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Fair Housing Coach [ISSN 1520-3093 (PRINT), 1938-3142 (ONLINE)] is published by Vendome Group, LLC, 6 East 32nd Street, New York, NY 10016.

Volume 15, Issue 12

Subscriptions/Customer Service: To subscribe or for assistance with your subscription, call 1-800-519-3692 or go to our Web site, www.vendomerealestatemediacom. Subscription rate: \$335 for 12 issues. **To Contact the Editor:** Fax: 212-228-1308; Email: hogilvie@vendomegrp.com

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WHAT DOES THE LAW SAY?

The Fair Housing Act (FHA) prohibits discrimination in housing based on race, color, religion, sex, national origin, familial status, or disability. In addition, many state and local laws ban discrimination based on creed or ancestry.

National origin discrimination means treating people differently because of their ancestry, ethnicity, birthplace, culture, or language, according to HUD. The law prohibits communities from denying housing opportunities to people because they or their family are from another country, because they have a name or accent associated with a national origin group, or because they are married to or associate with people of a certain national origin. HUD offers some examples of discriminatory conduct based on national origin:

- Refusing to rent to people whose primary language is other than English;
- Offering different rent rates based on ethnicity;
- Steering prospective renters to or away from certain areas because of their ancestry; and
- Failing to provide the same level of service or housing amenities because a resident was born in another country.

Discrimination claims may be based on national origin, religion, race, or color—or some combination of those protected characteristics. Communities may face stiff fines—and costly damage awards—to resolve allegations of discrimination against applicants or residents based on their religious, racial, or ethnic affiliations.

EXAMPLE: In 2011, the owners and managers of an Arizona community agreed to pay \$227,500 to resolve allegations of discrimination against an Egyptian couple because of their race (Arab), national origin (Egyptian), and religion (Muslim). The community, which denied the allegations, was accused of complicating the application process to discourage the couple from renting and inspecting their unit and their possessions without justification while they were in the process of moving in. The couple also alleged that the community ignored their requests for repairs to their unit, and initiated eviction proceedings after they complained about discriminatory treatment.

“Housing discrimination is extremely offensive and my office will always be vigilant to pursue these kinds of matters,” Attorney General Tom Horne said in a statement announcing the settlement. “Nobody should be denied the opportunity to find housing because of his or her ethnic background, and I am pleased with the results of today’s settlement” [State v. Villatree Apartments, July 2011].

COACH’S TIP: HUD cautions that immigration status doesn’t affect whether an individual is entitled to protection under federal fair housing law. The agency warns that it’s illegal to refuse to rent to anyone because of his or her religion—or to charge a different price or ask for additional documentation because of his or her national origin—regard-

less of immigration status. Moreover, HUD says it doesn't inquire into immigration status when it investigates fair housing complaints and points out that it's unlawful to threaten to report anyone to immigration authorities because they have filed a housing discrimination complaint.

7 RULES FOR COMPLYING WITH FAIR HOUSING LAW WHEN DEALING WITH MEMBERS OF ETHNIC AND RELIGIOUS GROUPS

Rule #1: Keep Personal Opinions Out of the Leasing Process

Many people found themselves riveted by the news of the Boston Marathon bombings, and all that followed—the intensive investigation, a virtual lockdown of a major metropolitan region, a fierce gun battle, and the eventual capture of a suspect.

Across the nation, nearly two-thirds of Americans said they followed the story very closely—that's far more public attention than any terrorist event since 9/11, which three-quarters reported following very closely, according to a new report by the Pew Research Center. And, the report said, the events in Boston appeared to confirm the public's long-held belief that occasional terrorist attacks are to be expected. For the past decade, majorities have consistently said that "occasional acts of terrorism in the U.S. will be part of life in the future." The sentiment spiked to 75 percent after the Boston bombings from 64 percent a year ago, and now matches the previous high of 74 percent in 2003, according to the report.

