



# FAIR HOUSING

YOUR MONTHLY UPDATE TO HOUSING NEWS, INFORMATION AND EVENTS.

August 2019

## HOPA and Pool Rules

The Fair Housing Act protects all residents from discrimination on the basis of race, color, national origin, religion, sex, handicap or familial status.

However, the Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Under this very narrow exemption, senior communities can lawfully refuse to sell or rent manufactured homes to families with minor children (a topic this newsletter has addressed previously).

The Housing for Older Persons Act (HOPA) qualifies communities with pools a unique fair housing issue. Many of these communities allow residents to have guests at the pool. And while courts have upheld certain reasonable age separation requirements for HOPA community

pools, the community owner must make sure that rules for usage do not violate federal, state and local fair housing laws.

For instance, if guests are allowed, HOPA communities should not have an outright ban on children's use of the pool nor require that parents (or grandparents) be present in order to use. While these rules may be well intentioned and safety conscious, such outright bans may violate familial status discrimination under the Fair Housing Act.

However, as safety is a genuine concern, implement rules requiring supervision of individuals (of any age) that can't swim.

Do not implement rules that restrict the use of the pool to

persons over a certain age. An "adult hour" seems nice, but it may draw concern for Fair Housing Act compliance. Many HOPA communities avoid this by restricting the pool during certain times for residents and guests swimming laps only.

Diving boards and slides come with warnings from their manufacturer on the appropriate age for usage. While you should post the manufacturer's warning, banning usage under a certain age sends up Fair Housing red flags. The previously mentioned rule regarding supervision of those who cannot swim may be more appropriate.

Finally, check your local laws and health rules that apply to the operation of pools. These local ordinances may offer additional guidance on appropriate pool policies.



## Recent HUD Enforcement Actions

(all adapted from [HUD Press Releases](#))

**CALIFORNIA** – Testing led to a Conciliation Agreement in California.

In this instance, a local enforcement agency alleged that real estate agents from a certain company treated African-American testers less favorably than white testers. Specifically, it was alleged that African-American testers were told there were no homes available when there were and were required to meet tougher pre-qualification requirements than white testers.

To read the Conciliation Agreement, [click here](#).

**NEW JERSEY** – Another assistance animal case was settled this past month. Read the Consent Order [here](#).

This claim was brought back in October, alleging that a condominium association discriminated against one of its residents with a disability for having an assistance animal. HUD's charge alleged that the condo association required the resident, who is a person with hearing and sight disabilities, to cage her animal in common areas and use the service entrance when entering and exiting the building with her animal.

Of particular note in this case is that the condo association did not have a reasonable accommodation/modification policy. MHI cannot stress enough the importance of having strong, written anti-discrimination policies, including one

dealing with reasonable accommodations and modifications.

**NEVADA** - HUD entered into a Conciliation Agreement with the owner and operator of an apartment complex in Las Vegas settling claims that the owner and manager discriminated against families with children by allegedly denying unsupervised children's access to the property's common areas. To read the Conciliation Agreement, [click here](#).

In this case, a mother residing at the apartments filed a complaint alleging the property manager made her son and other children leave a recreational area because they were playing without their parents observing. The woman's complaint further alleged that the owner and manager maintained an unwritten policy that children could not use common spaces without adult supervision.

The owner and manager deny that they discriminated against the woman and her children but agreed to settle the complaint.

