



NEWSLETTER

NATIONAL ASSOCIATION OF RESIDENTIAL PROPERTY MANAGERS

April 1989

Fair Housing Amendments

Last month, new national Fair Housing Amendments became effective.

These new federal requirements will have a profound effect on housing providers, particularly those in multifamily housing facilities. Although it is impossible in such a short space to set forth all of the provisions of this complicated law, below is a brief summary of several of the concerns most important to NARPM members.

FAMILIAL STATUS

After March 12, 1989, it is illegal to discriminate in the provision of housing because of the existence of children within a family unit.

This provision applies not only to the provision of housing, but also to the terms, conditions and facilities involved with the provision of housing. Discriminatory damage deposits, steering in assignment of units, denial of the use of facilities, and unreasonable occupancy restrictions which have the effect of unreasonably denying housing to families with children all will be a violation of the Fair Housing Act.

A multifamily housing facility which has a history of permitting families with children

to reside in the facility should have a little concern about its ability to show that its policies were not made in an effort to discourage families from living in the facility. Most such facilities should be able to continue the policies and practices under which the facilities have been operating.

HANDICAP PROVISIONS

The second new protected category is handicap. Housing providers may not discriminate in the provision of housing, the terms, conditions, provision of services and facilities, or any other activity that discriminates against persons that have a

handicap, that reside with a person with a handicap, or that associate with a person that has a handicap. The term handicap includes those persons with physical or mental impairments.

The Fair Housing Act requires that landlords permit handicapped tenants, at the tenant's expense to make reasonable modifications of existing premises, if the modifications are necessary to afford the handicapped person full enjoyment of the premises. This provision applies to both the interior of the

THE NEW AMENDMENT:

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subject to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwelling, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

Amendment means new definition

Prudent owners and managers should be carefully studying the new Fair Housing Amendments. The two new protected classes, *handicapped persons* and *families with children*, bring significant changes for segments of our industry.

FAMILIES WITH CHILDREN

- Families may not be "steered" to particular floors, buildings or sections.
- Extra-ordinary deposits may not be charged to families with children.
- Families with children must be allowed the full use of facilities.
- Prohibitions against discrimination apply to all types of dwellings including condominiums.
- Owners and managers may develop and implement reasonable occupancy requirements based on number and size of sleeping areas.
- Charges for utilities and other services based on the number of persons who occupy a dwelling would require review on a case-by-case basis to determine whether a particular situation was discriminatory.
- The final rule specifically indicates that State and local fair housing laws may include an exemption for housing for older persons.

Continued on Page 6

Continued on Page 8

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committee chairmen to volunteer to
serve on these committees.*

From the President's Desk



Susan Gordon
President 1989

Susan Gordon & Co.,
Property Managers

This past week the Directors met in New Orleans and our agenda was brimming with plans for our new organization. The professional standards for the National Association of Residential Property Managers have been approved and will be mailed to our members this summer. CHARTER membership certificates are in the mail. Those of you who have not yet joined NARPM — please hurry! This is the last newsletter we'll be mailing without your membership fee and we have a few CHARTER memberships left.

This newsletter includes a survey along with our membership application. We're looking for your input as we develop our education plans. October's Annual Meeting is taking shape. Our conference agenda and registration form will be in the June newsletter.

I Thought I'd Heard It All!

A tenant with a large dog lived next door to a neighbor who owned a fluffy white rabbit. The dog showed a particular interest in the rabbit as only a dog could. The owners of the dog were also aware of the pet's interest in the rabbit and paid particular attention to make sure their dog was leashed or chained at all times. However, the inevitable finally happened.

Early one morning the dog owners awoke to the terrifying sight of their dog in the neighbor's yard. What added more to their horror was the sight of their dog carrying a very dirty and dead rabbit in its jaws. Quickly the dog owners retrieved their pet and the dead rabbit. With great skill they washed the rabbit. Dried it with a towel and fluffed the fur with a blow dryer. Just as quickly, they placed the dead rabbit back into its cage in their neighbor's yard.

