Landlords and Fair Housing Act Compliance, by Jennifer Sherven, Esq.

By Jennifer Sherven, Partner, Kaufman Dolowich

The federal Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities.
It covers most housing with limited exceptions and prohibits discrimination in housing because of race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status and disability.

The U.S. Department of Housing and Urban Development (HUD) is responsible for oversight and has provided guidance that addresses discrimination based on an individual's criminal history. Landlords and property managers must be careful they do not run afoul of the law and discriminate in their resident selection process. People cannot be assessed or treated differently based on the applicant or resident being a member of a protected class.

Examples of Housing Discrimination

Housing discrimination can take many forms, but some examples can include sexual harassment, race or national origin discrimination, or disability discrimination including failure to provide reasonable accommodations or reasonable modifications such as grab bars, handicapped parking, denying a service animal or emotional support animal due to a no pet policy, and refusing to rent to families with children.

What is Prohibited in Sale and Rental Housing

According to HUD, some examples of actions that that would be illegal to take because of race, color, religion, sex, disability, familial status, or national origin include:

- Refusing to rent or sell housing;
- Setting different terms, conditions or privileges for sale or rental of a dwelling;
- Imposing different sale prices or rental charges for the rental of a dwelling;
- Limiting privileges, services, or facilities of a dwelling;
- Harassing a person; and,
- Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures, or other requirements.

Accessibility in Design & Construction

Accessibility can be a major legal hot button for landlords and property managers. In order to be in compliance with the Fair Housing Act, there are seven basic design and construction requirements that must be met in new construction. These are:

1. An accessible building entrance on an accessible route;
2. Accessible public and common use areas;
3. Usable doors by a person in a wheelchair;
4. Accessible route into and through the dwelling unit;
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
6. Reinforced walls in bathrooms for later installation of grab bars; and
7. Usable kitchens and bathrooms.

Preventative Steps to Take

- Familiarize yourself with applicable federal, local state, and local fair housing laws;
- Implement policies and procedures compliant with applicable federal, state, and local fair housing laws;
- Train staff on policies and procedures and updates to fair housing laws;
- Be consistent in the manner in which you interact with residents and prospective residents;
- Avoid questions and comments that may be interpreted as discriminatory;
- Document interactions with residents and potential residents, including when requests for accommodations are made; and
- Have a documented method to screen and accept applicants.

Kaufman Dolowich Can Help: Kaufman Dolowich employment law attorneys can assist with FHA compliance including:

- Defending landlords and property managers against housing discrimination lawsuits.
- Responding to HUD, state, and local agency investigations.
- Assessing clients' policies and practices to ensure FHA compliance to minimize risk of complaints.
- Training staff concerning applicable federal, state, and local fair housing laws.
- Assisting with accommodation requests.