With the intense media coverage of the initial attack and continuing investigation, it's easy to get caught up in speculation over who was responsible and why. The events have also sparked national debate on various topics, including national security and immigration control.

But whatever your personal opinions on these matters, it's important to keep them from affecting decisions about who may live in your community and how they are treated. It's unlawful to discriminate against anyone because he is—or is believed to be—a member of a particular ethnic, racial, or religious group.

Rule #2: Don't Exclude Applicants Because of Racial, Ethnic, or Religious Background

You could face liability for violating fair housing law by excluding or otherwise discouraging prospects from living in your community because of their race, skin color, ethnic background, or religious affiliation. Treating people differently because of their physical features, mannerisms, clothing, or speech could trigger a fair housing complaint based on race, religion, or national origin.

HUD highlighted the problem in its most recent national fair housing media campaign, which included a print ad featuring a woman wearing traditional Muslim headdress with the headline: "Is religious discrimination keeping you out of the home of your dreams?" The ad explains that housing discrimination based on any form of religion isn't just unfair—it's against the law. The ad points to these signs of possible discrimination:

- "I'll show you neighborhoods with mosques."
- "We only take people who speak English clearly."
- "You might be more comfortable living elsewhere."

Denying housing opportunities, misrepresenting the availability of units, or refusing to engage with applicants who have limited English skills are all forms of unlawful discrimination, which could lead to liability under fair housing law.

EXAMPLE: In January 2013, a Virginia property management company agreed to pay \$82,500 to settle a HUD complaint alleging it discriminated against non-English speakers by refusing to allow a Hispanic woman to apply for an apartment because she didn't speak fluent English. The woman said that the company refused to give her a rental application and rejected translation assistance from the bilingual person she brought with her. According to HUD, the company had a written policy expressly requiring all prospective residents to be able to communicate with management staff in English without assistance from others, and to complete rental applications only while they were in the management office.

"Denying housing because a person doesn't speak English well violates the Fair Housing Act," John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity, said in a statement. "This

settlement reaffirms HUD's commitment to combatting discrimination against a person because of their national origin or the language they speak" [Conciliation Agreement between HUD and Virginia Realty Company of Tidewater, Inc., January 2013].

Rule #3: Beware of Linguistic, Email Profiling

You could be accused of discrimination even if you've never seen or met a prospect. Fair housing advocates often conduct telephone tests to check for linguistic profiling—discrimination based on how a prospect sounds over the phone. If you routinely fail to return calls or give false information about the availability of units because the caller has a foreign accent, you could face a discrimination complaint based on national origin.

And there has been increased attention on "email profiling," discrimination based on perceptions about racial, ethnic, or religious characteristics from the name used in online communications. In a 2006 study, researchers at the Oregon State University sent more than 1,100 identically worded email inquiries to Los Angeles-area landlords asking about vacant apartments advertised online in 2003, within the weeks before and after the start of the war in Iraq. The inquiries were signed randomly, with an equal number using names that implied either Arab, African-American, or white ethnicity. The study found that African-American and Arab names received significantly fewer positive responses than the white name, and the African-American name fared worst of all. This pattern held true in all rent categories, in corporate and privately owned apartment complexes, and before and during the war in Iraq.

"Los Angeles is one of the most diverse cities in the world, but it's clear that housing discrimination exists and that it begins long before a landlord meets a prospective tenant," co-author William E. Loges said in a statement released by the university. "We thought that some of the bigger corporate complexes—which have hundreds and hundreds of units—would be more professionally run. They would have the resources to train their staffs on residential discrimination law. But even if such training occurred, there was no difference in the reactions to these applications between corporate-run complexes and privately-run apartments."

Rule #4: Apply Consistent Application Policies

Apply policies and procedures governing the application process consistently to all applicants, regardless of race, religion, or national origin. You could face accusations of housing discrimination if you treat members of particular racial, ethnic, or religious groups differently than other applicants by requiring them to meet more stringent screening criteria or by subjecting them to more cumbersome application procedures.

