ASSISTED HOUSING MANAGEMENT INSIDER®

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APRIL 2013

INSIDE THIS ISSUE

HUD Launches First Fair Housing App

HUD recently unveiled the first housing discrimination mobile application for the iPhone and iPad. Developed by HUD's Office of Fair Housing and Equal Opportunity (FHEO) and Hewlett Packard (HP), HUD's new fair housing app was unveiled during the 3rd Annual MobileGov Summit in Washington, D.C., a conference which brings government and industry IT leaders together to discuss the latest trends and best practices for creating the next generation mobile government work force.

The app uses the latest technology to provide the public with a quick and easy way to learn about their housing rights and to file housing discrimination complaints, and inform the housing industry about its responsibilities under the Fair Housing Act.

"Having this first fair housing mobile

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FEATURE

How to Keep Maintenance Staff from Triggering Fair Housing Claims

Some of the most important, and often overlooked, sources of fair housing complaints arise from maintenance operations. Sites may face allegations of discriminatory maintenance policies or procedures—for example, that requests from white members are routinely pushed ahead of those from minority members. Or complaints may stem from accusations of sexual harassment or discrimination by a single individual—a member of your maintenance staff or an outside contractor. And increasingly, maintenance operations are implicated in requests for reasonable accommodations or modifications by individuals with disabilities—for example, requests to alter the interior of a unit or common areas to make it accessible for a resident in a wheelchair or to refrain from using pesticides from a resident with disabling chemical sensitivities.

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COMPLIANCE

Obama Signs Expanded VAWA Back into Law

Initially passed in 1994, the Violence Against Women Act (VAWA) created the first U.S. federal legislation acknowledging domestic violence and sexual assault as crimes, and provided federal resources to encourage community-coordinated responses to combating violence. VAWA was reauthorized by Congress in 2000, and again in December 2005. The latest 2012 renewal met with resistance, but 500 days after VAWA had expired, the House voted to reauthorize the bill and President Obama signed it into law on March 7, 2013.

Changes in VAWA Renewal

VAWA 2013 reauthorized and improved upon lifesaving services for all victims of domestic violence, sexual assault, dating violence, and stalking, and expanded the law's scope to include Native American women, immigrants, LGBT victims, college students and youth, and public housing residents.

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Assisted Housing Management Insider [ISSN 1072-009X (print), 1938-310X (online)] is published by Vendome Group, LLC, 6 East 32nd Street, New York, NY 10016.

Volume 20, Issue 3

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We'll explore the many ways in which fair housing claims can arise from maintenance operations, and offer five strategies to help ward off problems at your site.

FHA & HUD's Disparate Impact Rule

The Fair Housing Act (FHA) prohibits housing discrimination based on race, color, national origin, religion, sex, disability, or familial status. In addition, last year HUD issued a final rule that took effect on March 5, 2012, that bans discrimination based on sexual orientation, gender identity, or marital status at HUD-assisted housing or at housing whose financing is insured by HUD.

Among other things, the FHA outlaws discrimination against anyone in the provision of services or facilities in connection with the rental of a dwelling because of a protected characteristic. In particular, it's unlawful to fail or delay maintenance or repairs of rental dwellings because of race, color, religion, sex, familial status, national origin, or disability, according to HUD regulations. Consequently, owners may be directly liable for adopting policies or practices that discriminate in the level of maintenance services provided to residents based on a protected characteristic.

In addition, on Feb. 8, 2013, HUD issued a rule clarifying the circumstances under which certain housing practices may violate the FHA as a result of disparate impact, practices that have a discriminatory effect even where there may not be evidence of discriminatory intent.

With respect to maintenance operations, a site could face a disparate impact claim based on a policy to focus maintenance efforts on certain areas or properties, to the exclusion of others, if it has a discriminatory effect based on the protected characteristics of the members living there. Such a claim could arise, for example, if the site devotes all its attention to maintaining market-rate units or buildings while ignoring basic maintenance chores in lower-rent units or buildings. If most of the residents of the luxury units are white—or childless—but most of the residents in the low-rent units are minorities or families with children, then it could lead to a disparate impact claim.

