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Avoiding Getting Sued: Check Out Rental Application

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A recent spot check of our clients' rental applications led to some shocking results. Every rental application we checked included features that were an expensive lawsuit waiting to happen. There are about 20 grounds for forbidden discrimination in rental housing in New York City. Every rental application examined contained questions for the prospective tenant that would set up the owner for a complaint to be filed by alleging discrimination on at least one of these grounds.

The laws prohibit discrimination based on age; alienage or citizenship status; any lawful source of income; color; creed or religion; disability or handicap; familial status; gender; marital status; military status; national origin; occupation; partnership status; race; sexual orientation; status as a victim of domestic violence or status as a victim of sex offenses or stalking; or whether children are, may be or would be residing with a person. The grounds are spread out over the Federal Fair Housing Act section 3604, the NY Executive Law section 296, the NYC Administrative Code section 8-107, the NY Real Property Law sections 237 and 237-a, and 24 CFR section 100.202.

For many of these grounds, it does not matter whether or not an owner has actual knowledge that the person belongs to the protected category; the discrimination is prohibited even against those who are not actually in the category but whom an owner might think are in such category. These could include, for example, people of European background who are so heavily tanned that they could appear to be from India, or a so-called "metrosexual" who may appear to be gay. Owners should therefore avoid giving the person who makes rental decisions access to a photograph of any applicant. Owners and staff should also avoid any kind of unscripted conversation with an applicant, as such chatting can lead to questions or comments that could be perceived as stumbling into at least half a dozen of these categories. Plus owners should keep in mind that even if an applicant is accepted as a renter, later conflicts with the person might lead to allegations of unlawful discrimination. The laws prohibiting discrimination apply not only to refusing to rent to the protected persons, but also to refusing to continue to rent to such persons. Owners who bring a proceeding against a tenant for having a portable dishwasher in the apartment may face a defense that the tenant is being targeted for the dishwasher because the owner does not want to rent to people with children! Therefore, when it comes to these categories, odd as it seems, the less owners and staff know about tenants, the better.

Application Form Available to CHIP® Members

A generic apartment rental application is available on the CHIP® web site (www.chipnyc.org) in the "Resources" section under the topic heading "Tenant Screening." The application was designed to ask for as much information as can legally be requested while avoiding getting sued for asking too much. The authors of this article worked with CHIP® member Jordan Platt, of Kaled Management, to develop the application.

The generic application form also conforms with New York City's Tenant Fair Chance Act, which requires that certain disclosures be made to prospective tenants regarding the screening process. The Act also calls for signs to be posted in rental offices, for which the Department of Consumer Affairs has adopted

specifications and language. Those specifications and language appear at the end of this article. The fines for failing to post the required sign can be devastating. Rental offices that do not have the necessary signs posted should do so immediately. CHIP® reported on the new requirements when they were first announced by the City (see **New York Housing Journal**®, April 2010, July-August 2010).

The generic application form demonstrates two features that are critical to complying with the Act: **(1)** the application form must be set out in two columns on the first page, and **(2)** while the first column **must be in black**, the second column, the one containing the statutorily required language, must **not be in black**. Therefore, if the forms applicants will fill out are not being professionally printed in color, any additional copies *must* be made on a color copier. Once an applicant fills out the form, it is strongly recommended to make color copies of the fully filled out form and give one of those color copies to the applicant. Less expensively, the applicant can fill out duplicate forms by using old fashioned carbon paper. *It is important not to use a black and white copier, black and white scanner, or fax machine under any circumstances* involving these forms. That is only asking for trouble. If copies of these forms are emailed, they should be emailed in color, preferably in the form of a PDF file. They should also not be circulated in the office or to attorneys in anything but color.

Finally, while owners do not have to fill out the right-hand column of the generic application form in red ink, they must not use black ink or a pencil. While using red ink is recommended, almost any non-black color is acceptable, although it is strongly advisable not to use dark blue or other darkcolored ink that could be mistaken for black.

There was a time, a generation ago, when the grounds for discrimination in housing were “race, color, or creed” and nearly every school child would have that list memorized. Now, however, the list is so long and so complicated, we urge owners to laminate a copy of this article and keep it handy in the rental office. It could save thousands of dollars in needless fines.

Rental Office Sign Posting Rules

(1) The words “**NOTICE ABOUT TENANT SCREENING REPORTS**” shall be printed at the top of the sign in one and one half-inch high capital letters.

(2) If application information is or may be used to screen tenants through a report from a consumer reporting agency, the sign shall state in 24-point type as follows:

“Tenant screening reports from consumer reporting agencies are sometimes used to assist landlords in making rental decisions. In regard to such reports (Check the applicable box):

[] We do not use such reports.

[] We may use such reports by contacting the following:

(Insert name and address of each consumer reporting agency that may be contacted, and identify any that are a nationwide specialty consumer reporting agency. Use additional lines for each listed agency)

“The law requires us to notify you if we do not lease or rent to you based on information in that report. You also have the right to dispute the accuracy of the information in the report directly with the reporting agency and to obtain a free report from such agency if we do not lease or rent to you based on such report.

“You also are entitled to receive one free report every 12 months from any nationwide specialty consumer reporting agency used by us, as well as a free credit report every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian and TransUnion. You can request this free credit report through the website www.annualcreditreport.com. You may dispute the accuracy of any information about you that is contained in such report directly with the credit reporting agency.”

(3) The color of the text of the notice required in paragraph (1) shall contrast sharply with the color of the remaining text, and the colors of the printed text shall contrast sharply with the background color of the sign.

(4) All the required information shall be included on one sign that shall be posted at the location at a place where it is conspicuously visible to a consumer who is seated while the transaction is conducted at such location.