EXAMPLE: In January 2008, the owners and managers of multifamily housing in Massachusetts agreed to pay \$158,000 to settle allegations of discrimination against Cambodian Americans based on national origin. The complaint alleged that the community told Cambodian-American prospects that their employment and/or credit had to be verified before they could see available dwellings while at the same time taking white prospects to see available dwellings without first verifying their employment or credit. The community was also accused of telling Cambodian-American prospects that they had to have a separate appointment to see available units while at the same time taking white prospects to see available dwellings immediately, with no prior appointment [U.S. v. Pine Properties Inc., January 2008].

Communities are allowed to request documentation and conduct inquiries to determine whether an applicant meets the criteria for rental, so long as this procedure is applied to all applicants, according to HUD. That may include asking for identity documents and conducting credit checks to ensure ability to pay rent. But HUD points out that a person's ability to pay rent or fitness as a tenant is not necessarily connected to his or her immigration status.

Moreover, HUD warns that procedures to screen potential and existing residents for citizenship and immigration status may violate the FHA's protections based on national origin. If you ask for information from one person or group, then you must ask for the same information from all applicants and residents, HUD says.

EXAMPLE: In July 2012, the owners and managers of an Alabama-based company agreed to settle allegations that they maintained a policy of discriminating against prospective tenants based on national origin. HUD alleged that the community required

Hispanic prospects to provide documentation of their immigration status, while not asking the same of non-Hispanic individuals. Without admitting liability, the company agreed to make \$10,000 in donations to fair housing organizations, provide translation services, and market housing opportunities to populations with limited English proficiency in its service areas. The agreement affects 9,406 housing units at 264 properties in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, South Carolina, and Tennessee [HUD v. Peachtree Apartments, July 2012].

It's a good idea to get legal advice about whether—and how—to implement policies on screening for immigration status. Some federally assisted housing programs are required to inquire into applicants' immigration status, but some conventional housing communities may be limited by recent changes on the state and local level. In California, the law bans inquiry into an applicant's immigration status. And New York City has added fair housing protection based on "alienage or citizenship status," so communities may not ask for an applicant's country of citizenship or whether he's a U.S. citizen.

COACH'S TIP: Some tenant screening services offer criminal background checks that include information from a variety of databases, including governmental terrorist watch lists. Many different governmental agencies maintain the databases for different purposes, including air travel, law enforcement, immigration, banking, and business transactions, to name a few. If your community chooses to include such screenings as part of the application process, then you must do it for all applicants, regardless of their ethnic, racial, or religious background.

Rule #5: Don't Engage in Unlawful Steering

When discussing vacancies with prospects, be guided by their stated requirements—not by your preferences or assumptions about where they would prefer to live in your community. Regardless of your intentions, it's unlawful to limit a prospect's housing choices by encouraging or discouraging them from living in your community—or certain parts of the community—because of their race, religion, national origin, or other protected characteristic.

Under HUD regulations, unlawful steering means guiding, restricting, or otherwise attempting to influence a prospect's housing choices based on a protected characteristic. It could take various forms, such as discouraging a prospect from seeing or renting a unit in the community by exaggerating its drawbacks, not mentioning its desirable features, or suggesting that he wouldn't be comfortable living there because of a protected characteristic. It's equally unlawful to segregate members of ethnic or religious groups by steering them to particular areas or buildings within the community.

EXAMPLE: In 2011, a Washington community agreed to pay \$110,000 in damages and civil penalties to resolve allegations of housing discrimination under fair housing law. The complaint alleged that the community's owners, managers, and former on-site manager discriminated in housing by steering Indian prospects away from one of the five apartment buildings at the community and by treating residents from India less favorably than other tenants. The community was also accused of discouraging African Americans, Hispanics, and families with children from living there [U.S. v. Summerhill Place, LLC, March 2011].

Rule #6: Consistently Apply Community Rules

Make sure that your community fairly applies the terms and conditions of tenancy to all residents, without regard to race, religion, or national origin.

