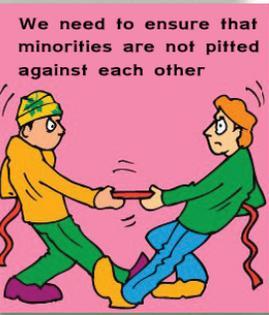
- April 7th - Advanced Fair Housing Workshop
- April 8th - Non Monetary Evictions Workshop
- April 10th - BARHA Tradeshow Boulder
- April 18th - Client Lunch - South Piccolos
- April 22nd - CAI Conference and Tradeshow

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incident occurs, consult us rather than making a policy on the fly.

Fair housing polices are critical for many reasons. Fair housing policies, education, and training have proven effective weapons in defending firm clients in front of the Colorado Civil Rights Division (“CCRD”). We have been able to successfully use fair housing policies



to make compelling arguments to the CCRD.

Fair housing policies show that you are committed to fair housing, and have zero tolerance for discriminatory fair housing practices. Your housing policies specifically prohibit the alleged discriminatory conduct. Your fair housing policy requires education and training to prevent the alleged conduct.

Taken as a whole, in close cases, these arguments can persuade the CCRD that the alleged conduct likely never happened.

Discretion leads to fair housing problems.

Anytime onsite management has discretion to determine outcomes based on the facts of a particular case, there is a possibility that the manager may make a wrong fair housing decision. Consistency is what you want. Consistency is the hallmark of fair housing compliance. A solid fair housing policy is the first critical step to make sure that your company deals with resident-on-resident discrimination consistently. The cornerstone of any fair housing policy is an unequivocal statement that your company has zero tolerance for fair housing discrimination, including discrimination by one resident against another resident.

Your policy should require onsite staff to document and investigate all resident-on-resident discrimination incidents. You must investigate



all incidents even if a resident hasn't filed a complaint. Once a leasing agent, manger, or maintenance technician has knowledge, you have knowledge. Once you have knowledge of an incident, you have a responsibility to take action. Logically, this policy is only an extension of your lease enforcement obligations. For example, if a resident was blasting Led Zepplin at 2:00 a.m. and you heard it, you would take action regardless of whether any resident complained. For your staff to always investigate resident-on-resident discrimination, your staff needs to be made aware of this obligation. Otherwise, even if they are aware of an incident, they may only investigate incidents when a resident files a written complaint.

The first step in any investigation is to

document the incident in writing. Request that the offended resident submit their complaint in writing, setting forth applicable dates, times, and witnesses to the discrimination. If the resident won't document the incident in writing, then you should. You should draft a letter to the resident stating that you requested the resident to set forth their complaint in writing, but haven't received their written complaint. The letter should advise the resident that the resident's complaint will be investigated, but your investigation may be more difficult and not as thorough without a written complaint from the resident. Your letter should provide the resident with an opportunity to make a written complaint at anytime. Finally, your letter should set forth the applicable facts as you understand them, and inform the resident that unless you receive further information from the resident, you will investigate the incident based on your understanding of the facts.

Similar to all resident problems, when you ask the resident to document a complaint in writing, you should always ask the resident what would satisfy the resident. What specific outcome is the resident looking for?

This is sound policy for many reasons. The resident's request may make resolution of the situation easier than you had anticipated. The resident's response sets clear expectations. If you meet the resident's request, the resident will have difficulty later arguing that you did not take satisfactory action, or go far enough.



If the resident's complaint identifies witnesses to the resident-on-resident discrimination incident, you should interview all witnesses. If possible, all witness statements should be reduced to writing, and signed by the witness. You should also ask all witnesses if they are willing to testify in court, if necessary. **If you later have to evict the offending resident, you already have compiled in writing important information that we will need to prosecute the eviction case.** If the witnesses don't corroborate the complaining resident's version of events, the written statements from other residents that no discriminatory incident took place will be invaluable in defending against a future discrimination charge.

If a complaining resident informs you that discriminatory conduct regularly takes place at a certain time, you should have someone on staff attempt to verify the conduct. For example, if every night at 9:00 p.m., the resident next door plays racist music and pounds on the resident's wall, you should attempt to verify for yourself if this conduct is occurring.

As part of your investigation, you should always interview the resident who is alleged to have engaged in

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the discriminatory conduct. More than one staff member should always be present for this interview. You should tell the resident that a complaint has been filed, and set forth the facts of the complaint. Ask the resident to respond to the specific factual allegations. Use a non-confrontational style of questioning. **Confrontational.**

Do you deny on March 22nd, you called Mr. Jones a so and so? Non-confrontational.

Mrs. Jones says that on March 22nd, you called her a so and so, tells us what happened.

You should carefully document the interview with the accused resident. The interview could be important evidence that

you investigated, and will counter the argument that you didn't take any action.



When you have completed your investigation, promptly take appropriate action. Your first action should always be to report in writing the results and status of the investigation to the complaining resident. You never want a resident to think that you aren't doing anything or haven't taken the resident's complaint seriously. As discussed below, appropriate action against the accused resident may vary depending on the circumstances, but always let the complaining resident know what action, if any, you intend to or did take. For example, based on the investigation, the property issued a demand to Mr. Smith that he comply with his lease.

If you aren't going to take any action, tell the resident why you reached this conclusion. State what you did to investigate, and the results of the investigation. Ask the resident if there is anything you missed, if the resident wants you to review additional information, if the resident wants you to speak to any additional people, or if the resident has any additional evidence that you should consider. Let the resident know that while there is insufficient evidence to take action now against the accused resident, you are always willing to evaluate any new or additional information.

Take prompt and consistent action based on the results of the investigation. **Most resident discrimination also constitutes a lease violation.** Serve warning letters or demands for compliance consistent with other lease violations, and your policy for lease violations. If the accused resident's conduct involves threats of bodily harm or a physical assault, serve a notice to quit for a substantial violation. If the accused resident's conduct constitutes a crime, you should file a complaint with the police, and advise the victim resident that they should contact the police as well. If you are not sure whether to report the incident to the police, contact us for further advice.

If the allegations can't be substantiated to the point where you would prevail in court, you should propose practical solutions and alternatives. But don't propose practical solutions without first investigating. This leads to inconsistent action, and may make you vulnerable to a future discrimination charge. A resident may argue that you fully investigated a previous complaint (took it seriously), but discriminated against him by failing to investigate his complaint.

One practical solution is to offer to let one or both residents relocate. Offer to let one or both residents out of their lease without penalty. **Based on our experience, practical solutions are not always viable.** The victim resident might tell you, "Why should I have to move, I have done nothing". If the resident rejects practical solutions, reinforce the findings of your investigation and your practical solutions in writing. We investigated your complaint. This is what we found. There is insufficient evidence to take action against the accused resident. We offered you several alternatives, but you declined. If the resident files a complaint, this will show you did everything in your power to address the resident's complaint, and resolve the situation.

To avoid retaliation charges, don't non-renew a complaining resident before carefully evaluating the situation. Make sure that you have solid non-discriminatory grounds for non-renewing any resident. Make sure that your non-renewal decisions are consistent. Ask yourself the key questions to avoid any retaliation claim. If this resident hadn't claimed discrimination by another resident, would you still have elected to non-renew? Have you non-renewed other residents for the same reasons you don't want to non-renew the resident who alleged discrimination by another resident? If the answer to either of these questions is no, don't non-renew. If you need help with a complex resident-on-resident discrimination situation, contact us for assistance.