FOLLOW FIVE RULES

To help ward off potential discrimination complaints at your site, abide by the following five rules.

Rule #1: Provide All Employees with Basic Fair Housing Training

Train maintenance and service workers on how to respond to comments or questions that touch on fair housing matters by anyone whom they encounter in the course of their duties. In general, they should understand why they shouldn't answer any questions by visi-

tors about the racial makeup or other protected characteristics of the people living in the site. It could be part of a fair housing test to ferret out unlawful discrimination.

Nor should employees offer personal opinions or indicate agreement with a resident who complains about neighbors, such as displeasure with cooking odors or noisy children. Train employees to keep personal feelings to themselves and to refer the resident to contact the management with any such questions, comments, or complaints. In addition, instruct employees to report such incidents themselves, so the site can document what transpired—and how the employee handled the situation—to ward off later accusations that the employee acted inappropriately.

Moreover, train employees to report any suspicious activity or anything else out of the ordinary to the office. Maintenance workers, housekeeping staff, and other employees are in a unique position to act as the eyes and ears of the management staff to alert them to potential problems, such as disputes among neighbors, complaints about domestic violence, or suspected criminal activity on the premises. Such reports could give you an early warning sign on the potential problem brewing among neighbors, allowing you to head off any potential fair housing problems.

EDITOR'S NOTE: For lessons and quizzes you can use to train your staff on all aspects of complying with the FHA at multifamily housing sites, visit the *Insider*'s sister publication, *Fair Housing Coach,* at *www.FairHousingCoach.com.*

Rule #2: Adopt Uniform Policies for Handling Maintenance and Repair Requests

In general, it's a good idea to handle maintenance and repair requests on a first-come, first-served basis—unless the request involves an emergency.

Develop a written policy that defines what constitutes an emergency with specific examples of the types of problems that would justify an immediate response. Examples include complaints about smoke, overflowing toilets, and electrical problems. The policy should also outline the types of problems, such as a jammed garbage disposal or stuck closet door, which wouldn't be considered emergencies. While it may be difficult to foresee all types of problems that may arise, the more detailed the list, the better.

The policy should detail the process for handling maintenance requests. For example, the staff member taking maintenance calls or emails should document the time and date of the request, details about the problem, and the name and contact information for the resident making the request. These basic procedures ensure that maintenance services are provided consistently based on reasonable, objective criteria, as opposed to discriminatory factors such as the race or other protected characteristic of the resident making the request.

Also, a log showing the date, time, and way that maintenance and repair requests are handled can alert managers to the early warning signs of a potential fair housing problem. A review of the records may reveal a previously undetected problem—for example, that a particular maintenance worker is ignoring the standard policy by doing favors for white residents to bump their maintenance requests ahead of requests from African-American residents. Periodic review of the records may enable the manager to head off a formal fair housing complaint by addressing the problem immediately with the employee via the community's disciplinary policy.

Rule #3: Take Reasonable Accommodation Requests Seriously

Emergencies aren't the only times that justify making an exception to the first-come, first-served policy for handling maintenance and repair requests. In some cases, a maintenance or repair request may require immediate attention if it qualifies as a reasonable accommodation for an individual with a disability.

Fair housing law requires housing providers to make exceptions to rules, policies, practices, or services as a reasonable accommodation when necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. The rule applies both inside the unit and in common and public-use areas. An exception to the first-come, first-served rule to provide immediate repair or maintenance service could qualify as a reasonable accommodation for an individual with a disability under certain circumstances.

Moreover, federal enforcement officials stress that sites must respond promptly to reasonable accommodation requests. Failure to respond within a reasonable period is considered a denial of the request, setting the stage for a formal complaint or lawsuit.

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Rule #4: Take Steps to Prevent Sexual Harassment

Owners have a duty to ensure that their employees, agents, or contractors don't engage in sexual harassment, according to HUD. A property owner or manager may be held liable if he knew or should have known that an employee, agent, or contractor is sexually harassing applicants or members, but failed in her duty to stop it.

