#6
CONTEMPORARY ISSUES
IN MULTIFAMILY HOUSING

Participant Guide

CAPS

CERTIFIED APARTMENT
PORTFOLIO SUPERVISOR®

YARDI

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SUBJECT MATTER EXPERTS

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SAMPLE

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Message to Apartment Portfolio Supervisors

Residents depend upon the CAPS and the onsite teams to provide safe, accessible homes in a way that is compliant with the law. In order to do this, there are a lot of things that have to go smoothly behind the scenes, and this is not always a straightforward task. There are many laws, regulations, and standards that lack clarity, are difficult to follow, or are inadequate to accomplish their stated goals. In addition, there are new challenges, like cybersecurity, that can seem intimidating to those without the specialized knowledge to understand them at an expert level.

The Certified Apartment Portfolio Supervisor (CAPS) training program is designed to prepare the CAPS to navigate some of the thornier contemporary issues facing multifamily housing providers as they strive to meet the needs of their residents.

Contemporary Issues in Multifamily Housing is one module in the CAPS credential program.

The complete set of CAPS modules is:

1. **Client Services and Stakeholder Relations**

2. **Investment Management**

3. **Improving Asset Performance**

4. **Asset Evaluation and Preservation**

5. **Talent Development**

6. **Contemporary Issues in Multifamily Housing**

For more information about this program or any of NAAEI's education programs, ask your instructor, contact your local apartment association, or contact **NAAEI** at **833-86-MYNAA** or **education@naahq.org**.

Module Timing

This module will run for approximately three hours. Each module will include a mix of activities, discussions, watching videos, and slides. Your instructor will lead the discussions and walk you through the course.

SAMPLE

Introduction

In order to meet the needs of your residents, there are a lot of things that have to go smoothly behind the scenes. Smart, legally-compliant practices in your business ensure that you and your team are able to focus on your residents' needs when they arise. Residents depend upon you and your team to provide safe, accessible homes in ways that are compliant with the law. Unfortunately, this is not always a straightforward task. There are many laws, regulations, and standards that lack clarity and are difficult to follow or inadequate to accomplish their stated goals.

In this course, you will learn how to navigate through some of the contemporary issues facing multifamily housing providers as they balance the needs of their residents with regulatory and legal compliance as well as a changing business environment.

Topics Covered:

- Fair Housing
- ADA Compliance
- Landlord Tenant Laws
- Energy and Sustainability
- Housing Affordability
- The Way We Live
- Marketing Trends and Marketing Stack
- People
- Business Essentials

Your instructor will ask you to participate in the following activity:

Introduce yourself to the group and answer the following questions:

- **Have you (or anyone you worked with) ever had difficulty knowing how to respond to a resident's request for special accommodation?**

- **How comfortable do you feel with your level of knowledge about issues like website accessibility or assistance animals?**

Learning Goal

At the end of this module, you will be familiar with contemporary issues affecting multifamily housing property management.

Fair Housing

KEATING MEMORANDUM [1]

Discrimination based on familial status violates the Fair Housing Act (FHA), so it is a violation to refuse housing to a prospective tenant solely because the tenant has children. Your community managers will need to make reasonable decisions about occupancy limitations; however, at times there may be tension between the desire to maintain a safe living environment and the need to comply with the law.

The Keating Memo

In March of 1991, HUD released the Keating Memorandum that attempted to clarify HUD's position on Fair Housing violations relating to occupancy restrictions. The Keating Memo clarified that HUD and the Department of Justice, as a general rule, considered an occupancy policy of two persons per bedroom to be reasonable, but that reasonableness is rebuttable and is not a bright line rule.

The Keating Memo also illustrates hypothetical examples of when the two person per room rule may not be reasonable. Factors relevant in the memo's analysis include:

- Size of the bedroom and overall unit.

- Age of any children occupants.

- Configuration of the unit.

- State and local laws.

- Other physical limitations of the building.

The Keating Memo, later incorporated into the Federal Register by Congress, is still valid HUD policy, and the Keating factors serve as a reminder that it is ultimately a totality test and there is not a bright line rule on occupancy restrictions.

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1. Adapted from "Fair Housing: Familial Status and Occupancy". (Skojec, Michael W., Esq. and Michael P. Cianfichi National Multifamily Housing Council and National Apartment Association. Arlington, Virginia, 2016)

Case Law

Two examples from case law are illustrative of this nuanced view of the Keating Memo occupancy guidelines.

- In *"Rhode Island Comm'n for Human Rights v. Graul (2015)"*, the defendant forced the married plaintiffs to move out of their one-bedroom apartment after they had a child, which had led to three persons living in that one-bedroom apartment. The defendant based this action on its two persons per bedroom policy. The plaintiffs brought a disparate impact action, which the defendant defended by asserting that it was merely following the guidance of the Keating Memo.