That afternoon, the next door neighbor visited the dog owners. The neighbor with a very perplexed look on his face began to speak: "Two weeks ago our rabbit died and we buried it in the backyard. This morning we awoke to find the rabbit in his cage! What kind of 'nut' would dig up a dead rabbit, clean it and return it to its cage?" The dog owners could only nod their head in agreement.

Got a story? — Send it in to "I Thought I'd Heard It All."



CONVENTION

First Annual Convention & Trade Exhibition

National Association of Residential Property Managers

October 18th-20th, 1989

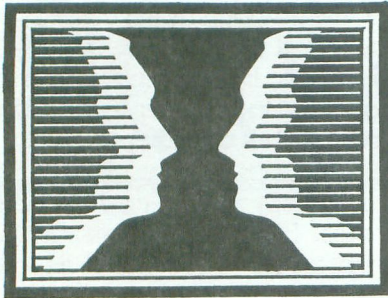
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Workshop Topics to include:

- Legal Issues
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- Coming Trends in Residential Property Management
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Real Help

Questions and Answers about your business

Questions for REAL HELP or comments regarding previously published columns, may be directed to Karen Ebert, ALPS, Inc., POB 160233, Austin, TX 78716.

Q. I have some owners who insist on holding their own security deposits. This almost always causes problems with deposits not being returned in a timely manner. It also takes a lot of follow up to make sure the deposit is returned. How should I handle this?

A. It is wise to hold and control the return of the security deposits especially if the LESSOR, as stated on the lease contract, is your company. Depending on your state laws, you may ultimately be responsible for the return no matter where the deposit is escrowed. If you must let an owner hold the deposit, be sure that adequate records are maintained and that disclosure has been made to the tenant(s). Transfer of the security deposit from owner to you at the time you receive 30 day notice to vacate can assure that you will have control over the deposit. Withholding the last month's rent would provide you with adequate funds plus control over the deposit. Unless you have to — I wouldn't handle that owner's property without control over the deposit.

Q. The biggest complaint we have from our Leasing Agents is that after spending hours or even days with a prospect, the prospect leases from another management company or from an independent owner — despite our efforts to teach good closing techniques. How can we eliminate this problem from our gripe list?

A. There are numerous videos and cassettes available through national real estate magazines and at workshops and conferences on closing techniques. While most of them are geared towards sales, the methods used are very applicable for leasing. Preview some of these and purchase a good one which your Agents can review from time to time. Some companies have instituted a "Preferred Customer Registration" whereby a customer completes a needs assessment form and submits money to be applied to a credit report, or the security deposit. Should the prospect lease from someone else, the money is retained for services rendered and given to the Agent. This is a good way to eliminate the customer who likes to use real estate personnel to "tour" or just "see what's out there" when they have no intention of leasing property at the present time. It also encourages a prospect to go back to the Agent when they drive by a property they want to see, or decide to look on their own.

Q. We are considering getting a computer. Presently we post everything manually. We're having a hard time assessing if we are large enough to do this and whether it would be cost effective. Computer consultants we have talked to don't know much about the real estate business and don't seem to be able to help us make this decision as much as they want to sell us a computer. Any suggestions?

A. Just ask a management broker who is computerized and most of them will tell you they wished they had done it when they were much smaller. The problem is that if you are only managing 50 to 100 properties and perhaps doing it all by yourself, finding the time to computerize is very difficult. We would suggest talking with other local Property Managers in your area to see what system they use, how much it costs and if they are pleased with the system. If you are managing over 50 units, computerizing is a real time advantage especially with the property management software currently available. We would be glad to assist you with names of property management software providers.

Q. I just took a position as Assistant Property Manager. I have no previous background in this field, but it is my opinion that the way they handle their keys is a disaster waiting to happen. Can you give me some suggestions for good key control?

