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EVALUATING YOUR APPLICATION POLICIES

Application policies run the gamut. As a result, clients frequently have application related questions. The most common questions stem from citizenship and social security number issues. Do I have to rent to persons illegally in the United States? Can I refuse to rent to applicants who are not U.S. Citizens but who are lawfully in the United States? Can I refuse to rent to applicants without social security numbers? Because these questions have fair housing implications, you should be familiar with the law in this area to make informed decisions regarding your application policies. We do not advocate any specific policy, other than to advise against any policy that would constitute a fair housing violation. Because application policies involve business decisions, you must decide what application policies work for you.

Legal status refers to a person's legal right to be

in the United States. Applicants can have three legal statuses, two legal and one illegal. An applicant can be a U.S. Citizen ("citizen"). A foreign national applicant can be lawfully in the United States ("non-citizen"). Foreign national applicants can have a wide range of



documentation granting them legal status in the United States including student and work visas. An applicant can be illegally in the United States ("illegal immigrant").

The question of whether you can refuse to rent to an illegal immigrant has been clearly answered by HUD. You can refuse to rent to an applicant who is illegally in the country. However, you may not implement this policy in a discriminatory and arbitrary manner. You cannot decline applicants because of how they look, talk, or dress. You must adopt an application policy that systematically screens the legal status of every applicant. You must ask each applicant if they are a citizen. If the applicant

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Landlord News

SPLISH SPLASH IT'S TIME FOR POOL FUN

Residents enjoy cooling off from the sweltering summer days by the pool, but also know that having a swimming pool is a liability for property owners. Pools serve as a great source of entertainment and exercise during the hot months of summer, but they do pose safety risks as hundreds of people get injured in or around pools every year. The 4th of July usually involves hot dogs, watermelon, and a cool dunk in the swimming pool. And the apartment community pool becomes particularly inviting as residents, friends, and families mingle for an afternoon of fun in the sun.



Pools and spas have always been a staple in a property's amenity portfolio, and when used and administered properly can provide hours of enjoyment and long-lasting memories for residents. And now that summer is in full swing, property owners and managers should not only ensure that the waters are sparkling clean and sanitary but also that they are safe.

The U.S. Consumer Product Safety Commission (CPSC) reports that each year 383 children younger than age 15 drown in pools and spas, and that there are more than 5,000 emergency room visits by kids each year with submersion injuries.

Because apartment community pools are often unsupervised, property owners should not only promote safety and awareness to residents but also practice it. Owners and managers should follow local, state, and federal regulations to ensure the safety of their facilities and to minimize drowning and injuries that can otherwise turn a pool party into a tragic event.

To help make pool and spa usage a pleasant and

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answers no, you must also ask the applicant if they have a legal right to be in the country. If a non-citizen applicant asserts lawful status, you may ask for documentation proving their right to be lawfully in the country, including proof of lawful status for the entire lease term. The application questions can be simplified to “you are lawfully in the U.S. because you are a) a U.S. citizen, or b) student visa, work visa, or other reason, etc.”

You can refuse to rent to illegal immigrants, but can you rent to them if you want? Is it a crime? It is not a crime to rent to an illegal immigrant, and thus you can rent to illegal immigrants. The confusion regarding the legality of renting to illegal immigrants stems from well-published news reports that some jurisdictions have adopted laws imposing civil penalties for renting to illegal immigrants. Some of these laws have been struck down for constitutional reasons. Currently, Colorado has not adopted a law making it illegal to rent to illegal immigrants.

Whether it is desirable to rent to illegal immigrants is a different question, and turns on wide range of factors. Because the decision of whether to rent to illegal immigrants is a business decision considering multiple factors, only you can make this decision. The major argument for renting to illegal immigrants is to increase rentals. According to the National Multi Housing Counsel, the total rental population in 2011 was approximately 100 million. Estimates of the number of illegal immigrants range from 10 million to more than 20 million. Regardless of the exact numbers, illegal immigrants clearly constitute a significant percentage of the eligible rental population.

The major argument against renting to illegal immigrants is that they are a significant credit risk for two reasons. First, you cannot properly screen credit because illegal immigrants do not have social security numbers. Second, collecting from illegal immigrants is problematic. Many commentators have argued that reliable alternative methods of credit screening that do not require a social security number have been developed. Both clients' and our experience has been to the contrary. Our experience is based on collecting money for our clients.

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SPLISH SPLASH IT'S TIME FOR POOL FUN CONTINUED FROM PAGE 1

safe experience for your residents, here are a few helpful tips for property owners and managers:

HAVE THE APPROPRIATE EQUIPMENT

- ✓ Fences or barriers –A successful pool barrier prevents a child from getting over, under or through it to gain access to the pool or spa.
- ✓ The pool or spa should be checked to ensure compliance with federal and local laws and regulations.
- ✓ Safety drain covers compliant with the Virginia Graeme Baker Pool & Spa Safety Act should be in place.
- ✓ Pool and spa pumps should be checked to ensure proper operation.
- ✓ Life-saving equipment such as life rings and reaching poles should be easily accessible.



ASK YOURSELF

- ✓ Are there water safety rules posted in a visible area for adults and children to review?
- ✓ If your property has no lifeguard, does your staff periodically monitor the pool or spa when it's in heavy use or during special events?
- ✓ Do you recommend to residents who use the pool to bring their cell phone in case of emergency?