Sites have to take proactive measures to ban sexual harassment, which is considered a form of discrimination based on sex. The first step is to develop a site-wide policy banning sex discrimination. The policy should fully explain the two types of sexual harassment:

- *Quid pro quo* sexual harassment—in which an employee or contractor conditions access to housing or related services on a victim's submission to sexual conduct; and
- Hostile environment sexual harassment—in which a member is subjected to sexual behavior of such severity and pervasiveness that it results in an environment that's intimidating, hostile, or offensive.

Make it clear that the policy applies to all employees, whatever their position, as well as to outside contractors or vendors. The policy should spell out that violations are grounds for disciplinary actions against employees—and termination of services by outside contractors.

Adopting the policy is a good first step, but sites must go further to prevent liability for sexual harassment by employees or contractors. According to HUD, owners and managers are subject to liability for sexual harassment by employees or agents—regardless of whether they knew about it or were negligent in failing to prevent it from occurring. For example, HUD says that if a manager authorizes a maintenance worker to enter a member's home to make a repair, and the maintenance worker sexually harasses the resident, then the management company would be legally responsible for the discriminatory actions of the maintenance worker.

To reduce the risk of improper conduct—or false accusations of improper conduct—by your maintenance staff or outside contractors, maintain and follow written policies and procedures regarding when maintenance and repair work is performed—particularly inside occupied units. Among other things, guidelines for maintenance workers could include:

- Have proper identification, such as a work shirt or badge, while on the job;
- Enter units only for scheduled repairs or maintenance or in case of emergency;
- Give reasonable notice before repair or maintenance visits;
- If the resident is home, don't enter the unit unless the resident lets you in;
- Except in case of emergency, do not enter a unit if any child under the age of 18 is home without the presence of a parent or other adult;
- Treat all residents the same;
- Don't fraternize with residents;
- Respect residents' privacy; and
- Don't allow yourself to be in a compromising position.

Rule #5: Keep Good Records

Good record keeping is essential to help prevent—and defend against—any fair housing complaints with respect to how your community handles maintenance and repair requests.

Make sure that that you maintain written policies and procedures for handling maintenance requests. Keep records about each request for maintenance and service.

Moreover, fully document any complaints about maintenance services and what the site did to resolve the problem. This is particularly important if there's any suggestion that a complaint about maintenance services seems related to a fair housing matter. Examples include a member who complains that she received inadequate service because of her race or complains about inappropriate sexual comments or conduct by members of your maintenance or landscaping crew.

Since disability discrimination is the leading source of fair housing complaints, it's essential to keep good records about any requests for reasonable modifications and maintenance-related requests for reasonable accommodations. Fully document your efforts to resolve any questions about request, such as whether the resident (or person associated with him) qualifies as an individual with a disability under the FHA and whether there's a disability-related need for the requested accommodation or modification. ♦

IN THE NEWS

➤ HUD Announces Employee Furloughs Due to Sequestration

In a memo to staff sent on Feb. 28, Deputy HUD Secretary Maurice Jones said "the impact of sequestration on HUD programs will be dramatic." The Secretary has testified that over 200,000 people will lose their HUD-funded housing assistance and that HUD must also reduce its salaries and expenses by $66.6 million.

The memo also announced that HUD will furlough all 9,000 of its employees for seven days between May and August in a bid to reduce costs due to sequestration. This will effectively result in a shutdown of the department on those days. HUD doesn't plan to start implementing furloughs before May. The proposed furlough dates are May 10 and 24; June 14; July 5 and 22; and Aug. 16 and 30.

In addition to furloughs, HUD is also reviewing spending on contracts, equipment, travel, and training. When sequestration went into effect March 1, the department imposed an agency-wide hiring freeze, according the memo.

➤ Report Assesses HUD's Fair Housing Enforcement

The Lawyers' Committee for Civil Rights Under Law, The National Fair Housing Alliance, and Poverty & Race Research Action Council recently issued a report entitled "Affirmatively Furthering Fair Housing at HUD: A First Term Report Card Part II" that looks at HUD's record of "affirmatively furthering fair housing" (AFFH) as mandated in Section 3608 of the Fair Housing Act (FHA) during the first term of the Obama administration.

