

## **Require Proof of Citizenship, Immigration Status When Considering Foreign Applicants by Scott Clark, Attorney**

Properties may sometimes have applicants who are from a foreign country. Some companies have adopted policies for handling these requests for residency. This article will examine the topic.

While communities may require applicants to show proof that they are legally in the United States, they must do so in a non-discriminatory manner to comply with the federal Fair Housing Act.

The U.S. Department of Housing and Urban Development (HUD) provides the following guidance on the topic:

“It is unlawful to screen housing applicants on the basis of race, color, religion, sex, national origin, disability or familial status. In the wake of the attacks of September 11, 2001, landlords and property managers have inquired about the legality of screening housing applicants on the basis of their citizenship status. The Act does not prohibit discrimination based solely on a person’s citizenship status. Accordingly, asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the Fair Housing Act. In fact, such measures have been in place for a number of years in screening applicants for federally-assisted housing. For these properties, HUD regulations define what kind of documents are considered acceptable evidence of citizenship or eligible immigration status and outline the process for collecting and verifying such documents.

These procedures are uniformly applied to every applicant. Landlords who are considering implementing similar measures must make sure they are carried out in a non-discriminatory fashion. Persons legally in the United States may include the following:

- Persons granted permanent residence in the United States either as an immigrant or per the discretion of the U.S. Attorney General.
- Individuals seeking asylum in the United States.
- Persons admitted to the United States for “emergent” reasons or reasons strictly in the public interest.
- Individuals residing in the United States because the U.S. Attorney General is withholding deportation.
- Persons residing as temporary or permanent residents under other provisions of the immigration laws.
- Residents of Guam, the Marshall Islands and the Federated States of Micronesia.

The federal government has created different documents that set out the legal standard for each of these groups. To comply with the HUD non-discrimination guidelines, a community generally must seek the following documentation. A community rental policy generally will require foreign applicants to produce a copy of the following:

**For U.S. Citizens**

- A signed declaration of citizenship and if preferred, a birth certificate, U.S. passport or naturalization certificate.

**For Non-U.S. Citizens**

- A current *Visa*. If the Visa expires during the lease term, the individual must present to the landlord an application for Visa renewal prior to the expiration date.
- A *Student Visa*, which must include proof of school employment.
- A *Work Visa*, which must include proof of employment and Social Security number.
- A *Non-Work Visa*, which may not show “employment” as a source of income.
- A *Spouse Visa*, which must accompany a leaseholder that has a Student or Work Visa.
- Other federally-approved documentation that shows the person falls into one of the above categories.

Since the United States authorizes citizens of Canada and Bermuda to enter the United States without Visas in many circumstances, these individuals may not have the documentation usually required of non-U.S. citizens. To demonstrate their legal status, they need only show:

- Persons age 19 and older: a government-issued photo identification, such as a driver’s license along with proof of citizenship, such as a birth certificate or naturalization certificate.
- Persons under age 19: proof of citizenship, such as a birth certificate.

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