

HUD Says Criminal History Screening Has Discriminatory Impact

Earlier this month, the Department of Housing and Urban Development (“HUD”) issued a formal guidance on the application of the Fair Housing Act to the practice of screening based upon criminal history.

“Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action—such as a refusal to rent or renew a lease—based on an individual’s criminal history,” says HUD in the document.

Noting that having a criminal record is not a class of persons protected by the precise language of the Fair Housing Act, HUD concludes “criminal records based barriers to housing are likely to have a disproportionate impact on minority home seekers.”

The guidance then provides great detail on how the government would build a

potential case against a housing provider based upon criminal history record screening.

HUD states housing providers must be ready to affirmatively prove any such screening has a “substantial, legitimate, non-discriminatory interest.” In particular HUD declares the practice of excluding people based upon prior arrests (without any conviction) is discriminatory on its face.

What does this mean for community owners? As previously stated, be sure to have a written resident screening policy. Train your employees. With this new guidance, review your current policy regarding criminal backgrounds. Consult with your attorney to determine what types of processes make sense for your community.

HUD also notes criminal screening policies must be uniformly applied and not be used as a tool to treat one class of people different than another.



\$130,000 Fair Housing Fine

On March 23, 2016, the United States Department of Justice announced that the owner of a “173-lot mobile home park in Crown Point, Indiana paid \$130,000 to settle a federal housing discrimination lawsuit.

The government’s case alleged the community owner discriminated against potential residents, “by maintaining and enforcing a discriminatory policy of refusing to allow families with children to live at” the park.”

The press release noted the claim was “based on evidence generated by the department’s Fair Housing Testing Program, in which individuals pose as renters to gather information about possible discriminatory practices.”

MHI reminds community owners that in order to qualify as “Senior Housing” 100% of the community is 62 or older or 80% of the households have one resident 55 or older.

See page two for the entire press release (where we’ve omitted specific names).

Department of Justice

Office of Public Affairs

For Immediate Release

Wednesday, March 23, 2016

Justice Department Obtains \$130,000 Settlement in Lawsuit Against Indiana Mobile Home Park for Discriminating Against Families with Children

The Justice Department announced that the corporate owner and agent of XXX Estates have agreed to pay \$130,000 to settle a Justice Department lawsuit alleging familial status discrimination. The settlement must still be approved by the U.S. District Court for the Northern District of Indiana.

The lawsuit, filed in May 2015, alleged that XXX Estates LLC and John XXX violated the Fair Housing Act by maintaining and enforcing a discriminatory policy of refusing to allow families with children to live at XXX Estates, a 173-lot mobile home park in Crown Point, Indiana. The allegations were based on evidence generated by the department's Fair Housing Testing Program, in which individuals pose as renters to gather information about possible discriminatory practices.

"The Fair Housing Act guarantees families with children the right to choose a home without facing unlawful barriers of discrimination," said Principal Deputy Assistant Attorney General Vanita Gupta, head of the Justice Department's Civil Rights Division. "The Justice Department will continue its vigorous enforcement of the Fair Housing Act to ensure that equal access to housing – a bedrock of the American dream – remains a reality for all families in our country."

Under the terms of the proposed settlement, the defendants must pay \$100,000 into a settlement fund to compensate victims of discrimination and an additional \$30,000 to the government as a civil penalty. In addition, the proposed settlement requires the defendants to implement a nondiscrimination policy, establish new nondiscriminatory application and rental procedures and undergo training on the Fair Housing Act. Anyone who believes that they have been discriminated against by XXX Estates because they have children should call the Justice Department at 1-800-896-7743, mailbox number 9994 or email the department at fairhousing@usdoj.gov

The federal Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, familial status, national origin and disability. More information about the Civil Rights Division and the laws it enforces is available at www.justice.gov/crt/.



For more information, questions, or to get copies of past Updates, contact MHI's General Counsel, Rick Robinson, at rrobinson@mfghome.org.