In Section 3608 of the FHA, HUD and its grantees are required to avoid the perpetuation of segregation, and to take affirmative steps to promote racial integration. According to the report, until the Obama administration, HUD historically has had a very limited enforcement program for ensuring state and local compliance with the AFFH obligation. A 2009–2010 Government Accountability Office (GAO) investigation of compliance by state and local governments with the AFFH requirement found both compliance by the recipients of federal funding and enforcement of AFFH requirements by HUD to be lacking.

Since then, however, the HUD Office of Fair Housing and Equal Opportunity has been re-energized. During the first term of the Obama administration, there has been significant enforcement of the AFFH requirement by HUD: (1) it has participated in and sought increased AFFH enforcement in several federal court cases involving AFFH issues; (2) it has processed and investigated private fair housing complaints where the allegations included violations of the AFFH requirement; (3) it has significantly increased its review of local Analyses of Impediments to Fair Housing (AIs), and some have been rejected; and (4) it has undertaken several compliance reviews concerning the AFFH requirement leading to voluntary compliance agreements addressing AFFH requirements.

The report also commended HUD's recent adoption of the long-delayed "disparate impact" rule. The new rule adopts a standard for HUD review of administrative complaints that has been adopted by every federal appellate court to rule on the issue over the past 30 years. According to the rule, a civil rights plaintiff is permitted to challenge a facially "neutral" policy or practice that has a clear discriminatory effect on a protected class of persons—like African Americans and other racial/ethnic minorities, or people with disabilities. Under the disparate impact standard, policies that have a discriminatory effect can be examined by the court to ensure that they serve a legitimate purpose and that no effective, less-discriminatory means of achieving that purpose is available.

While the "disparate impact" rule isn't technically an implementation of the AFFH requirement, the report states that it's a crucial tool for HUD enforcement of the AFFH requirement. This is because the disparate impact standard is frequently invoked to challenge state and local government policy or action that "actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin."

In many cases a private disparate impact claim in federal court against a local grantee is the step that triggers HUD AFFH review. And the report predicts that HUD's adoption of the disparate impact

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In the News (continued from p. 5)

rule, including the provision recognizing that actions that reinforce or increase segregation may violate the FHA, will clarify the applicable law in HUD administrative proceedings, and is a signal that HUD is taking its AFFH enforcement obligations more seriously.

Although the report concludes by giving HUD positive marks for its recent AFFH enforcement, the report also criticizes HUD because, "after almost four years of planning and design, HUD still has not published an AFFH regulation to better define the AFFH monitoring and enforcement process. Moreover, it is not clear that the proposed rule under consideration will establish a complaint process that will give private parties the ability to participate in the enforcement process as they do now. The lack of a clear complaint process has been a major hindrance to AFFH enforcement and it needs to be addressed in any new regulation." ♦

RECENT COURT RULINGS

➤ Former Employee Can't Sue for Back Pay Until DOL Issues Ruling

Facts: A former employee sued the housing authority to recover unpaid wages and benefits allegedly owed to him under the Davis-Bacon Act. This federal law establishes the requirement for paying the local prevailing wages on public works projects. It applies to "contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works."

The former employee began training as a plumber under a program jointly administered by the housing authority and local plumbers union. He worked during a probationary employment period, and, at the request of the union, he was terminated from the program. No reason for the termination appears in the record.

The former employee then filed complaints with local HUD officials claiming that the housing authority had paid him less than the relevant prevailing Davis-Bacon Act wages. HUD agreed twice and instructed the housing authority to pay the prevailing wage rate. Still contending that the wage rate should have been higher, the former employee filed a complaint with the Department of Labor (DOL), and two DOL officials wrote letters telling him that the Davis-Bacon Act didn't apply to his work for the housing authority at all. The employee sued.

Ruling: A Pennsylvania district court dismissed the former employee's claim.