A. There are numerous key management systems on the market. Some Management companies insist on using the most current state-of-the-art key safety systems. This is fine, if your company is willing to put the money into the more expensive system. Two areas to concentrate on no matter what system you use are: Key Numbering — keys should be labeled or numbered with a code other than the street or unit number. If you are computerized, the key number should not be the same as the property number. Any listing of the key numbers identifying the property should be kept under lock and key or entrusted to limited personnel in the office. A system must be developed to track who has the key checked out and to verify that it is returned in a timely manner. Liability resulting from a poorly maintained key system can lead to lawsuit. We can provide a list of key maintenance providers to you. Gathering data on a few systems, analyzing them for cost, and pre-

senting them to your broker/employer with the emphasis on the liability aspects of the present system, can be a way of making the best first impression as a new "key" employee.

Q. Does the new Fair Housing Amendment mean a tenant can move 15 people into a 1 bedroom unit?

A. The new Amendment stipulates that a landlord cannot discriminate against a family with children. If two adults would be allowed to occupy an efficiency or one bedroom apartment, a single parent with a child must be given the same right to rent that unit. Nothing in the law limits the applicability of reasonable restrictions regarding the maximum number of occupants in a unit.

Q. We charge an additional deposit for children because they do more damage than adults. Is this now illegal?

A. Yes. This practice was determined to be discriminatory. The same would be true for a wheelchair bound person. However, a practice of a reduced deposit for elderly persons can continue as long as the practice is based solely on age and is not operated to the exclusion of children.

Q. My tenant is in a wheelchair and wants to have a friend do his laundry. This will not take any structural modifications but our rules say no one but tenants may use the facilities. Must I allow my tenant's friend to have access to our laundry room?

A. Yes, HUD feels this sort of accommodation is required by the Fair Housing Amendments.

Q. When would it be appropriate to charge an additional deposit for a handicapped tenant?

A. If the proposed modifications are minor and the tenant has a good credit history, or otherwise can provide reasonable assurances that he or she will be able ensure

that the restorations are carried out, then it would not be reasonable for the landlord to require any payment. On the other hand, if the tenant wishes to make extensive modifications that must be restored and has only a "fair" credit history, or other factors suggest that the tenant would not be able to ensure that the restorations are carried out, then it might be reasonable for a landlord to require a payment. Of course, the landlord may not require that the total amount paid exceed the reasonable cost of restoring the modifications that must be restored at the end of the tenancy.

Q. When does a tenant not have to restore an interior modification?

A. The Fair Housing Act does not require a tenant to restore all modifications. For example, if a handicapped tenant seeks a landlord's permission to widen a doorway for a wheelchair to pass, it is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises. However, if a tenant seeks, for example, to lower the kitchen cabinets to a height suitable for a person in a wheelchair, the landlord may condition permission on the tenant agreeing to restore the cabinets to their original height.

Q. My owner says "no pets," the applicant has a seeing eye dog, what do I do?

A. It is a violation for an owner or manager to refuse to permit the applicant to live in the property without the seeing eye dog. The blind person will not have equal opportunity to use and enjoy the dwelling.

Fair Housing ...

Continued from Page 1

dwelling unit and to common and public use areas of a facility. The landlord may condition the approval for such modifications on the tenant's agreement to restore the interior of the unit to its original condition if the modifications would interfere with the next tenant's enjoyment of the unit. A landlord may not require an additional damage deposit from a handicapped tenant, but the landlord may negotiate with the tenant to have the tenant pay into an interest bearing escrow account which would cover the cost of restoration. Such determination must be made on a case-by-case basis depending on the tenant's ability to pay for modifications.

Reasonable accommodations in the rules and policies of housing facilities are also required to be made when the accommodation is necessary to afford a handicapped tenant equal opportunity to use and enjoy a dwelling unit, including public and common use areas. An example of such reasonable accommodations is permitting a blind tenant and his dog to reside in a facility even though there is a no pet policy in effect.

