

# **FAIR HOUSING POLICIES THE BEST LINE OF DEFENSE**

The fair housing discrimination avalanche continues to gather momentum. Every year the number of housing discrimination complaints filed with the Colorado Civil Rights Division and HUD increases. This year is no exception. We have already defended more fair housing discrimination complaints this year than last. Adopting fair housing policies is the number one thing you can do to both avoid and defend fair housing complaints.

Fair Housing Policies (FHPs) both reduce fair housing complaints and bolster the defense of complaints. FHPs reduce complaints in several ways. Written FHPs demonstrate a landlord's strong commitment to fair housing. The landlord makes it clear to all employees that fair housing is serious business because there are serious consequences both for the company and for individuals for violating fair housing laws. Accordingly, your policies should state all employees are required to fully understand their responsibility regarding fair housing laws as a condition of employment, and that violation of fair housing policies can result in immediate termination.

Fair housing complaints frequently result from new hires not being trained, staff committing the landlord to bad fair housing positions, and the failure of onsite teams to communicate potential fair housing issues. A landlord's policies should address these three issues. New hires should undergo mandatory fair housing training within thirty days of being hired. An even stronger policy would be to require fair housing training on day one. Employees should also know that if at any time, they are uncertain about a fair housing issue, they should immediately contact their supervisor for direction. If they are uncertain, they should never take any fair housing-related action or commit either themselves or the landlord. With policies, employees will be trained to identify and report fair housing issues, and thus avoid complaints based on lack of action.

FHPs also bolster the defense of fair housing complaints. FHPs can be used to argue that the discrimination alleged by the tenant couldn't have happened. Specifically, landlord has policies to cover the situation, and people are trained not to handle the situation as alleged by tenant, therefore it is more likely that the situation was handled correctly and not discriminatorily as tenant contends. FHPs also give landlord a certain amount of instant credibility with the Colorado Civil Rights Division and HUD because the adoption of FHPs shows your commitment to fair housing.

When it comes to fair housing consistency is your friend, and discretion is your enemy. Written FHPs result in greater consistency, and can be used to argue that you consistently take the same non-discriminatory action in response to a given fair housing situation and there is no discretion involved. When a tenant files a fair housing discrimination complaint, the tenant always alleges that the landlord took action because of the tenant's protected class status, i.e. because of race, because of national origin, because of disability, etc.

FHPs are a devastating rebuttal to these contentions. For example, a tenant may allege that he was non-renewed because of his race. If your FHPs address this issue, you can state that

no it wasn't because of his race, it was for the three noise complaints against the tenant, that you non-renew all tenants who have 2 or more noise complaints, this is your policy, it is a written policy, all of your teams are trained to enforce it, and you have consistently enforced this policy for five years.

In this regard, FHPs strongly demonstrate your lack of discriminatory intent or motive. There is no discretion because situations are handled based upon the policies and not based upon an onsite team member's discretion. The fact that a policy has been in place for a long time and consistently followed also demonstrates lack of discriminatory intent. In short, your handling of the tenant's situation can't be discriminatory (based on the tenant's protected class status) because your actions are based on a policy that was adopted years before the tenant came onto the scene.

While we can't conduct a seminar in fair housing policies in a single newsletter, we can touch upon some key issues that your fair housing policies should address. Policies should set forth the federal, state, and local protected classes and that it is against the law to discriminate against any individual based on their protected class status.

FHPs should also establish a fair housing code of ethics for your company. Regardless of protected class status, you should always treat all applicants and residents equally, professionally, and with respect. Fair housing is providing good resident and prospect service. Residents and prospects should always be treated with the high level of service that you would expect from those serving you. There is no aspect of our relationship with an applicant or tenant that is not subject to Fair Housing laws.

FHPs should make it clear that that fair housing laws apply to everyone. There are no exceptions. Everyone is responsible at all times for complying with all fair housing laws. This includes managers, assistant managers, leasing personnel, maintenance techs, regional managers, officers, and owners. Your policies should also clearly set forth fair housing training and continuing education requirements.

Policies should require that all communities display an 11" x 14" Fair Housing poster in public view in the leasing office. Your policies may also require, in limited English proficiency markets, for the poster to be displayed in alternative languages. For example, you may want to display a Spanish version of the Fair Housing poster. You should also display the company's occupancy standards in the leasing office in public view.

