

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

Fair housing policies 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 CCDR. 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 Zeppelin 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 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.