Newly constructed covered

multifamily dwellings which are first inhabited after March 13, 1991 are required to meet the design and construction requirements contained in the Act. These requirements are intended to make the affected units usable and modifiable for later use and adaptation by a handicapped tenant.

ENFORCEMENT

The Fair Housing Amendments Act has provided strong enforcement authority within HUD to insure that the Fair Housing Act provisions are followed. Complainants have one year after the occurrence of an alleged violation to file a complaint with HUD or a local substantially equivalent agency. HUD (or the local agency in appropriate cases) has 100 days to investigate, attempt to conciliate, and make a reasonable cause determination. If a determination is made that there is reasonable cause to believe that a violation of the Fair Housing Act has occurred, the government will file a charge and prosecute the complaint on the complainant's behalf, either through the administrative process or through the judicial process. The Act provides that administrative law judge will conduct hearings within specified

time frames, or, instead, either of the parties may elect to have the case tried before a federal district court.

The penalties for a violation of the Fair Housing Act are increased dramatically. Administrative law judges may award actual and compensatory damages, injunctive relief, and civil penalties of \$10,000 for a first offense, \$25,000 for a second offense within five years, and \$50,000 for a third offense within seven years. Federal district court judges may award punitive damages in place of the civil penalties. Attorney's fees are awarded to the prevailing party except the United States.

Fair Housing is a new and expanding concept in housing. While the new provisions are worthy of serious consideration, these new requirements should not create problems for managers who follow reasonable and consistently enforced policies and who make every effort to provide equal housing opportunities to all qualified tenants.

This article was prepared by Kathelene Coughlin, Associate Regional Counsel for the U.S. Department of Housing and Urban Development, Atlanta Office. Ms. Coughlin is the lead attorney for Region IV for the implementation of the Fair Housing Amendments Act.

In the upcoming issues of NARPM Newsletter, we'll be dealing with the following questions. Please take a few minutes and send some good ideas which have worked for you in the areas of:

- Housing Trends — Senior Citizens
- Marketing For Small Properties
- Maintenance for Small Properties
- Computers and the Residential Property Manager

Your responses can be a few lines or article length. Please call Susan Gordon (615) 321-3999) or Karen Ebert (512-331-0444) if you would like to submit an article on one of these topics.

IN OUR JUNE ISSUE: Conference, Seminar & Trade Show Info & Registration

A Property Manager's Fiduciary Responsibility Regarding Mortgage Payments

The purpose of this article is not to give legal advice. It is, however, to share experiences from other property managers, increase professionalism and benefit those who are members of NARPM. If you have specific questions, ask your attorney or accountant for advice and counsel.

THE FACTS

A property manager of a residential multiple dwelling unit was collecting rents, paying bills, invoices, management fees and then paying the mortgage. The property had a negative cash flow. Hence, the manager was required to request funds from the owner each month in order to meet the financial obligations of the property. The owner was aware of the shortage and remitted funds to the company on a monthly basis.

The situation in question arose when the owner failed to remit the requested funds. The property manager sent a second request via certified letter requesting the funds. The owner failed to respond to the second letter or any letters sent to him thereafter. The property manager continued managing the property by following standard procedure by collecting rents, paying invoices, bills, and the management fee. However, the manager did not pay the mortgage because there was insufficient funds in the account, and he would not short the trust account. After the third month of non-payment of the mortgage, the property went into foreclosure. The owner sued the property manager for negligence in discharging his fiduciary responsibility.

JUDGEMENT

The court found the property manager negligent in discharging his fiduciary responsibility

and ruled in favor of the owner. The court reasoned that since the property manager had accepted the responsibility for the payment of the mortgage, the manager had elevated himself to the highest standard of fiduciary responsibility. Hence, the mortgage should have been paid before any other expenses including the management fee and utilities. Hence the manager was in error to disperse any funds prior to the payment of the mortgage even to the detriment of the manager or residents.