Similarly, all written community and corporate advertising should display the Equal Housing Opportunity Logo. Advertising should never suggest or imply preferences for or limitations against a protected class. Advertising is not limited to planned written advertising campaigns. Because advertising includes any written or verbal communications made to any prospective resident or current resident, all advertising policies apply to any written or verbal communications as well.

**Advertising policies and all Fair Housing policies specifically apply to the use of e-mail.**

Onsite teams are not allowed to adopt any policy or publish any statement that would affect a protected class without advance written company approval. This prevents the knee jerk reaction to onsite issues that could result in fair housing discrimination complaints. For example, many communities have issues with children running amok. Everyone knows or should know that you can't adopt a policy that prevents children from playing or requiring constant supervision. However, we have seen it time and time again. This policy is discriminatory against families with children (familial status discrimination). Further, it doesn't matter if it is not the "company policy", but rather was sent out in a community letter because a letter is the "publishing" of a discriminatory statement.

FHPs should address the application process in detail. This means applications, application process, documentation of the process, and touring policies. Touring policies should address identification requirements, safety issues, times, and inclement weather policies.

Policies should also address resident communications in detail, especially documentation requirements. Lease breach and lease non-compliance issues should be spelled out. Does the violating resident get a verbal warning, a warning letter, or get served with a Demand for Compliance or Possession? When we assist clients with lease compliance issues, we always ask, "what's your policy". We can't tell you how many times we have asked this question, and the answer is "I don't know". This is a recipe for disaster. Without a lease violation policy, onsite teams decide (use discretion) on what action to take. Obviously, this can and does lead to drastically inconsistent actions. If the person who was treated inconsistently happens to be a member of a protected class, the chances of a discrimination complaint just increased significantly.

FHPs should cover non-renewals. Onsite teams should not be deciding whether to renew or not to renew. Your criteria for non-renewal should be spelled out in detail. Again, there is or should not be any discretion involved. Based upon your renewal criteria, a tenant either meets it or doesn't. The policy should require the onsite team to discuss non-renewals on a monthly basis, and decisions to not renew should be documented at the time they are made, even if the resident won't be notified for months in some cases. A well thought out renewal (or non-renewal) policy is the strongest defense against retaliation allegations and charges of discriminatory motive. Specifically, when the tenant alleges discrimination based on not being renewed, you are in the strongest position possible when you can demonstrate that the policy has been in place for years, and that everyone in the tenant's situation was non-renewed.

Maintenance should always be carried out fairly and equally. How it is carried out should be spelled out. For example, your policy is to prioritize routine maintenance requests on a first-in first-out basis. However, maintenance emergencies always are given priority. What constitutes an emergency should be spelled out?

Obviously, no FHP would be complete without addressing reasonable accommodations and reasonable modifications in depth. Disability is the number one ground for fair housing complaints by a wide margin. Nearly sixty percent of fair housing complaints are based in whole or in part on disability.

FHPs have to state in detail how disability-related requests are to be handled. No onsite team member should ever deny a request until all applicable procedures have been followed, and the request has been fully evaluated. We strongly recommend making disability-related requests at the regional manager level. Thus, you should strongly consider whether an onsite team member has the authority to deny a disability request.

FHPs should educate your teams that a resident's request doesn't have to take any particular form. In making a request for either a reasonable modification or accommodation, a resident may not use the expressions "reasonable modification", or "reasonable accommodation". If a resident has not directly made a request, you should always err on the side of caution, and treat the resident's communication as a request. If the resident is obviously disabled, you should always consider all requests to be a request for either a reasonable modification or accommodation.

All team members should know that reasonable accommodation or modification requests don't need to be in writing. When a resident makes a request of any team member, you should always immediately offer to assist the resident in completing a Reasonable Modification or Reasonable Accommodation form. Your policies should require that everyone be trained in the use of your disability request forms. THS offers an advanced fair housing class on how to handle disability requests. Your policy should make attending it mandatory. We highly recommend that you use THS's disability request form set, which includes both forms and letters. In the near future, all Firm clients will have access to our disability request form generator. If you are not going to use THS's form set, we strongly recommend that you have us approve what you are using.

Your FHPs should address the handling of fair housing discrimination complaints. Frequently, we receive requests from clients to defend a fair housing complaint well after the client received it. Fair housing complaints should be immediately forwarded to a supervisor. If you receive a fair housing complaint, do not communicate with any party, attorney, or administrative agency under any circumstances, even if you only seek further or clarifying information about the lawsuit, or discrimination charge. All fair housing complaints, are always handled by Management Company' corporate office, and only after proper legal consultation.

***For more information or to discuss FHPs, please contact us.***