Reasoning: The former employee is allowed to bring a claim to ask the court to review the DOL's *final decision* as to whether and to what extend the Davis-Bacon Act applied to the former employee's work for the housing authority when the final decision has been made. The court concluded, however, that the letters the former employee received from the DOL weren't final decisions or final agency actions. The Davis-Bacon Act authorizes a private right to sue for back pay only after all the administrative actions to ensure adequate payment have been pursued and have failed.

- McClean v. Philadelphia Housing Authority, February 2013

➤ Granddaughter Can't Occupy Unit as Remaining Family Member

Facts: A local housing authority denied a granddaughter's request to succeed as a remaining family member to the unit formerly leased to her deceased grandmother. She's 29 years old and claimed to have moved into her grandmother's unit when she was 3 years old. She also claimed to have continuously resided in the unit since moving in.

The housing authority first became aware that the granddaughter resided in the unit in April 2008, when the grandmother included her name on the Occupant's Affidavit of Income and submitted a Permanent Permission Request for her to join the household. The family didn't receive a response, but the granddaughter testified that she became aware she wasn't added to the household when she received the tenant's lease addendum and rent notice in May 2009.

In March 2010, the site manager concluded that the granddaughter wasn't entitled to a lease because the grandmother never got management's written permission for her to reside in the unit. The granddaughter then sued, asking the court to rule that the housing authority's determination was arbitrary and capricious.

Ruling: A New York trial court denied the granddaughter's request.

Reasoning: The regulations require that an applicant receive permission to be added as a remaining family member [24 CFR §966.4(a)(v)]. This regulation states that, "The family must promptly inform the Public Housing Authority of the birth, adoption, or court-awarded custody of a child. The family must request public housing authority approval to add any other family member as an occupant of the unit."

Regardless of whether she resided in the unit since she was 3 years old, the court concluded that there was no written consent given to permanently join the household and, therefore, the granddaughter failed to fulfill the lawful entry requirement to obtain remaining member status.

- Camacho v. NYCHA, February 2013

➤ Owner Not Liable for Housing Discrimination

Facts: A resident filed a complaint with the New Jersey Division on Civil Rights (DCR) against the owner for housing discrimination based on her race and her disabilities. She claimed that the management company treated her differently in the way it calculated a one-time subsidy for utility payments. She received a one-time annual utility credit in the amount of $225 from Life Line Credit Program of the State of New Jersey. The management company counted this subsidy toward her applicable annual income when calculating her monthly rental payment. She claimed that this subsidy, according to HUD regulations, is exempt from being included in a tenant's income. She also alleged that the site staff interrogates and harasses her guests and that non-black residents' visitors aren't treated in the same manner.

The DCR assigned an investigator to investigate her claims. The report confirmed that the subsidy was to be included in the calculation of income. The investigator also interviewed the site manager, who explained that the unit has 24-hour security and all visitors are required to sign in at the front desk. Residents also have to meet their visitors at the front desk if the visitors arrive after 10 p.m. To verify the manager's statements, the investigator interviewed 10 residents—seven African American, two Caucasian, and one Hispanic. And the residents verified the sign-in policy the site manager described.

Lastly, the report stated that the resident never made a request to the owner for reasonable accommodations for any disability. The investigator reviewed the management's files, which verified that the site had made accommodations for numerous residents. And the building contained 13 fully accessible units. Upon completing the investigation, the investigator gave the resident the report, along with an opportunity to rebut it. She provided no additional relevant evidence or information, and the investigator recommended that the case be closed with a finding of no probable cause to substantiate the allegations in the complaint. The resident appealed the DCR's decision.

Ruling: A New Jersey appeals court upheld the DCR's conclusion.

Reasoning: The court concluded that there was no basis to overturn the agency's decision, and that the agency's decision wasn't arbitrary or unreasonable. The resident made many accusations against the owner, but her accusations were unsupported by evidence in the record. On the other hand, the DCR's determination was supported by sufficient credible evidence.