TRAIN YOUR STAFF IN WATER SAFETY

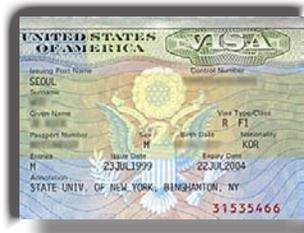
- ✓ Property staff members should be trained and certified in first aid and emergency response.
- ✓ Staff members should know how to perform CPR on children and adults. Training should be regularly updated.
- ✓ Understanding the basics of life-saving – for any staff member on site – can mean the difference between life and death during a pool emergency.

By practicing these and other water safety tips, property owners and managers can further assure that an afternoon at the pool or spa for residents is a fun experience and doesn't become a tragic event.



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collection experience is that any resident, illegal or not, who does not have a social security number is difficult, if not impossible to collect from. The three most critical pieces of information in collections are an accurate name (identity), social security number, and date of birth. Without a social security number, collection efforts are limited at best. Because they are not tied to a social security number, an applicant without a social security number can easily manufacture both a false identity and date of birth. Without a social security number, a resident is largely off the grid.



Similar to the issue of illegal immigrants, the issue of non-citizens has been decided. You must rent to qualified non-citizens; again these persons are foreign nationals with proper legal status. However, you may have legitimate non-discriminatory

business reasons for application policies that could impact non-citizens. For example, your policy could require all applicants to have a social security number. We often get asked whether it is both legal and desirable to have an application policy that requires social security numbers.

The social security number issue has not been determined by the courts. Because non-citizens won't have social security numbers, many commentators argue that requiring social security numbers adversely impacts non-citizens. Specifically, even though the policy appears to be neutral (all applicants are subject to the policy), the policy is discriminatory because it adversely impacts non-citizens since they don't have social security numbers. Non-citizens are a protected class (national origin) under fair housing laws.

On the other hand, strong arguments support the conclusion that requiring social security numbers is non-discriminatory. While probably shocking to some, your policies can discriminate against residents as long as the policy is supported by legitimate non-discriminatory business reasons. Discriminatory policies should survive legal challenge if there is a legitimate business reason for a policy, and the policy discriminates equally against all residents, not based on protected class status, but based on the legitimate business reason for the policy.

Rental criteria based on credit standing is the classic example of a legitimate non-discriminatory business policy. Residents are approved or disapproved (discriminated against) based on their credit standing, and not on their protected class status. Requiring social security numbers is similar in nature and is supported by strong legitimate non-discriminatory business reasons,

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The Eviction Educator
Providing You With The Eviction Tips of the Month

1. If your account is on an auto-file status and you send us a notice that has not yet expired, we must confirm the demand with you by phone or email after the 3-day period has passed. If we cannot reach you, this could cause a delay in filing your case. We are required to confirm with you after expiration of the notice that the resident has not paid or moved during the 3-day period. By law we must allow the resident the full 3 days to pay or vacate.



2. When preparing demands please print or type the information on your demands. Illegible information, especially if you are on auto-file, can result in errors that may affect your case. Accuracy on your demands is extremely important and providing the eviction team with clear, readable demands assists us in making sure that all of the information is correct. This simple attention to legibility in your demands eliminates the possibility for challenges to the accuracy of the names or addresses on your demands.

3. You cannot charge legal fees or sheriff fees to your resident until these charges are assessed to you.



IMPORTANT THS JULY DATES

July 4th	ALL COURTS CLOSED INDEPENDENCE DAY HOLIDAY THS CLOSED INDEPENDENCE DAY HOLIDAY
July 11th	Advanced Fair Housing THS Lower Conference Center 3600 S. Yosemite Street Denver, CO 8:30 a.m. - 11:30 a.m.
July 19th	Colorado Springs Client Lunch Ritz Grill - Elbo Room 15 S. Tejon Street Colorado Springs, CO 11:30 a.m. - 1:00 p.m.
July 20th	North Client Lunch Dave & Busters Westminster 11:30 a.m. - 1:00 p.m.

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i.e. the ability to properly screen and collect from residents. Further, non-citizens may obtain a social security number by applying for one with the Social Security Administration, whereas illegal immigrants cannot. While we can't predict court rulings, in our opinion requiring applicants to provide social security numbers is likely to withstand challenge, especially if you direct non-citizens to apply for a social security number and consider their application after they have obtained one.

You should evaluate your application policies as a whole to ensure that they are working as intended, and so that your onsite team is clear on how they are carried out. Evaluation means methodically verifying that various application scenarios generate the result you expect based on the application policy. Failure to evaluate all applicant scenarios may result in unanticipated and undesirable results. If you have no policy regarding legal status, an onsite leasing agent may not know what to do when a non-citizen applies, resulting in a costly fair housing discrimination complaint. Similarly, if your policy is to require social security numbers, your onsite team should know to inform applicants that they may apply for a number with the Social Security Administration. When an applicant is not informed that they may apply for a social security number, the applicant may conclude that you are refusing to rent because of their protected class status. If your policy is not to rent to illegal immigrants, then your policy should address both legal status and social security numbers. An illegal immigrant applicant can lie about their legal status, but won't or shouldn't be able to obtain a legal social security number. Of course, no policy can address applicants who are going to both lie about their legal status and provide fraudulent social security numbers.