  The court, however, held that neither the Keating Memo itself, nor the defendant's attempt to "comply" with the memo constituted legitimate business interests that justified their policy action of forcing the plaintiffs to move out. The court noted that the Keating Memo is mere internal guidance, is not enforceable as a liability rule, and cannot be used as protection from a policy that discriminates on the basis of familial status. The Graul case demonstrates that the FHA trumps the Keating Memo when the Memo's guidance would be unreasonable, which, here, was because the third occupant was a baby infant.

- In *"Gashi v. Grubb & Ellis Prop. Mgmt. Servs., Inc. (2011)"*, the defendant forced the married plaintiffs to move out of their one-bedroom apartment after the wife gave birth to a baby, raising the level of occupants in their one-bedroom apartment to three. The defendants similarly invoked a policy that limited occupants to two persons per bedroom.

  In ruling for the plaintiffs, the court pointed out that the Keating Memo states that compliance is a totality test and is not solely determined based on the number of people permitted in each bedroom. The court quoted the Keating Memo in that "owners and managers may develop… reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit". The court criticized the defendant's policy because it strictly limited the number of occupants per room at two persons, without any regard to these other factors such as size of the rooms or age of the occupants.

Best Practices

Avoid rigid, blanket occupancy restrictions. Courts want to see informed deliberation based on the unique factors of each situation, so consider:

- The size and configuration of each apartment. If your community has some units with significantly larger bedrooms than others, your occupancy policy should reflect those differences.

- The age of occupants.

- The physical limitations of the building (e.g., sewer capacity).

- State and local laws. Compliance with applicable state and local laws tends to indicate that the policy is reasonable.

Avoid using the word "children" in your written occupancy policies and in your language as you speak about occupancy issues. As the Keating Memo itself states, "An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit".

Remember, under the federal Fair Housing Act, rules and policies cannot discriminate against the protected class of familial status. The takeaway from the Keating Memo is that, although HUD suggests a two person per bedroom policy is "reasonable" as a "general rule" under the FHA, it is rebuttable, and courts will take a totality of the circumstances into consideration when determining whether familial status discrimination has occurred.

OCCUPANCY LIMITS AND HOUSING CODES
Occupancy Standards: How Many Residents Per Unit?

Although there are no federal occupancy standards, there are many rules to follow when determine how many residents should live in a dwelling. Two sources you need to consider are the International Property Maintenance Code (IPMC) and the Fair Housing Act. Both give guidance on how to appropriately handle occupancy restrictions based on applicants' needs and the layout and size of your units.

The IPMC is a model code that regulates the minimum maintenance requirements for existing residential and commercial buildings. The IPMC is intended to establish minimum standards for structural conditions, lighting, ventilation, sanitation, and fire safety. The Code stays closer to maintenance and habitability standards, which are different perspectives than the "reasonable" occupancy standards established by the Keating memorandum. IPMC and municipal and local statutes address building construction codes, specifically overcrowding and habitable space. Note that their per person square footage standards are generally less than those followed by fair housing recommendations.

The IPMC is widely adopted to fill in the gaps in state and local property maintenance law. It provides specific requirements for square footage per occupant. For example, a bedroom with one person should be a minimum of 70 sq. ft.; a unit with two occupants must have at least 120 sq. ft. of living space; dining rooms cannot be counted as bedrooms; etc.

Conversely, the Fair Housing Act requires you to consider the needs of particular applicants. For example, while a unit may be too small for three residents under the IPMC, it may be appropriate for two adults and an infant. Similarly, a one-bedroom with a large extra room may be appropriate for three adults. In either situation, you may adjust your occupancy standards appropriately, but you cannot violate the Fair Housing Act by making those decisions based on family status or any other protected class.

ASSISTANCE ANIMALS [2]

Emotional Support Animals and Service Animals

The onsite teams at your portfolio communities are undoubtedly familiar with the concept of assistance animals; there are generally two categories of assistance animals:

Service animals—these are animals that are typically trained to work, provide assistance or perform tasks for the benefit of a disabled person. What your team may be less familiar with, however, are emotional support animals.

Emotional support animals—sometimes called companion animals—are a type of assistance animal that provides emotional support to alleviate symptoms of a person's disability. For a disabled person who requires an emotional support animal, the simple presence of the animal provides a benefit.

Apartment communities have seen a significant increase in reasonable accommodation requests for emotional support and service animals in recent years. As a CAPS, you will be responsible for ensuring that your community manager and onsite staff understand how to handle these requests in a way that decreases the risk of violating federal, state or local Fair Housing laws.