- Fennie v. New Brunswick UAW Housing Corp., March 2013

➤ Resident Can Be Evicted for Concealing Her Income

Facts: In the late 1990s, a resident became employed for the first time as a bookkeeper. But she failed to disclose her new earnings to the site owner, each year stating in an affidavit of income that she didn't work. This omission allowed her to pay a substantially lower rent than she would have had she revealed the income.

When housing authority officials discovered the misrepresentation, the resident was charged criminally with grand larceny in the third degree. In July 2008, she pleaded guilty to a reduced charge of petit larceny and received a conditional discharge, upon her agreement to repay the housing authority in monthly installments totaling $20,000. Thereafter, the housing authority sought to evict her on the grounds of non-desirability, misrepresentation, non-verifiable income, and breach of rules and regulations.

During the hearings, she admitted that she failed to report her income. She also testified that her three children, two of whom have learning disabilities, live with her, and that she needed a larger home for her family, but couldn't afford to rent one. The hearing officer ruled that, despite the plight of the family,

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Recent Court Rulings (continued from p. 7)

termination of her tenancy was the only appropriate outcome.

She then challenged this determination in court. She contended that the penalty of termination was so harsh as to constitute an abuse of discretion as a matter of law. For the first time, she claimed that eviction might leave her homeless. And she included documentary evidence concerning her sons' learning disabilities and the negative impact on their schooling should the family be forced to move to a homeless shelter. The trial court upheld the housing authority's determination.

However, an appeals court reversed the ruling and sent the case back to the housing authority for a lesser penalty. It concluded that termination of the tenancy was so disproportionate to the offense, in light of all the circumstances, as to shock the judicial conscience. The housing authority then appealed this decision.

Ruling: New York's highest court reversed the appeals court's decision.

Reasoning: The court ruled that the lower court didn't consider any analysis about how probable it was that the resident's eviction would result in homelessness. While the resident testified that she couldn't afford a larger unit, she didn't claim at her hearings that she would become homeless if evicted. Her lawsuit in trial court had no affidavit to that effect or any support for her claim. Nor was it alleged that the resident would lose her job or be forced to resign if she were obliged to move. She knowingly and intentionally concealed her income from the housing authority for seven years. Therefore, the court ruled that termination of her tenancy wasn't so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness. ♦

- In the Matter of Jacqueline Perez v. Rhea, February 2013

Compliance (continued from p. 1)

Safe housing for survivors. Landmark VAWA housing protections that were passed in 2005 have helped prevent discrimination against evictions of survivors of domestic violence in public and assisted housing. The law, however, didn't cover all federally subsidized housing programs. The latest reauthorization expands these protections to individuals in all federally subsidized housing programs, explicitly protects victims of sexual assault, and creates emergency housing transfer options.

Native American women. Native American victims of domestic violence often cannot seek justice because their courts are not allowed to prosecute non-Native offenders—even for crimes committed on tribal land. The latest reauthorization of VAWA includes a solution that would give tribal courts the authority they need to hold offenders in their communities accountable.

LGBT survivors. Lesbian, gay, bisexual, and transgender survivors of violence experience the same rates of violence as straight individuals. But LGBT survivors sometimes face discrimination when seeking help and protection. VAWA now prohibits such discrimination to ensure that all victims of violence have access to the same services and protection to overcome trauma and find safety.

Protections for immigrant survivors. VAWA maintains important protections for immigrant survivors of abuse, while also making key improvements to existing provisions by strengthening the International Marriage Broker Regulation Act and the provisions concerning self-petitions and U visas.

Justice on campuses. VAWA now recognizes college students as among the most vulnerable to dating violence. Provisions in VAWA add additional protections for students by requiring schools to implement a recording process for incidences of dating violence, as well as report the findings. In addition, schools would be required to create plans to prevent this violence and educate victims on their rights and resources.

Maintaining VAWA grant programs. VAWA now bolsters grant programs for victims of domestic violence and provides a formal process for the Office on Violence Against Women to receive coalition and other key domestic violence and sexual assault community input.

