

Landlord News

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SOCIAL SECURITY NUMBERS AND APPLICATION POLICIES

Our clients frequently deal with social security number ("SSN") issues. Can we require applicants to have SSNs? What if a prospective resident does not have a SSN? If we require SSNs, can we waive this requirement for applicants that do not have a SSN? If we require SSNs, do we have to waive this requirement if the applicant tells us they do not have a SSN? If an applicant tells us that they don't have a SSN, have we violated fair housing laws if we don't waive the requirement?

The SSN discussion is put into focus by two additional questions. Who most likely will have a SSN number? Who most likely will not have a SSN? Generally, all American citizens should have a social security number. This



includes all citizens born in the U.S., and all immigrants who have obtained U.S. citizenship status. Generally, all non-U.S. citizens (persons not born in the US) will not have a SSN. Fair housing laws prevent discrimination based on "national origin".

As far as policies go, remember under fair housing laws there are three types of discrimination. One, policies that intentionally discriminate against protected classes. Two, policies that fail to reasonably accommodate disabled individuals. Three, policies that have a disparate impact on a protected class. Disparate impact means distinct, adverse, or different. The policy only affects the protected class. Policies that have a disparate impact are not intentionally calculated to discriminate against a protected

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Client Holiday Party Kicks Off Season

Dust off your party hat and mark your calendar for Friday December 2nd. That is the date of the Hopkins Tschetter Sulzer Annual Client Holiday Party. Judging by the already growing interest for information on this year's party early indications are that the 2005 gathering will be even bigger and better than last year. The festivities kick off at 4:00 p.m. and are scheduled to go until 7:30. But we suspect that just like in 2004 many clients will be having so much fun that they will still be partying with us long after that time.

Let this party, that celebrates our appreciation of our terrific clients, serve to kick off your holiday season. Join us for great food, hearty libations, good music, pleasurable company and festive partying. Don't miss this opportunity to participate in our drawing for five wonderful door prizes as well as having a chance to exchange holiday greetings with your peers in the industry and get to know all of the Firm Attorneys and Staff.



Again this year we will hold the Client Holiday Party at our office which is located at 2821 South Parker Road, Pavilion Tower II Aurora Colorado. The festivities will take place in the lobby atrium of

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class, but as a practical matter affect one or more protected classes more than the general population as a whole.

Requiring a SSN during the application process is not intentionally designed to discriminate against applicants based on national origin. However, the argument against a SSN requirement is that such a requirement has a disparate impact on the "national origin" protected class during the application process. Non-U.S. born applicants, even if they are lawfully in the U.S., are less likely



to have a SSN and thus the requirement that you must have a SSN to become a resident will adversely impact prospects based on national origin. However, this is by no means the end of the argument.

Not all policies that adversely impact segments of the population are automatically discriminatory under fair housing laws. When you think about it, most policies affect one or more segments of applicants. Requiring 2x or 3x income discriminates against poor people. Does that mean fair housing laws require that you eliminate this requirement? Of course not. Even if a policy discriminates, a policy may not violate fair housing laws if the policy is supported by a legitimate non-discriminatory business purpose. Requiring a SSN during the application process is supported by a very strong legitimate non-discriminatory business reason. In many respects, a person's SSN is a person's identity. Without someone's SSN, identity and credit verification is difficult (some would say impossible).

A SSN requirement probably does affect non-US born individuals, but you have very good reasons for the policy. If a lawsuit gets filed, whose position will prevail in court? Even various fair housing experts disagree on this issue. Predicting the outcome is difficult for several reasons, especially in Colorado. First, no court has ever decided the issue of whether you can require SSNs on applications. Second, Colorado courts (both state and the United States District Courts for Colorado) have not even decided on the test, which would be the basis for determining the outcome of the case. With no legal precedent to rely upon, the likely outcome of any lawsuit can only be predicted by examination of analogous cases involving housing discrimination based on a "disparate impact" theory.

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our building. A map to our physical location can be found on our web site by clicking on the events link and on the December 2nd date on the calendar.



There is ample parking for all located behind the building and in the covered parking facility. Please let us know we can count on seeing you on December 2nd by giving us

your RSVP either on line at our web site www.htspsc.com or by calling Nancy at 303-699-3484.

Don't miss out on the fun. RSVP Today. We'll all be looking forward to seeing you on December 2nd.



