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Attention Property Managers and Landlords: Are Hoarders a new protected class under Fair Housing?



April is REALTOR® Fair Housing Month where we celebrate the 1968 Federal Fair Housing Act which prohibits discrimination on the basis of race, color, national origin, religion, sex, familial status, or handicap in all property transactions. Indiana's fair housing law does not include additional protected classes other than those stated above. On the other hand, the REALTOR® Code of Ethics imposes a higher duty in Article 10 by adding sexual orientation and gender identity to the federally protected classes.

Today's discussion will focus on the protected class of *handicap* with a newly expanded definition that may trigger tenant rights under the Fair Housing Act, a recent Fair Housing Advertising case, and Fair Housing discrimination with Service Animals.

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

Standard of Practice 10-3

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14)

Hoarding and Fair Housing: Is your Tenant a "Hoarder"?



Did you know that hoarding is the third leading cause of eviction? Compulsive hoarding can become so severe that a home becomes unsafe and tenancy is threatened. A compulsive hoarder has been defined as someone who acquires and fails to discard a large number of possessions that appear to be useless or of limited value. Homes are so cluttered that tenants cannot live in them as intended; exits become blocked, areas are hard to move around in, and clutter may become a fire hazard. Hoarding is now recognized as an authentic mental disease.

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and **handicap (disability)**. Over the years, the definition of handicap has been broadened significantly so as to now encompass the mental disorder of compulsive hoarding. As a result, a hoarder may meet the definition of "disability" pursuant to Fair Housing Law.

What does this mean to landlords and property managers? This creates a legal obligation in the owner/landlord and activates the tenant's right to assistance under fair housing law. The law requires attempts to reasonably accommodate the disability before evicting this particular resident.

Reasonable accommodations may include providing clean up time, providing references to clean up services, and maybe contacting mental health authorities.

Needless to say, this new protected class may significantly impact our members who are property managers or landlords. For further information from the Virginia Fair Housing Office on this topic click [here](#).

focus on: Legal Affairs *(continued)*

Advertising and Fair Housing

Is an advertisement promoting a rental unit as a “great bachelor pad” in violation of the Federal Fair Housing Act? The Fair Housing Act states it is illegal to “make, print, or publish, or cause to be made, printed, or published any advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.” To decide if there is an advertisement that violates the fair housing act, the ordinary reader test should be used. This test focuses on what an advertisement would say to an ordinary reader as to whether a particular group is preferred for housing.

In a recent case, a property management firm placed an advertisement for a rental unit on Craigslist which read **“Great Bachelor Pad! Our one bedroom apartments are a great bachelor pad for any single man looking to hook up...”**

Although the ad appears to be facially discriminatory to both women and families, the lower court found it acceptable as the ad suggested to the renter that the property was suitable for him/her and did not violate the fair housing law. As you can imagine, the Housing Center appealed to the Sixth Circuit Court of Appeals which has since reversed the lower court and ordered a new trial as the jury instruction given did not properly describe the ordinary reader standard. Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp., 2013 WL 3968768 (6th Cir. Aug. 5, 2013). Stay tuned for the final outcome of this lawsuit.

Service Animals and Fair Housing

A reasonable request for accommodation to a landlord for a service animal must meet the following:

1. A person must have a disability. The definition of disability is one with a physical or mental impairment limiting one or more major life activities.

AND

2. The disability must be related to the need for the assistive animal.



Legal liability will come into play if the above conditions are met and documented by a health care professional yet emotional support animals are forbidden due to a “No Pet” policy. A denial of the accommodation is legal if it is based on an undue financial burden or risk of harm to others.

Remember, it is the housing provider not the real estate professional that should decide to grant or deny the request for accommodation. Click [here](#) for my past article on kids and service animals.



Celebrate 46 Years of Fair Housing

Please contact the IAR Legal Hotline if you have any questions or concerns regarding the above. The IAR Legal Hotline is available to principal, managing brokers and designated agents from 9am-5pm, Monday-Friday at 1-800-444-5472.