Current Domestic Violence and Housing Rules

In October 2010, HUD Secretary Shaun Donovan announced final

rules providing detailed guidance to housing authorities and Section 8 property owners on how to implement VAWA. Now that the latest reauthorization expands VAWA's protections to all federally subsidized housing programs, one may expect the final rule's guidance to apply.

Some of the topics addressed in the rule include the documentation needed to prove domestic violence, the ability of domestic violence survivors to flee subsidized housing and move with Section 8 vouchers, and housing providers' obligations to protect survivors' confidentiality.

Documentation. The final rule clarifies VAWA's requirements for documenting an incident of domestic violence, dating violence, or stalking. Under the act, if an individual seeks to assert VAWA's protections, a housing authority, owner, or manager may request in writing that the individual provide documentation that she's a victim of domestic violence, dating violence, or stalking. VAWA specifies three types of proof that can satisfy the documentation requirement: a HUD-approved form; a police or court record; or a signed statement from a victim service provider, an attorney, or a medical professional [42 U.S.C. §§1437d(u), 1437f(ee)]. A victim can use the HUD-approved form to self-certify that she's a victim of domestic violence, dating violence, or stalking.

Confidentiality. The final rule expands upon housing providers' confidentiality obligations regarding documentation of domestic violence, dating violence, and stalking. VAWA states that documentation of domestic violence shall not be entered into a shared database or provided to any related entity [242 U.S.C. §§1437d(u), 1437f(ee)]. The final rule augments these confidentiality protections by prohibiting employees of a housing authority, owner, or management agent from having access to information regarding domestic violence unless they are specifically and explicitly authorized to access this information because it's necessary to their work [24 C.F.R. §5.2007)].

Lease bifurcation. Criminal activity directly relating to domestic violence, dating violence, or stalking isn't grounds for terminating the victim's tenancy. But the law does allow you to "bifurcate" a lease in order to evict, remove, or terminate the assistance of the offender while, at the same time, permitting the victim who's a lawful occupant to remain in the unit. Also, you aren't allowed to deny admission based on an individual's status as a victim of domestic violence or in cases of criminal activity related to domestic violence [24 C.F.R. §982.553].

Portability. A housing authority may not refuse to issue a voucher to an assisted family due to the family's failure to seek the housing authority's approval prior to moving if the family moved to protect the health or safety of a victim of domestic violence [24 C.F.R. §982.314]. HUD also revised this regulation to state that PHA policies that prohibit moves during the initial lease term and that prohibit more than one move during a one-year period don't apply if the family needs to move due to domestic violence.

Actual and imminent threat. The final rule provides guidance regarding what constitutes an "actual and imminent threat" for purposes of VAWA. The act states that a housing provider's authority to evict or terminate assistance isn't limited if the housing provider can demonstrate an "actual and imminent threat" to other tenants or employees at the property if the victim's assistance or tenancy isn't terminated. In other words, to use "imminent threat" of harm to other residents as a reason for evicting the victim, the evidence must be real and objective—not hypothetical, presumed, or speculative.

The final rule also states that an actual and imminent threat consists of a physical danger that's real, would occur within an immediate time frame, and could result in death or serious bodily harm. Further, the final rule states that the factors to be considered in determining the existence of an actual and imminent threat include the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur [24 C.F.R. §5.2005].

Additionally, the final rule states that eviction or termination of a victim's assistance under the actual and imminent threat provision should occur "only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence, or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat" [24 C.F.R. §5.2005]. ♦

THE TRAINER

We'll review the compliance issues raised in this month's articles. Then we'll give you a quiz to test your understanding of the issues discussed.

AVOIDING MAINTENANCE-RELATED DISCRIMINATION CLAIMS; COMPLYING WITH VAWA

In this month's feature, we discussed how to prevent maintenance staff from triggering fair housing claims. Sites may face allegations of discriminatory maintenance policies or procedures, or accusations of sexual harassment or discrimination by a maintenance worker. And maintenance operations are often involved in requests for reasonable accommodations or modifications by individuals with disabilities; discrimination claims can easily arise from how these requests are handled.