Fair housing law requires communities to enforce their rules in a nondiscriminatory manner, HUD says. You can't target certain residents for enforcement of the rules—or apply more severe penalties for violations by certain residents—because of their race, religion, or national origin.

Fair housing law doesn't protect individuals who are unruly or pose a danger to other residents, according to HUD. You may take action—including initiating eviction proceedings—against anyone whose behavior is disruptive to the community, as long as you apply the same eviction procedures to all residents. Any disciplinary action must be based on the resident's behavior or other violation of community rules—not on race, religion, national origin, or any other protected characteristic.

You must also offer all residents the same privileges of the tenancy, HUD says. You can't limit use of building amenities, such as clubhouses or fitness centers, based on a resident's race, religion, or national origin. As an example, HUD says that if your rules permit residents to reserve the community room for functions, such as birthday parties, then you must allow an Arab-American resident to reserve the room, if available, for his son's birthday party. If you don't, and later give the reservation to a white resident, then you could be accused of national origin discrimination.

By the same token, you could face charges of discrimination if you allow a Bible group to meet there, but deny its use by a Muslim group. Similarly, if you allow residents to put Christmas decorations on their porches and outside their front doors, then you must permit residents of other faiths to display items that reflect their religious beliefs.

Nevertheless, fair housing law doesn't require you to make exceptions to community rules to accommodate religious beliefs. If, for example, your lease prohibits the use of candles due to fire safety concerns, fair housing experts say that you don't have to make an exception to allow residents to use religious candles inside their units.

Rule #7: Don't Ignore Complaints of Discrimination or Harassment

Take steps to investigate—and if necessary, to redress—any reports of discrimination or harassment against your residents because of their race, religion, or national origin. Complaints of misconduct by employees and others under your supervision and control are particularly troublesome because the law generally holds owners and managers accountable for fair housing violations by employees who are acting within the scope of their employment.

But it's also important to look into complaints that residents are being victimized by their neighbors

because of their religious, racial, or ethnic affiliations. Investigate such complaints thoroughly, document the results, and if called for, take steps to remedy the situation. Unless you take such complaints seriously, you could face a fair housing complaint if you knew about harassment against residents based on their religion, race, or national origin, but did nothing to stop it.

EXAMPLE: In 2004, the San Francisco Housing Authority agreed to pay \$200,000 to settle a lawsuit alleging that public housing residents were victims of religious, racial, and ethnic harassment, including verbal abuse, racial slurs, threats, assaults, vandalism, and robbery. The complaint claimed harassment against white, African-American, Hispanic, Iraqi, and Muslim residents, but that the harassment of residents of Iraqi descent and Muslim faith increased following the 9/11 terrorist attacks. Allegedly, the housing authority had knowledge of the harassment, but failed to take reasonable steps to protect its tenants as required by law [*U.S. v. San Francisco Housing Authority*, January 2004].

COACH'S TIP: Don't retaliate against employees or others who raise concerns about discrimination or harassment. Fair housing law bans retaliation against anyone who exercises their rights under fair housing law. Those provisions protect employees from adverse employment actions—such as being fired, demoted, or harassed—for opposing discriminatory practices or advising aggrieved residents to contact HUD or other fair housing agencies.

- Fair Housing Act: 42 USC §3601 *et seq.*

COACH Source

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COACH'S QUIZ

We've suggested seven rules for complying with fair housing law when dealing with members of ethnic and religious groups. Now let's look at how the rules might apply in the real world. Take the **COACH's Quiz** to see what you've learned.

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

QUESTION #1

A woman and her adult daughter come to look at an advertised one-bedroom unit. The unit is for the mother, who doesn't speak English, so the daughter is translating and explaining the paperwork to the mother. You've had problems in the past in dealing with people who don't speak English. You usually show advertised units during a prospect's first appointment, but you tell them that they can't see it till next week, knowing that the unit will probably be rented by then. Even though you didn't directly deny her housing, your actions could still lead to fair housing trouble. True or false?

