

# Landlord News

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HOPKINS·TSCHETTER·SULZER, P.C.

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A Full Service Law Firm

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## SENIOR DISCOUNTS – NOT WORTH THE RISK

Senior discounts in housing are controversial. The law is not clear on senior discounts in rental housing. Society's allowance of other senior discounts (restaurants, bus, movies) makes the senior discount in housing issue more confusing. The senior discount in rental housing centers around a) whether you can allow senior discounts at your community or property; and b) if you have a senior discount, whether you can advertise the senior discount.



The Fair Housing Act ("FHA") prevents any advertisement that states a preference, limitation, or discrimination based on protected class status. The legal limitations on advertising apply both to preferences for or against.

Some argue that the words "senior discount" state a preference against persons with families (familial status protected class). So much so that the internet is now loaded with websites that list the words "senior discount" as prohibited words under the FHA's advertising restrictions. However, other websites specifically list "senior discounts" as allowable advertising. The difference of opinions illustrate the FHA's lack of clarity on the senior discount issue, and only serve to further promote confusion on this issue.

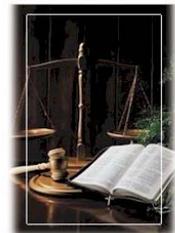
In the end, the advertising issue is a diversion. The fundamental issue is whether or not senior discounts are permissible or allowable under the FHA period. If senior discounts are allowable under the FHA, then senior discounts may be advertised under the FHA.

The lack of clear legal authority on senior  
Continued on Page 2

## FIRM EXPANDS SERVICE TO COLORADO SPRINGS

In response to numerous requests from our clients who have properties in El Paso County, the Firm has expanded our services to include Colorado Springs. Effective May 1, 2005 Hopkins-Tschetter-Sulzer will be filing cases and representing clients in El Paso County.

In conjunction with our expansion south of the metro area we have become active members of the Apartment Association of Colorado Springs. Our participation in the association started on April 13 when Senior Managing Partner Mark Tschetter and Senior Associate Wes Wollenweber presented our Advanced Fair Housing Workshop to 60 members of the Colorado Springs Apartment Association. Also on hand to meet the staff of the association and the workshop attendees were Vic Sulzer, Partner, Terry Hughes, Office Manager and Eve Lincoln, Client & Public Relations. The warm welcome and enthusiastic response to the workshop was overwhelming and the firm is looking forward to working closely with Laura Russmann and the professional staff at the Colorado Springs Apartment Association.



Starting in June the firm will host a free client lunch quarterly in Colorado Springs. Just like the well established monthly luncheons in the metro area it will give our El Paso clients an opportunity to get to know the Firm attorney's and staff as well as being briefed on current topics that impact their business.

**DON'T FORGET TO REGISTER FOR  
THE BASIC EVICTION WORKSHOP  
THURSDAY MAY 12<sup>TH</sup> --303-699-3484**

## SENIOR DISCOUNTS (Continued from Page 1)

discounts makes determining their legality problematic. No statutes, regulations, or reported court decisions directly address the legality of senior discounts under the FHA. The concept of showing seniors or the elderly any monetary preferences is mentioned just a single time in the fair housing regulations, and even then not directly in the regulation but rather in the comment to the regulation.



Specifically, HUD's comments to the final rule implementing the fair housing act regulations (24 CFR 100.65 - Discrimination in terms, conditions and privileges and in services and facilities) discussed the issue as follows. "A number of commenters indicated that they customarily provided for reduced security deposits for elderly persons renting units and asked whether continuing such practice would place them in violation of the Fair Housing Act. As long as such a policy is based solely on age, is available to persons if there are children in the family, and is not otherwise operated in a manner that results in the exclusion of families with children, such a practice would not be unlawful."

HUD's foregoing statements support the conclusion that senior rental discounts are allowable and "would not be unlawful" under the FHA. Of course, based on HUD's comments any senior discount would only be legal as long as such senior discounts were a) based on age; b) were available to seniors with children; and b) were not operated in a manner that results in the exclusion of families with children. This last requirement makes senior discounts very problematic. How will you know if your senior discount operates to exclude families with children? When HUD or some court tells you so, that is when. Thus, you will never be sure if your policy is legal until HUD or the courts tell you that your senior discount program is legal.