In our article on the Violence Against Women Act (VAWA), we discussed how the recent reauthorization of the law has expanded its scope, and what you need to know to comply with its new provisions.

TRAINER'S QUIZ

INSTRUCTIONS: Each of the questions below has only one correct answer. On a separate sheet of paper, write down the number of each question, followed by the answer you have chosen—for example, (1) b, (2) a, and so on. The correct answers (with explanations) follow the quiz. Good luck!

QUESTION #1

To avoid fair housing problems, always handle maintenance requests on a first-come, first-served basis. True or false?

a. True.

b. False.

QUESTION #2

Some female residents complain that employees of the landscaping company you hired often take their lunch break by the site's picnic area. They say that the workers commented on how they look in their shorts and dresses, and repeatedly asked them for dates. Since the workers aren't your employees, you don't have to worry that their behavior could trigger a fair housing complaint against your site. True or false?

a. True.

b. False.

QUESTION #3

Among other things, your guidelines for maintenance workers should require them to enter units only for scheduled repairs or maintenance or in case of emergency. True or false?

a. True.

b. False.

QUESTION #4

VAWA doesn't apply to all federally subsidized housing programs. True or false?

a. True.

b. False.

TRAINER'S QUIZ

QUESTION #5

VAWA provisions apply only to women who have been the victims of domestic violence and sexual assault. True or false?

a. True.

b. False.

QUESTION #6

A female resident who's seeking protection from her abusive husband asks you to "bifurcate" her lease—that is, take her husband's name off it so that it's in her name only. Can you require her to show proof that she's a victim of domestic violence?

a. Yes.

b. No.

ANSWERS & EXPLANATIONS

QUESTION #1

Correct answer: b

False. In general, sites should adopt policies to handle maintenance and repair requests on a first-come, first-served basis—unless the request involves an emergency. Furthermore, a maintenance or repair request may require immediate attention in some cases if it qualifies as a reasonable accommodation for an individual with a disability.

QUESTION #2

Correct answer: b

False. Even if the workers involved aren't your employees, site owners or managers may be held liable if they knew or should have known that a contractor was sexually harassing residents, but failed in their duty to stop it. Once you've received a complaint about the landscapers, you should report it to the company and follow up to ensure that the company is taking steps to get its employees to stop the offending conduct.

QUESTION #3

Correct answer: a

True. To reduce the risk of improper conduct—or false accusations of improper conduct—by your maintenance staff or outside contractors, maintain written guidelines regarding when maintenance and repair work is performed—particularly inside occupied units. Your guidelines should also include: requiring maintenance workers to have proper identification while on the job; not entering a unit unless the resident lets the worker in; and not entering a unit if a child under the age of 18 is home alone—except in case of emergency.

QUESTION #4

Correct answer: b

False. Although the prior version of the law didn't cover all federally subsidized housing programs, the latest reauthorization expands protections to individuals in all federally subsidized housing programs, explicitly protects victims of sexual assault, and creates emergency housing transfer options.

QUESTION #5

Correct answer: b

False. VAWA protects all victims of domestic violence, regardless of their gender or sexual orientation. Lesbian, gay, bisexual, and transgender survivors of violence experience the same rates of violence as straight individuals. But LGBT survivors sometimes face discrimination when seeking help and protection. VAWA now prohibits such discrimination to ensure that all victims of violence have access to the same services and protection to overcome trauma and find safety.

QUESTION #6

Correct answer: a

Yes. Under VAWA, if an individual seeks to assert VAWA's protections, the site owner or manager may request in writing that the individual provide documentation that she's a victim of domestic violence, dating violence, or stalking. VAWA specifies three types of proof that can satisfy the documentation requirement: a HUD-approved form; a police or court record; or a signed statement from a victim service provider, an attorney, or a medical professional.

HUD Launches App (continued from p. 1)

application equips people everywhere with the information they need to combat housing discrimination," said John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity. "We are maximizing the latest technology to make the process for filing fair housing complaints faster and easier and arming our fair housing partners with the information they need to understand their fair housing rights and responsibilities." ♦