Some Thanksgiving Humor



A lady was picking through the frozen turkeys at the grocery store, but couldn't find one big enough for her family. She asked the stock boy, "Do these turkeys get any bigger?" The stock boy answered, "No ma'am, they're dead."

Thanksgiving is a traditional American Holiday where families all over the United States sit for dinner at the same time---Halftime



HTS TAKES A FIRST PLACE AT 2005 CHILI COOK OFF

As the saying goes "If at first you don't succeed, try try again. Or perhaps a more apropos observation in this instance would be "If it's not broke don't fix it". Armed with unwavering faith in our Red Chili Recipe and overwhelming optimism the Hopkins Tschetter Sulzer Team committed to return to the 2005 AAMD Chili Cook Off competition with our international award winning Australian Dinkum Chili.



Eve Lincoln, Lindsay McGriff, Ashley Tschetter, Terry Hughes, Mark Tschetter, Brianna Tschetter, Matt Hopkins, Vic Sulzer

This year's entry took the skilled participation of the entire staff. With some doing the shopping, others chopping, mincing, slicing and dicing for many, many hours on the Wednesday before the competition. Although everyone had a hand in the operation, Senior Managing Partner Mark Tschetter is convinced that the difference this year is the fact that he, yes that's right, actually personally cooked much of the chili ---all of which was prepared at his home.



The chili was slow simmered for 36 hours under his watchful eye. There is absolutely no truth to the rumor that he occasionally waved a boomerang over the simmering pots to enhance its subtle flavor.

Apparently faith in our recipe, hard work and Mark's excellent culinary skills paid off when we were awarded with the First Place Award for the Favorite Red Chili in this year's Chili Cook Off.

Once again the competition was spirited and fun and all of the participants as well as those who attended had a great time. Booths were

bigger and better than ever and costumes were imaginative and fun. Kudos goes to the overall Best Chili Winner The Breakers who utilized a jailhouse motif and costuming and also walked away with First Place in the Best Culinary Expression Category.



Chip Kabrud, Pete Muccio, Terry Hughes, Tracy Gallegos, Vic Sulzer

Taking first place in both the Booth and Costume Categories was the always creative and competitive team from Omni. Other First Place Winners included Baron Property Services for the Hottest Chili and Arbor Carpet for Most Creative Chili.

Encouraged by this year's First Place Win for Favorite Red Chili, plans are already afoot at the Firm to locate and test other possible entries for the 2006 Chili Cook Off.

CHILI FACTS AND HISTORY

The capsicum (Chilli Pepper) plant is indigenous to South America, where they grow wild. The very first concerted cultivation of the plant is believed to have taken place around 7000 to 6000 BC and traces have been found at prehistoric burial sites around Peru. By the turn of the 15th century, when the Spanish and Portuguese discovered South America, chilli peppers were widely cultivated for human consumption. Aren't we all glad that they did?

The Spaniards found that drying and crushing the pods of the hottest chilli peppers, made an excellent fiery substitute for the peppercorn that was so extensively used in European cuisine. They named their fantastic discovery "pimienta" (which is the Spanish word for pepper), or "pimienta chilli" (as the Mexicans referred to them) so as to distinguish them from peppercorns. Soon enough, tons of chillis were being shipped back to Spain each year, much to the delight of the Spanish population.



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Other jurisdictions have held that discriminatory effect is sufficient. If Colorado adopted this test, a resident would win if he could show by statistical evidence or otherwise that the policy simply affected non-U.S. born prospects. Other jurisdictions require the policy to have an adverse impact, but allow you the opportunity to justify the policy.



Under this test, the resident would lose if you were able to justify the policy. Still other jurisdictions require the resident to show adverse impact, allow you to justify, but you

must also show that there is no other alternative to achieving the goal of your legitimate non-discriminatory policy. Under this test, if your justification were to check credit, you would lose the case if the resident were able to show that you could verify his credit without a social security number.

Requiring SSNs in all cases does survive some legal challenges if certain legal tests are applied. However, because the legal situation is uncertain, we advise proceeding with caution in this area. Your SSN policy should be designed to survive not one potentially applicable legal standard, but any legal standard that could be applied. Any other policy increases your risk. When there is no precedent, the risk is greater. When your policy would be the test case, the risk is greater. Nobody wants to be the test case. Remember, as with all fair housing decisions, you only find out whether you're right after the fact, when the judge tells you. Accordingly, the development of a SSN policy, like all fair housing policies, should involve risk analysis. We regularly talk about risk analysis in detail, as applied to fair housing decisions, in our advanced fair housing classes.