We cannot and do not advise our clients to adopt policies that may or may not be determined legal at some point in the future. Senior discounts are not worth the risk and uncertainty. Accordingly, the firm advises clients not to give them or advertise them.

Several other key points regarding senior discounts are worth mentioning. Offering senior discounts at HOPA properties (Housing for Older Persons Act of 1995) may be less of a risk. The ADA ("Age Discrimination Act") prohibits

discrimination on the basis of age in programs or activities receiving federal financial assistance. If your community or property falls under the ADA, senior discounts would be barred by the ADA. Finally, if your community or property is located in Aspen, Boulder, Crested Butte, or Telluride, you may not offer senior discounts because these jurisdictions make age a protected class.



## ADVANCED WORKSHOPS DRAW LARGE ATTENDANCE

In accordance with the Firm's commitment to provide the best comprehensive service for our clients we presented our new Advanced Fair Housing Workshop in April both in the metro area and in Colorado Springs. Our overall goal continues to be to provide more than just eviction service to our clients. We have always believed that it is our responsibility to inform, support and educate our clients as well as timely and effectively evicting residents. Through our ongoing educational workshops, web site information, our newsletter, client luncheons and ready availability of attorney's and staff we strive to provide our clients with informed skills to better run their properties and serve their residents. *Full legal service to property owners and managers should be about more than just timely evictions.* In conjunction with this philosophy the Firm will continue to offer training in Basic and Advanced Fair Housing, Basic and Advanced Evictions and some other industry related topics that we are currently developing.

Basic Fair Housing is just what the course title suggests --- the basic nuts and bolts of Fair Housing, do's and don'ts, history, protected classes etc. Advanced Fair Housing covers in depth all the nuances of accommodation and modification and incorporates actual cases and resolutions of clients. How to deal and not deal with the CCRD and HUD and how to protect yourself and your property owners from Fair Housing violations. All attendees are tested at the beginning and completion to evaluate their level of understanding on the topic.

Basic Evictions covers all of the primary procedures for eviction for non-payment as well as a broad brush of evictions for other than rent.

Continued on Page 3



## WORKSHOPS (Continued from Page 2)

Understanding the importance of the timing and the flow of the eviction process. The Advanced Eviction class addresses, in depth, how to deal with all non-monetary evictions as well as lease provisions that aid or hinder the property management when evicting residents. This class includes examples based on actual cases of how things were done correctly and how things went wrong. Participants in this workshop are tested throughout on the material and their understanding of how to deal with a non-monetary eviction and the correct form or forms to utilize to maximize success in gaining timely access to the property.

All workshop attendees are given comprehensive workbooks covering the material and they also receive a certificate of completion to signify they have completed the course. We



encourage all of our clients to send their employees to the workshops. The few hours away from the property may prove to be an investment in helping them better serve their communities

and perhaps prevent legal problems down the road. Check our Events section on our web site [www.htspc.com](http://www.htspc.com) and locate the date and time of scheduled workshops.



## MEMORIAL DAY THE ORIGIN

Memorial Day, originally called Decoration Day, is a day to remember those who have died in our nation's service. After the Civil war many people in the North and South decorated graves of fallen soldiers with flowers.



In the Spring of 1866, Henry C. Welles, a druggist in the village of Waterloo, NY, suggested that the patriots who had died in the Civil War should be honored by decorating

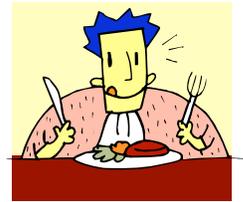
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Continued on Page 4

## CLIENT LUNCH HAS NEW NORTH LOCATION

We are pleased to announce that a new location for our North client luncheon has been secured. Effective May 20th we will meet at the new site, Cianco's at Hyland Hills Restaurant --- 9650 N. Sheridan Boulevard, Westminster. For those who would like more specific directions please check out our calendar in the Events section of our web site [www.htspc.com](http://www.htspc.com) and click on the date. It will take you to a link with a map and directions to the restaurant. We look forward to seeing you at the new location. Be sure and call and let us know we can count on seeing you there.



