

HOA UNIVERSITY – MAY 2, 2009 AVOIDING DISCRIMINATION CLAIMS

Your responsibilities as an HOA Board begins with understanding the applicable laws. (1) Utah's Condominium Ownership Act (57-8-1); (2) Utah's Community Association Act (57-8a-101 et seq); (3) Utah's Nonprofit Corporations Act (16-6a-101, et seq.); (4) Federal and State Fair Housing Laws.

Types of Discrimination which is Prohibited (remember – not all types of discrimination are illegal. Further, often times, discrimination is found from unintentional acts such as content of applications and advertisements)

1. Race;
2. Color;
3. Religion;
4. National Origin;
5. Familial Status – includes families with children under the age of 18, pregnant women and elderly persons.
6. Disability or handicap;
7. Sex (gender), including sexual harassment.
8. Source of Income

(Note that owner-occupied buildings with four or fewer units are exempt from the federal Acts, as well as single-family housing rented without the use of discriminatory advertising or without a real estate broker, and certain 'senior housing' arrangements)

The State of Utah has adopted the federal fair housing laws as codified in **Utah Code Ann.** §57-21-1 et seq. Some of the most relevant sections of the Utah Fair Housing Act are stated below. Utah law adds "**source of income**" as protected category.

The board and attorney must understand that people with "past" drug addictions, including recovering alcoholics, most likely qualify as someone with a disability and are thus protected.

Discriminatory housing practices are often found in the board's advertising materials. You should not use words, photographs, or graphics that tend to show you prefer renting to a specific "type" of renter

Disability - Pets.

Pets are a source of emotion and, consequently, litigation. You can legally refuse to rent your property to pet owners. The obvious reason is that pets can cause damage to your property or be a source of irritation to others.

However, a valid disability, may entitle a tenant to a service or companion animal under the fair housing laws. Companion animals are much more difficult to control because,

allegedly, the disability can range from anxiety to loneliness as opposed to a seeing-eye dog.

Disability – General.

The Fair Housing Act (amendments) protects those who have a physical or mental disability that substantially limits one or more major life activities. The law also protects those who are associated with someone who is disabled such as a family member or caregiver. Recovering alcoholic is deemed to be a disability. “Recovering” is not clear, regrettably.

Disability – Reasonable Accommodations.

HOA boards are expected to adjust their rules to allow a person with a disability to have an equal opportunity to use and enjoy a rental dwelling unit. Boards must allow modifications of their rental units or common areas, and the HOA board’s cost. This is governed by a reasonableness standard.

Common examples: Parking, service animals, rental payment plans for renter’s whose money is controlled by a third-party, reasonable wheel-chair access, etc.

Sexual Orientation.

Federal law does not specifically prohibit housing discrimination based on sexual orientation but use common sense and decency. Local ordinances may prohibit such discrimination.

Source of Income.

You may not refuse to make housing available to someone because he is receiving public assistance. This does not necessarily mean that the Association must participate in Section 8 Housing, but this issues remains somewhat unresolved.

Occupancy Limitations.

Be careful of only allowing a certain number of occupants per unit/room. If this is deemed an attempt to limit families with children, as opposed to being based on some objective standard (fire code, building code, zoning, etc.), the Board will likely be guilty of violating the Fair Housing Act.

Text of Utah Code: Utah Code Ann. §57-21-5. Discriminatory practices enumerated -- Protected persons, classes enumerated (relevant portions only).

(1) It is a discriminatory housing practice to do any of the following because of a person's race, color, religion, sex, national origin, familial status, source of income, or disability:

(a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental, or otherwise deny or make unavailable any dwelling from any person;

(b) discriminate against any person in the terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling; or

(c) represent to any person that any dwelling is not available for inspection, sale, or rental when in fact the dwelling is available.

(2) It is a discriminatory housing practice to make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement, or advertisement, or to use any application form for the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status, source of income, or disability, or expresses any intent to make any such preference or limitation.

WAR STORIES:

1. Companion Animal – Utah Condominium
- fined without due process

2. No Children Can Use Pool Table in Clubhouse Signs.

3. Quiet Time in Pool

4. You can mow your lawn on Sunday in our community!!!

5. No one under the age of 18 can use the exercise equipment (sign)

6. No children in diapers may use the pool (sign and/or policy)

7. I want the HOA to install and pay for safety rails in my bathroom and through the unit...

**DIFFERENCE BETWEEN AMERICANS WITH DISABILITIES ACT AND
FEDERAL FAIR HOUSING ACT (ADA v. FHA)**

Notes:
