



Leasing Agents, Property Managers, and Discrimination Claims

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Discrimination claims can take various forms and are especially prevalent in the rental housing industry. This article provides a practical framework to assist leasing agents and property managers in understanding the nature of these claims, common scenarios in which they arise, and actions you can take to protect yourself from discrimination claims.

The Nature of Discrimination Claims

Discrimination claims related to rental housing are governed primarily by the federal Fair Housing Act (FHA), as well as other state and local anti-discrimination laws and ordinances. The FHA prohibits landlords, leasing agents, and property managers from employing discriminatory acts, practices, or policies directed at tenants in one or more protected classes/groups afforded protection under the law. These classes include race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, and disability. While the FHA does not include age or source of income as a protected class, various state and local laws do include these classes.

Examples of Discrimination Claims

The following are examples of discrimination claims related to rental properties. This list is not exhaustive but illustrates some common bases for such claims:



- Refusing to rent to a person because of their race, color, religion, national origin, sex, familial status, or disability.
- Harassing tenants because of their race, color, religion, national origin, sex, familial status, or disability.
- Charging higher fees and/or rent to persons with children (familial status).
- Refusing a reasonable request for a service animal.
- Refusing to rent to someone based on their disability or refusing to make reasonable accommodations for disabled persons.
- Misrepresenting the availability of housing based on discriminatory reasons.
- Refusing to rent to a person because they are a refugee or immigrant.
- Applying different lease terms or conditions to different tenants.
- Steering tenants to properties in other neighborhoods.
- Inconsistently waiving security deposit requirements.
- Refusing to rent to tenants receiving Housing Choice Vouchers (Section 8).

Proving a Housing Discrimination Claim

Generally, a tenant has the burden of proving discriminatory conduct, and there are multiple ways to prove discrimination. The most effective proof is direct evidence, such as actual discriminatory statements (verbal or written), advertising materials, or policies. However, discrimination claims can also be proven using circumstantial or indirect evidence, which suggests a fact by inference and is often used when direct evidence does not exist or is unavailable. For example, a tenant may try to prove discrimination by contrasting how one tenant, who is in a protected class or group, is treated versus other applicants who are not within that protected class or group. If a property remains unrented



for some time after a tenant was rejected, a tenant can use that fact as another piece of circumstantial evidence. A tenant may also look into the owner's, agent's, or property manager's prior history to establish a pattern of discriminatory conduct. Finally, tenants may engage volunteer or paid fair housing "testers" to establish circumstantial evidence. Testers are individuals trained in fair housing laws who pose as potential tenants without any actual intention of renting a property. Their goal is to gather information and document potentially discriminatory conduct.

Often, a tenant will initiate their claim at the administrative level by filing a complaint with the U.S. Department of Housing and Urban Development or an equivalent agency at the state or local level. However, this is not a requirement and does not always occur. Sometimes, the tenant will file a civil complaint in the federal or state court of law having jurisdiction over the matter.

Protecting Yourself from Discrimination Claims

Facing a discrimination claim can be taxing both professionally and personally, but there are steps you can take to reduce and hopefully eliminate your exposure.

Marketing Materials

First, care must be taken in how rental properties are marketed. Be as neutral as possible in describing the property and focus on its objective features (amenities, location, etc.). Do not include a description of the "type" of tenant(s) (e.g., families, bachelors, "empty nesters") best suited for a specific rental property. Avoid language that could be interpreted as discriminatory to a protected class or shows preference to a specific demographic.



Screening of Tenants

Next, implement and adhere to a policy for properly screening potential tenants. Use the same clear and consistent criteria to screen all candidates and avoid forming subjective opinions about prospective tenants or allowing such opinions to influence the screening process. Screen prospective tenants using only objective factors, such as amount of income (not source), credit score, references, and rental history. Do not eliminate candidates who meet your objective criteria. Provide all qualified candidates to the property owner and allow them to make the final decision.

For brokers, ensure that all your agents are trained in the requirements of the FHA and related local laws. Establish “best practices” for your staff to follow in marketing properties, screening tenants, and communicating with landlords.

Communications with Owners/Landlords

Take steps to prevent a landlord/client’s discriminatory acts or practices from influencing your screening practices, as doing so could create liability for you and your brokerage. While the ultimate decision about a tenant usually rests with the property owner, you should address and caution them with respect to any potentially discriminatory acts or practices. Encourage property owners to familiarize themselves with the FHA and its counterparts. Remember, acquiescing to a property owner’s wrongful acts could also subject you to exposure in a discrimination claim. Therefore, it is important not to accommodate discriminatory requests or directives from property owners.



Reasonable Accommodations

Consider accessibility issues with respect to the properties you market, and where possible, take reasonable steps to proactively make the property accessible. If a tenant with a disability meets all criteria for renting a property, the fact that the property lacks reasonable accommodations is not a proper basis to reject that tenant.

It is also important to understand your rights and obligations with respect to service animals. Under the FHA, housing providers must make reasonable accommodations for tenants with disabilities who request to keep a service animal in the property. Service animals are not considered pets, so the accommodation requirement applies even if the property owner employs a “no pets” policy. Likewise, a tenant cannot be made to pay additional rent, deposits, or fees based on the fact that they own a service animal. Further, service animals are not limited to a specific species of animal, nor must they be trained to perform specific tasks. Emotional support animals are therefore also included under the FHA’s protections.

There are, however, some limitations on the obligations to accommodate service animals. You have the right to request proof of the tenant’s disability as well as documentation showing that the animal serves a function related to the tenant’s disability. Additionally, service animals can sometimes be properly barred if they pose a danger to others or are overly disruptive, if their owner is unable or unwilling to clean up after them, or if it can be proven that their habitation at the property would cause an undue financial or administrative burden.



Conclusion

While this article is not intended to be an exhaustive discussion of the nuances of the FHA and similar laws governing rental housing discrimination, it provides a useful overview of the nature of these claims, the forms they take, and steps you can take to protect yourself and your business. It also serves as a reminder that it is incumbent upon brokers, agents, and property managers to become and remain familiar with all federal fair housing laws, as well as any applicable state and local laws in their jurisdictions.

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