

Avoid Discrimination Lawsuits in the Tenant Screening Process by **Matthew M. Gorman and Anthony Marinaccio, Attorneys**

Claims and lawsuits arising from allegations of discrimination in advertisements for rent and the tenant screening process can be both costly and time consuming. However, they are easy to avoid by following simple rules when renting to potential tenants.

California landlords are subject to both Federal and State anti-discrimination laws. The **Federal Fair Housing Act**¹ (“FHA”), the **Unruh Civil Rights Act**² (“Unruh Act”), and the **California Fair Employment and Housing Act**³ (“FEHA”) address potential discrimination by landlords, circumstances constituting discrimination, and the classes of people that landlords may not discriminate against. It is important to note that anti-discrimination laws exist on both the Federal and State levels because applicants, tenant advocacy groups, and the government can pursue violations under either level, or both.

The first step in ensuring that you comply with Federal and State anti-discrimination laws is knowing who the law protects. A list of all “protected classes” (i.e., groups protected from discrimination) is provided below. Landlords who discriminate against individuals based on these classes may be subject to claims or lawsuits under Federal and State law: race, religion, ethnic or national background, familial status, marital status, age, sex, disability, sexual orientation, gender identity, receipt of public assistance (source of income), immigration status, or personal characteristics and traits.

The second step in ensuring compliance with Federal and State anti-discrimination laws is knowing what actually constitutes discrimination. Often times, landlords believe discrimination only occurs when one denies an applicant housing; however, discrimination can be much more nuanced. For example, advertising that suggests certain races, ethnic groups, or religions need not apply would be considered discriminatory. Discrimination can also include setting different standards for different groups, harassing a person in connection with housing, steering certain groups to a certain part of a building or to inferior units (providing segregate housing), or denying an applicant to submit an application. Landlords should employ practices which seek to treat all classes of individuals equally, at every stage of the rental process: from advertising, to screening, to rental selection, and property management.

Note that discrimination based upon a prospective tenant’s handicap or disability may be treated differently than other types of discrimination because a landlord may be required to make “reasonable accommodations” to allow a disabled person to live in a unit or use on-site facilities. This area of law will be addressed in upcoming articles.

One way to avoid a discrimination lawsuit is to avoid asking questions or making off-hand comments that suggest discriminatory intent. For example, because a landlord may not

discriminate based upon marital status, one should avoid questions addressing one's marital status or comments such as "It would be nice if you get married."

If you receive applications from unmarried couples and married couples, you must treat them the same during the screening process. Therefore, you cannot have different standards to combine income for unmarried couples than for married couples.

A third important step in ensuring compliance with anti-discrimination laws is how to treat one's immigration status in renting a unit. Recently, California enacted Civil Code Section 1940.3, prohibiting a landlord or rental manager from inquiring into a prospective tenant's immigration status. The fewer questions you ask regarding an applicant's immigration status – including questions such as "When did you come to the U.S.," "How long have you lived in the U.S.," or "Do you have a green card?" – the less likely this will be an issue. However, it may be lawful to deny an application because a Social Security Number does not match or you believe the identification shown to you is fraudulent.

Rental Screening Standards

After understanding the distinction between legal and illegal rental practices, the prudent landlord should create a consistent standard in screening potential tenants by treating all potential tenants in a similar manner. For example, it is entirely lawful to require all potential tenants to completely fill out a rental application and run a credit report for all persons that will be on a lease. Creating exceptions for some tenants – and, in particular, for specific groups of people – may lead to a potential discrimination lawsuit if the affected persons learn that they have been treated differently.

Advertising should be objective and not state any discriminatory intent. For example, an advertisement should not state that a neighborhood's residents are primarily a specific ethnic group or race. Further, you should avoid statements such as "perfect for newlyweds," "no children," "singles only," "welfare recipients need not apply," or "English speaking residents only." When talking to potential tenants, you should make them aware of your objective screening criteria, and note that your standards apply equally to all tenants. Objective screening criteria can include:

- (1) requiring a certain number of positive references;
- (2) a positive reference from a previous landlord;
- (3) a credit history and eviction report to be performed; and
- (4) having sufficient income to pay the rent.

Requiring an applicant to fill out the rental application in its entirety can be part of this objective criteria. ***(AOA has an application form that requests all this information and they also perform credit, eviction and criminal reports for their members.)***

In addition, do not make exceptions to your objective screening policy. All applicants – no matter what they say, what they look like, or who they are – need to do whatever you require to rent a unit from you. Further, if you deny an applicant housing, you should be able to support your decision with lawful reasons – a bad credit history, a criminal record, or having references that do not check out. It is important to document those legal reasons in writing by showing how your advertising, screening criteria, and ultimate decisions were based upon lawful, non-discriminatory reasons.

What a Discrimination Lawsuit Can Cost You

Discrimination lawsuits are both time consuming and costly and can be easily avoided by setting in place an objective and reasonable screening process for all applicants. Under California law, a person who has been allegedly discriminated against can receive actual damages, emotional distress damages, injunctive relief, punitive damages, and attorney's fees.

In addition to a lawsuit filed by an applicant, the California Department of Fair Employment and Housing ("DFEH") also actively prosecutes claims made by applicants against landlords. The DFEH is able to obtain civil penalties up to \$10,000 for the first violation in addition to other civil penalties such as an injunction or requiring a landlord to rent to the aggrieved applicant.

It is also necessary to have anyone who will be assisting in the application process – such as a rental manager, leasing agent, or family member showing the unit – to understand what your screening criteria is and what is allowed under the FHA, FEHA, and the Unruh Act. For example, a rental manager may be held liable for his or her acts on behalf of a landlord in addition to the landlord's potential liability.⁴ It is important for everyone involved in the rental screening process to be aware of potential discrimination pitfalls and fully understand how your rental screening process will take place.

In sum, it is important to have objective rental screening criteria when accepting applications from prospective tenants and to treat all prospective tenants equally. An objective and reasonable screening policy will allow you to find better residents and avoid claims of discrimination.

[Editor's Note: For more information, please come and hear Attorneys Gorman and Marinaccio speak at our upcoming "Move-In/Move-Out" Seminar. The seminar will be held at the Holiday Inn, 7000 Beach Blvd. in Buena Park on Wednesday, March 24th from 10:00 am to 12:00 noon. You may register online at www.discoverSUCCESS.com – AOA members attend FREE and non-members pay only \$35.00.]

Matthew Gorman is a Partner at the law firm of Alvarez-Glasman & Colvin in Santa Rosa, California. His practice focuses on land use, environmental law, and real estate matters. He may be reached at (707) 542-4833 or mgorman@agclawfirm.com.

Anthony Marinaccio is an Associate at Alvarez-Glasman & Colvin's City of Industry office. His practice focuses on municipal law, land use, and real estate litigation. He may be reached at (562) 699-5500 or amarinaccio@agclawfirm.com.

The foregoing discussion is intended for information purposes only and is not intended to be considered legal advice or legal opinion. Readers are cautioned to consult an attorney of their own selection with respect to any particular situation.

¹ 42 U.S.C. § 3601 *et seq.*

² Cal. Civil Code § 51.

³ Cal Government Code § 12900 *et seq.*

⁴ Cal. Government Code § 12940(j)(3).