CONCLUSION

If a property manager is paying the mortgage payment, the mortgage must be paid before any other disbursement are made.

APPLICATION

What should I do if I am currently paying mortgage payments and an owner fails to remit the necessary funds to pay the mortgage?

If you are currently paying mortgages for owners and a shortage is going to occur, the first item to be paid is the mortgage. If there is insufficient funds to pay the mortgage, do not pay any bills or take any management fees. The property manager must send a certified letter to the owner immediately. This letter should also state that funds must be received within (10) calendar days or, the management agreement will end within thirty (30) calendar days.

If the owner fails to respond within the thirty (30) calendar days, the property manager should reverse or void all journal entries to the account of pending but unpaid bills, except those showing rent collection and transfer everything to the owner. Send the owner two checks one for the rents and one for the security deposits. Send him the keys and copies of the lease agreements. Also send a nice letter stating that you regret losing him as a client. However, you would rather lose him than lose you livelihood.

AN ALTERNATIVE METHOD

The above approach is a last ditch effort and will create a hostile relationship between the owner and the property manager. Therefore, in anticipation of a late payment, I would recommend the following suggestion as an alternative to the above approach.

Invite the owner to become an "active participant" in the operation of the property. With the new tax laws an owner must show that he is actively involved in the management of his property. This can be accomplished by complying with several different criteria one of which is being actively involved in the management and paying the mortgage.

If an owner refuses to comply with the suggested alternative, invite him to leave a deposit on hand to cover shortages. This request is not unreasonable. It is the same request that the owner makes of the tenant. If the owner refuses, give him a notice of termination of the contract.

Remember: Many times it is not who you do business with but who you do not do business with that makes you profitable and successful. Do not hand-feed the owners — they bite.

— Steve Urie

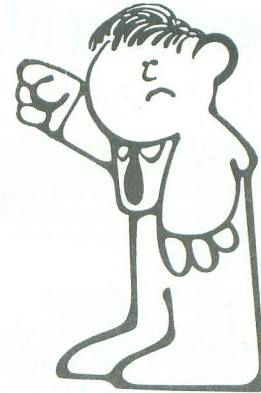
Amendments ...

Continued from Page 1

HANDICAPPED PERSONS

- Handicapped persons cannot be "steered" to certain floors, or parts of the property.
- Landlord must allow the handicapped tenant to make reasonable modifications (both to the inside and outside of a unit) at his or her own expense in order to have the full enjoyment of the property.
- Renter must restore at his or her own expense the interior of the premises to the condition that existed before the modification (reasonable wear and tear excepted).
- Renter does not have to restore exterior modifications.
- Landlord cannot increase any customary required security deposit for the purpose of securing payment for modifications.
- In certain instances where it would be reasonable for a landlord to condition permission for making modifications on the tenant paying into an interest-bearing escrow account a reasonable amount of money to ensure that funds will be available to pay for those restorations that the tenant is legally required to make at the end of the tenancy.
- It is unlawful to refuse to make reasonable accommodation in rules, policies, practices, or services if necessary to afford a handicapped person equal enjoyment of his/her unit.
- Alcoholism will frequently fall within the definition of a handicap. A landlord may hold an alcoholic to the same standard of performance and behavior (e.g. tenant selection criteria) to which all other tenants are held.
- "Handicap" does not include current, illegal use or or addiction to a controlled substance; nor to an individual solely because that individual is a transvestite.
- Persons infected with the Human Immunodeficiency Virus (HIV) are covered by this act.
- It is illegal to inquire into the nature or severity of a handicap.

Sorry...



***...but this is the last
NARPM newsletter
you'll receive if you
have not yet become a
member.***

***Please fill out the
application inside and***

***JOIN THE
PROFESSIONALS!***

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Residential Property Managers**
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