Assistance Animals and the Fair Housing Act

According to the federal Fair Housing Act, disabled persons who require an assistance animal may request a reasonable accommodation for the animal from their rental housing provider. If a resident is eligible for the request, the property owner is required to permit the disabled person to live with and use an assistance animal in all areas where the resident is normally allowed to go. Any conditions and restrictions that housing providers normally apply to pets, including pet deposits or fees, may not be applied to assistance animals. Local animal-related ordinances (e.g., vaccinations, leash, and waste pick-up laws) do apply, however, unless the disabled individual is physically incapable of complying with them. Under the Act, refusal to make reasonable accommodations in rules, policies, practices or services to provide a disabled individual with equal opportunity to use and enjoy a dwelling is a prohibited form of discrimination.

2. Adapted from "NAA Toolkit: Emotional Support Animals: A Practical Guide to Reasonable Accommodation Requests". (National Apartment Association. Arlington, Virginia, 2016).

The Verification Challenge

It is important to remember that asking for verification of the resident's need for an assistance animal is not the same thing as asking for documentation of the suitability of a particular animal for that need. Some states have laws that prohibit asking for documentation of the animal, and in other cases, the law is often unclear on that point. To ensure legal compliance, it is best to assume that you may be able to verify the resident's <u>need</u> for the animal, but not the animal's <u>suitability</u>.

In cases where a property owner may request verification of the resident's need for an emotional support animal, federal regulations allow for a broad range of individuals who are familiar with the resident to provide the verification. These individuals include a physician, psychiatrist, social worker or other mental health professional or other person who can provide reliable verification. A lack of clarity in the regulations opens the door for abuse and imposes an unfair burden on property owners, undermining the intent of the Act to help those truly in need of an emotional support animal.

Among the major concerns, the party verifying the resident's need for an emotional support animal may not have an actual treatment relationship with the resident. In some cases, residents supply reasonable accommodation request documentation to property owners in the form of a letter or "certificate" purchased online for a fee. This documentation may be provided with little or no contact with a mental health professional, other than a brief consultation, and not as the result of an actual treatment or therapeutic relationship.

Of equal concern is the level of scrutiny you place on the decision to grant a request for a reasonable accommodation; the failure to be diligent in verifying the need for an accommodation may result in unanticipated risks. For instance, the failure to apply a consistent level of scrutiny on every request for accommodation could result in a fair housing claim that disabled requestors were not treated equally; similarly, the failure to properly verify the disability of a requestor and the need for a specific animal may result in a dangerous breed of dog posing a serious threat to persons or property at the community.

The Path Forward

Persons with disabilities have a right to make reasonable accommodation requests so they may have an equal opportunity to use and enjoy a dwelling. However, a lack of clarity in the law governing emotional support animals allows for abuse and imposes an unfair burden on property owners. This undermines the intent of the Fair Housing Act to help those truly in need of an emotional support animal and could place you at risk from multiple directions. **Revision of current regulations is needed to mitigate these potential abuses.** The goal is to help ensure that the benefit of a reasonable accommodation applies only to those who are legitimately in need.

Practical Tips

You can find a list of frequently asked questions, as well as helpful scripts for dealing with residents' questions, in the appendix to this module.

FAIR HOUSING: HOARDING DISORDER

Under the terms of their lease, residents have an obligation to maintain a healthy, safe, and sanitary environment. It doesn't have to be perfect, of course, but it is reasonable to expect that residents will avoid significant health and safety code violations, such as:

- Poor sanitation

- Excessive volume of belongings

- Blockage of ingress and egress, particularly the ability to get in and out during an emergency

- Mold growth

- Fuel/fire danger

Unfortunately, some residents find this more challenging than others. Hoarding is a debilitating mental illness that results in the obsessive collection of items and the inability to get rid of them. Because hoarding is considered a mental illness, residents who suffer from this condition have the right to request reasonable accommodation under Fair Housing laws. In practical terms, this usually means giving them extra time to clean their apartment.

The Hazards of Hoarding Disorder

A resident with hoarding disorder is a safety issue for both the resident with the disorder and other residents in nearby apartments. The hoarding resident risks illness, injury, or death from the accumulation of possessions in their living space. In some extreme cases, deceased hoarders have been discovered buried under their possessions.

Fire is one of the most obvious hazards presented by hoarding. An apartment full of possessions is like an apartment full of kindling, and to make matters worse, it's often very difficult to get in and out of hoarded apartments. Emergency services may be prevented from rescuing the resident and putting out the fire in time to prevent additional property damage and loss of life. This means that other residents who live near the hoarding resident are put in increased danger, as well.