- a. True.
- b. False.

QUESTION #2

A young couple is interested in renting a one-bedroom unit. They recently moved here from Russia, so you tell them about a vacancy next door to a Russian-speaking family. Although there are other available units, you believe they'd be more comfortable living near others who share the same cultural background. Since you're looking out for their best interests, you can't be accused of a fair housing violation. True or false?

- a. True.
- b. False.

QUESTION #3

Last week, a couple calls your office to complain about their neighbor, who has started spreading rumors that they are "up to no good." They said they didn't have any problem with her until recently, after the husband grew

his beard long and his wife started wearing a headscarf in keeping with their religious beliefs. Over the past few weeks, they've received several anonymous letters and phone calls insulting their religion and accusing them of being terrorists. To avoid potential fair housing problems, you should investigate the situation and try to resolve it. True or false?

- a. True.
- b. False.

EXTRA CREDIT: NAME THAT RULE!

You've recently heard about a fair housing complaint accusing a community of denying housing to people of Middle Eastern and South Asian descent, except in two of the community's 21 buildings. The complaint claimed that the property manager communicated a strong dislike for Middle Eastern and South Asian people to other employees, frequently referring to them as "curry people." Allegedly, she wouldn't let them live anywhere else in the community because they "stink" and "completely destroyed" apartments, leaving the walls smelling of curry after they moved out and making neighboring residents want to live elsewhere. She was also accused of enforcing community rules, especially those against clutter on patios or liquids leaking from cars, more strictly against residents of Middle Eastern or South Asian descent as compared to other residents. The complaint also alleged that she told leasing agents that two former leasing agents, who had reported the property manager's conduct to superiors, were almost immediately fired as a result.

Based on these allegations, can you name which of the seven rules may have been violated (note that more than one rule may apply)?

COACH'S ANSWERS & EXPLANATIONS

QUESTION #1

Correct answer: a

Reason: Rules #2 & #4 apply here:

Rule #2: Don't Exclude Applicants Because of Racial, Ethnic, or Religious Background

Rule #4: Apply Consistent Application Policies

Even though you didn't directly deny her housing or refuse to deal with her interpreter, making the process more cumbersome to discourage her from living in your community because she can't speak English could be considered discrimination based on national origin.

QUESTION #2

Correct answer: b

Reason: Rule #5 applies here:

Rule #5: Don't Engage in Unlawful Steering

Even though you're well intentioned, showing them only the unit near the Russian-speaking family could be considered unlawful steering based on national origin. Fair housing law doesn't permit you to limit a prospect's housing choices by encouraging or discouraging her from living in your community—or certain parts of the community—because of her race, religion, national origin, or other protected characteristic. It's better to tell prospects about all available units, and allow them to make a choice about where they want to live.

QUESTION #3

Correct answer: a

Reason: Rule #7 applies here:

Rule #7: Don't Ignore Complaints of Discrimination or Harassment

It's unlawful to harass anyone because of his or her religious beliefs and practices. If a community knows about harassment and fails to do anything about it, then it could be accused of tolerating religious discrimination. Take the complaint seriously by conducting an investigation, documenting the results, and taking steps to resolve the matter.

EXTRA CREDIT: NAME THAT RULE!

Answers:

Rule #1: Keep Personal Opinions Out of the Leasing Process

Rule #2: Don't Exclude Applicants Because of Racial, Ethnic, or Religious Background

Rule #4: Apply Consistent Application Policies

Rule #5: Don't Engage in Unlawful Steering

Rule #6: Consistently Apply Community Rules

Rule #7: Don't Ignore Complaints of Discrimination or Harassment

These are the allegations in a complaint recently filed by the Justice Department against the owners, managers, and operators of a Texas community. Note that the complaint is just the first step in a long process, so it reflects only one side of the story. The allegations should not be taken as true, and so far there have been no findings of any wrongdoing.