

Are You Illegally Discriminating?

by Jan Leasure

News: The U.S. Department of Housing and Urban Development announced that it had charged a property management firm with violating the Fair Housing Act (discrimination based on familial status). The management company refused to rent a one-bedroom apartment to a couple and their infant son.

The couple met with a rental agent at the apartment complex, where they viewed both a one-bedroom and a two-bedroom apartment. While the couple was viewing the two apartments, the rental agent asked whom the occupants of the apartment would be. When the couple informed the agent that they planned to live there with their child, the rental agent purportedly told them that they could not rent the one-bedroom apartment, since it was the company's policy to permit no more than two people in a one-bedroom unit.

What is familial status, anyway? And how do we conduct our business in such a way that we do not discriminate based on familial status?

The Fair Employment and Housing Act says that "familial status" means one or more persons under age 18 who reside with a parent, legal guardian, or designee of the parent or legal guardian with the parent or legal guardian's written consent. Familial status also applies to persons who are pregnant and to persons who are in the process of gaining legal custody of an individual under the age of 18.

You would be considered to be illegally discriminating against families with children if you declined to rent to an applicant who fits one of the categories described in the preceding paragraph just because they fit into that category. In other words, if you declined to rent to an applicant who has a member or members of his/her family who is/are under 18; if you declined to rent to someone who is pregnant, or if you declined to rent to someone who is in the process of adopting a child, you would be illegally discriminating.

You would also be considered to be illegally discriminating if you applied different terms or conditions to the rental, such as charging a different amount of rent or a higher security deposit. From time to time, I see landlords advertising a property for \$1,200 per month for two people (for example) and \$1,350 for three people. Or the landlord may charge a couple without children a \$1,200 security deposit, but charge a couple with a child a \$1,500 security deposit for the same property.

You will run afoul of the familial status regulations if you post rules on your property that are aimed specifically at children, such as "*No Children in the Pool*" or "*No Children on the Tennis Courts*". This does not mean that you cannot post rules that are designed with the health and safety of your residents in mind, but the rules should apply to adults and children alike. For example, one landlord I know was convicted of a fair housing violation because he posted a rule saying, "*Children are not Allowed to Play in the Parking Lot.*" Clearly, he was concerned about the deadly combination of automobiles and small bodies. However, he would not have been convicted had his rule read, "No Playing in the Parking Lot," or "Residents are not Allowed to Play in the Parking Lot." By the way, the only case I know of in which California law addresses age requirement is California Code of Regulations, Title 22, Article Three, Section 65539

states that children under age 14 should not use pool without adult in attendance. If, on the other hand, your rule stated that children are not allowed to use pool without adult supervision, that rule would be deemed extreme and would be considered to be discriminatory.

Finally, it is illegal to advertise preferences based on familial status. Using terms such as “adults only,” “no children,” or “adults preferred” would be a violation and thus, illegal.

What about occupancy standards? **While no hard and fast rules exist at the state level in California, the Department of Fair Employment and Housing (DFEH) uses the standard of “two persons per bedroom plus one” as a general guideline.** Any policy of a property owner or property manager may be construed to be discriminatory against families with children. Some cities and counties have applied standards of their own, many based on the square footage of the unit, so be sure to check your local building codes to see if something more definitive than the DFEH guidelines apply to your jurisdiction.

The best way I know of to avoid being accused of discrimination against a family with children is not to ask. “What? Don’t ask if the applicants have children?” I can hear your disbelief from here! That’s right – my application to rent does not ask how many children will occupy the property. But don’t quit reading yet! Think about it. How can I possibly discriminate against a family with children when I don’t know whether they have any children? “Sure, that’s logical,” you say, “but doesn’t a landlord need to know whether his/her prospective tenants have children?” Well, maybe . . . maybe not. Let’s examine that question and see whether we really need to know or not.

If the applicant gets great references from his prior landlords, and the prior landlords tell us that the applicant returned the property in better condition than he was given it, does it matter whether the applicant has children? If the applicant does have children, he/she certainly has taught his children to respect and take care of the property of others, based on his references. If the applicant meets your income requirements, has sufficient employment history, and an adequate credit score, does it matter if he/she has children?

If the applicant does have children, he has apparently figured out how to support them on his current income and keep his rent and other bills paid, based on his credit. So if it’s true that what we (landlords) want is to have our properties well-maintained and to have the rent paid on time, what difference does it make if that happens with a tenant with children or one without? It makes no difference to me. I would submit that if it makes no difference to you, you are much better protected against a fair housing lawsuit based on familial status.

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