## AAMD TRADESHOW COMING MAY 10th

Circle your calendar for Tuesday May 10<sup>th</sup> and join us at the 2005 Apartment Association Trade Show. The theme of this year's events is Music, Movies and Move-ins: There's no business like rental business. Come check us out at our booth #246.



We are on the back wall equi-distant between the two bars, most assuredly a popular corridor.



Drop in and test your movie skills and win a prize or just drop in to say hello and pick up a goody and some munchies.



**ALL COURTS CLOSED ON MONDAY MAY 30 FOR MEMORIAL DAY HOLIDAY**

### FAIR HOUSING ANSWERS

- 1.a
- 2.true
- 3.false
- 4.true
- 5.false
- 6.true
- 7.false
- 8.false
- 9.true
- 10.true
- 11.false
- 12.false
- 13.false
- 14.false

# CHECK OUT YOUR FAIR HOUSING IQ

*This is a test of your knowledge of basic fair housing law. Please circle or check the correct answer.*

## FAIR HOUSING BASICS

1. Federal fair housing law bans discrimination based on seven characteristics commonly known as the "seven protected classes". These seven protected classes are:
  - a. Race, color, religion, sex, national origin, handicap, and familial status.
  - b. Race, religion, sexual orientation, national origin, familial status, source of income, and color.
  - c. Race, military status, sexual orientation, familial status, religion, color, and handicap.
  - d. None of the above.
2. Your state or locality may add other protected classes to the seven federally protected classes.  
 True  False
3. Fair housing law permits you to ask a prospect or resident if he or she is disabled.  
 True  False
4. Fair housing law bans you from rejecting a prospect based on his or her status as a member of a protected class.  
 True  False
5. Fair housing law bans you from rejecting a prospect because he or she is a drug addict.  
 True  False
6. Fair housing law permits you to set reasonable occupancy standards that limit the amount of people who can live in an apartment.  
 True  False
7. If no special circumstances are present, occupancy standards may permit no more than one child per bedroom.  
 True  False
8. You should keep records only of prospects who rent at your community, not of every prospect who visits.  
 True  False
9. Owners and managers are liable for staff members' fair housing violations.  
 True  False
10. Staff members can be sued individually for their fair housing violations.  
 True  False

11. You can decorate the community for Christmas and ignore other religious holidays because everyone likes Christmas.  
 True  False
12. You can run criminal background checks only on prospects who you feel look threatening.  
 True  False
13. When a resident with a disability asks you to make a change in your policies and procedures for him, this is called a "request for a reasonable modification".  
 True  False
14. When a resident with a disability asks for permission to make a physical change to his or her apartment to be better able to use and enjoy it, this is called a "request for a reasonable accommodation".  
 True  False

(ANSWERS TO QUIZ PAGE 3)



## MEMORIAL DAY

(CONTINUED FROM PAGE 3)

In the Spring of 1866, Henry C. Welles, a druggist in the village of Waterloo, NY, suggested that the patriots who had died in the Civil War should be honored by decorating their graves. Townspeople made wreaths, crosses and bouquets for each veteran's grave. The village was decorated with flags at half mast. On May 5 of that year, a processional was held to the town's cemeteries, led by veterans. The town observed this day of remembrance on May 5 of the following year as well.

Decoration Day was officially proclaimed on May 5, 1868 by General John Logan in his General Order No. 11, and was first observed officially on May 30, 1868. The South did not observe Decoration Day, preferring to honor their dead on separate days until after World War I. In 1882, the name was changed to Memorial Day, and soldiers who had died in other wars were also honored.

In 1971, Memorial Day was declared a national holiday to be held on the last Monday in May. Today, Memorial Day marks the unofficial beginning of the summer season in the United States. It is still a time to remember those who have passed on, whether in war or otherwise



**Opportunity is missed by most people because it is dressed in overalls and looks like work.** Thomas Edison

