Hanover Miscellaneous Professional Advantage

Property Managers – are you *unknowingly* committing discriminatory housing practices???

Discrimination in the rental of housing is illegal. It is prohibited both under federal law – the Fair Housing Act and other federal laws (Title VI of Civil Rights Act and Americans with Disabilities Act) that amplify the Fair Housing Act – and under state law by virtue of statutes governing housing that incorporate federal law and amplifies its reach. But what does it mean to "discriminate"?

The Fair Housing Act does not define "discriminate" or "discrimination" but refers instead to "discriminatory housing practices". These are unlawful acts which involve the refusal, denial, preference or limitations of access to housing, based on an applicant's inclusion in a protected class. Discriminatory housing practices also include acts which coerce, intimidate, threaten or interfere with persons protected. This broad sweep of prohibitions means that conduct may be deemed discriminatory, even if at first blush it does not appear so.

Example 1

A (who is from country "Q") is friends with **B** (who is from country "V"). **A** goes to Blue Apartments to request information on available units. **C** (the property manager) says Blue may have two units open up at end of month and provides **A** with rental terms and an application. Ten minutes later, **B** goes to Blue Apartments to request information on available units. **D** (the receptionist) apologizes but tells **B** there are currently no available units and to try again in a couple of weeks. **B** tells **A** that Blue Apartments said they had nothing available and **A** complains. Although it may not be proven to be intentional, Blue Apartments may have to deal with an allegation of discrimination against **B** for denial of access based on race/national origin.

Example 2

E (who is of ethnic group "Z") goes to Red Condos to request information on available units. **F** (who is also of ethnic group "Z") says there are units available but based on the "way the area is going" **E** may be more interested in **F**'s Green Condos a couple of miles north.

Example 3

G has two small children ages 4 and 7. **G** goes to Gray Townhomes as recommended by co-worker **H**, who is a current tenant and can receive a rent credit if they make a successful referral. **G** requests an application and **J** (the property manager) says, "just to let you know, the property does not have a play area" and "Yellow Townhomes is a more popular option for families with young children". **G** relays this conversation back to **H** and **H** informs **G** that at the last HOA meeting some residents complained about noise from children in the common areas.

Both Examples 2 and 3 may be looked at as "steering" efforts which could be considered discriminatory on the basis of limiting access, interference or possibly coercion.

The common thread in all three of these examples is that the property manager/staff has somehow inhibited an otherwise qualified prospective tenant's power to choose where they want to live. This intrusion becomes problematic when it can be traced to characteristics that federal or state law says should not have any bearing on the enjoyment of housing (as opposed to business reasons such as ability to afford rental payments). Let's look at one last example.

Example 4

K is an LBGTQ resident of Purple Residences who lives alone. **K** calls **L** (the property manager) and states that there is no hot water. **L** tells **M** (the maintenance on duty) to go check it out. **M**'s shift ends one hour later. Three hours after the initial call, **K** calls **L** and asks if anyone is going to fix the hot water. When **L** asks **M** why **K**'s unit was not checked out, **M** explains that they moved some other jobs up to avoid going to **K**'s unit alone as **M** was "uncomfortable with **K**'s lifestyle". If Purple Residences is in a state that extends fair housing protections to individuals based on sexual orientation, they may have to answer a complaint alleging discrimination.

> *NOTE: The original draft of this article was done prior to the U.S. Supreme Court decision,* Bostock v. Clayton County*, which held Title VII of the Civil Rights Act protects employees from discrimination based on sexual orientation or gender identity. The question of whether an employee may resist the type of situation described in Example 4 based on religious beliefs (for example,* Masterpiece Cakeshop v. Colorado Civil Rights Commission*) is a complex legal question and beyond the scope of this article.*

Conclusion

Property managers should recognize that single acts or events may constitute discrimination. Some state enforcement agencies even go as far as to enlist the aid of testers – teams of individuals from multiple backgrounds with no real intent to rent, but who visit properties, compare responses, and report back on varying or disparate treatment based on membership in a protected class – to determine if a property engages in discriminatory housing practices. Although a pattern of behavior may be compelling, "practice" under the Fair Housing Act does not statutorily require multiple bad acts to be considered discriminatory.

Today discrimination as a practice is not solely limited to blatant acts such as a sign in the window stating "*NO (fill in the blank) ALLOWED*". The Department of Housing and Urban Development lists other examples of discrimination that may be found here. Property managers should be aware that statements or actions by them or their staff not intended to discriminate may nonetheless be characterized as a discriminatory housing practice. A key takeaway is to avoid those seemingly innocuous or "helpful" comments or acts which may be interpreted as an inappropriate interference with an individual's power to choose.

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