The following policy reduces risk. Require SSNs if available. If not available, if possible, attempt to develop other means for verifying identity and credit. If you cannot develop practical or cost efficient alternative methods in such situations, you do not have to rent to any individual if you cannot verify identity or credit. To be clear, you would be in a lot stronger position in defending a fair housing suit, if you attempted to verify a prospect's credit. In other words, various strength's of position are as follows. *Weakest position:* SSN always required. *Stronger Position:* You tried to develop alternative

methods of verifying identity or credit, but were unable to do so. There are alternatives, this cannot be debated. But those alternatives may not provide you with the information you need, based on your requirements. *Strongest Position:* You developed alternative methods, and used them.

Getting back to where we started, you can require SSNs from all applicants. No law in itself can justify such a policy. In other words, you cannot tell a prospect that the law requires that they have a SSN in order to rent. You may or may not win a lawsuit if you get sued over this. Who wants to get sued? Nobody. So we recommend having a more comprehensive policy that requires SSNs if available but includes alternative methods of verifying identity and credit. Note, there is a difference between not having a SSN, and refusing to provide it. You do not have to rent to any individual who has a SSN but refuses to disclose for privacy, security, or other reasons.

If you require SSNs, you may waive it for applicants who do not have (as opposed to refuse to give) a SSN. As long as you do this consistently. As with all fair housing issues, consistency of policy and practice is the key. You will always be in the strongest position if you act consistently. If you waive it for one applicant, waive it for all. Note, you do not have to waive the requirement, if the reason the applicant does not have a SSN is because the applicant is illegally in the U.S. This is an entire subject in itself, and will be discussed in a future newsletter.



If you require SSNs, you do not have to waive the requirement if the applicant tells you they do not have a SSN. Have you violated fair housing laws if you don't waive the requirement? Maybe. You will only find out the answer to this question for sure after you get sued, and the judge decides who is right. Because this is a very expensive and needless gamble, we don't recommend rolling the dice. You don't have to waive a SSN requirement but should along with developing alternative methods of verifying identity and credit. Finally, some clients have asked whether or not they can just waive their SSN requirements for non-U.S. born applicants. In other words, not even require or inquire. The answer to this question is probably the easiest. Sure, you could waive this requirement, but then you would have to waive it for everyone. In other words, no applicant could be asked for a SSN.

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If you're not sure about where to start in order to verify credit without a SSN, then come to a client lunch. You probably will get several ideas. It's a great opportunity to have access to and instant feedback from dozens of persons with years of experience in the property management business. Practical issues (how do you go about this, where do I start,



who do you use) are frequently discussed by and among both our clients and us at lunches.



Don't Lose Legal Protection by Jumping the Gun on Changing Locks.

The Metro County Sheriff's met recently at the Metro Counties Sheriff Conference. At the conference, the Sheriffs discussed a problem with landlord lockouts. In discussing their execution of writs of restitution, many metro sheriffs reported



on their experiences in encountering lock changes prior to their arrival. Specifically, the sheriff arrived to execute the writ on the date of the

physical move only to discover that the property manager had already changed the locks and had begun moving the resident's property out. Based on the discussion, the metro sheriffs all agreed that they will no longer execute or sign off on any eviction that has started before the sheriff arrives or any eviction where the locks have been changed prior to their arrival. If any metro sheriff encounters such a scenario in the future, the sheriff will just walk away without executing the writ or reporting that the writ was executed.

Theoretically, this can leave you open to a lawsuit for wrongful eviction.

If the resident has not vacated prior to the physical move, it is the sheriff's actual execution of the writ pursuant to a lawful court order that protects you against wrongful eviction claims. Thus, if you deemed it necessary to schedule the sheriff and haven't cancelled, do not lose your legal protection by jumping the gun. Don't move, clean, or change locks prior to the time the sheriff arrives.



As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them. ~

John Fitzgerald Kennedy



Please Extend the Enclosed Invitation To the Client Holiday Party to Your Staff by Passing it On or Posting It. Thanks!

ALL COURTS WILL BE CLOSED ON VETERANS DAY HOLIDAY NOV 11 AND ON THANKSGIVING

ADAMS WILL BE CLOSED ON THE FRIDAY AFTER THANKSGIVING