Pest infestations are another way in which the hazards of hoarding spread from apartment to apartment. Infestations in the hoarded apartment can be particularly hard to treat because the excess of belongings provides sheltered habitat that can be hard to reach. Those infestations can quickly get out of control and spread to neighboring apartments.

Recognizing a Hoarding Situation

One of the best ways to address the problem is to catch it early. There are red flags you can look for and ways you can remain observant, but it's critical to remember that you can't spot a hoarder just by looking at them. In fact, because they want to avoid drawing attention to themselves, hoarders are often very discreet about their activities, and they may present as very polished in their appearance.

Your best bet for spotting (or even heading off) a hoarding situation is to be diligent about scheduling inspections and routine maintenance. While you can't just enter residents' apartments to check on them, your onsite staff can keep a sharp eye out while they inspect and repair things like smoke and carbon monoxide detectors. They should avoid inspecting the resident's personal belongings, but they can take note of what's visible in the normal course of their inspection or maintenance call.

Make sure your team knows to watch for these red flags, as well:

- Residents who refuse entry for maintenance, or constantly reschedule visits and make excuses for why they won't let staff in.

- Residents who are observed bringing things in from dumpsters.

- Complaints from other residents, including foul odors or sudden unexplained pest infestation. Pest control contractors can be very helpful in spotting problems.

Communication Considerations

Dealing with a hoarding situation may be very frustrating for you and your team, but it's important to remember that communication with the resident must be handled with sensitivity. You can make it much harder for them to address the problem when you don't. Be patient and avoid upsetting them as much as possible.

Remember that residents are protected by privacy laws as well. Be careful about who you talk to about the situation and what you say to them. You may be tempted to call the resident's friends and family to tell them what's going on, for example, but that would be a violation of the resident's privacy. Instead, consider suggesting to the resident that they ask their loved ones for help themselves.

Relapse Prevention

If the resident is able to get the situation under control and clean up their apartment, make sure you work with them to put a permanent plan in place to prevent future hoarding problems. Put a written agreement in place that arranges for regularly scheduled inspections and be very specific about your expectations.

Bear in mind, however, that hoarding is difficult to overcome, and that treatment is generally necessary to avoid relapse. If they are unable or unwilling to get that treatment, there is a good chance they'll hoard again.

CRIMINAL BACKGROUND CHECKS [3]

Theory of Disparate Impact

You, your community managers, and your onsite team all want to do whatever you can to keep your residents safe. To that end, you may decide that criminal background checks of prospective residents are an appropriate measure. While there is nothing inherently wrong with performing these checks, you do need to be careful how you go about it. Inconsistent and poorly conceived policies in this area can violate federal, state and local Fair Housing laws under the disparate impact theory. You must be aware of local regulations about criminal background screening. As of the beginning of 2020, several city and state laws prohibit any criminal background screening. Additional laws are being considered elsewhere.

Disparate impact theory has long been used in other contexts, like employment law, to attack practices or policies that are not overtly discriminatory, but instead are seemingly race-neutral, yet actually have disproportionate discriminatory effects on particular protected classes, like a certain race. Disparate impact theory is grounded in the idea that although policies are no longer explicitly discriminatory, statistical disparities between different races can nevertheless show that a policy has a negative discriminatory effect—even if unintended.

HUD Guidance on Criminal Screening Policies

In June 2015, the Supreme Court officially recognized disparate impact theory as a method for bringing a lawsuit under the Fair Housing Act (FHA). In April of 2016, the Department of Housing and Urban Development (HUD) issued Guidance discussing how a criminal conviction screening policy could violate the FHA under disparate impact theory.

The HUD Guidance notes that racial disparities in incarceration rates will result in certain races, like African Americans, being denied housing more often than other races because of criminal screening policies. The HUD Guidance requires housing providers to support their uses of background tests with "substantial, legitimate, nondiscriminatory interests" such as the safety of residents, employees, and property.

For housing providers that already consistently implement a criminal screening policy which fairly weighs and reflects legitimate concerns posed by particular types of offenses, the new HUD Guidance does not change a lot. In fact, the HUD Guidance is just that—guidance. It does not carry the force of law like formal agency rules, and a court is not bound to accept its conclusions.

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3.   Adapted from "Criminal Conviction Screening Policies: Best Practices to Avoid Disparate Impact Liability".
     (Skojec, Michael W., Esq. and Michael P. Cianfichi. National Apartment Association. Arlington, Virginia, 2016).

This HUD Guidance should be taken seriously. Housing providers should review and change any policies that currently automatically exclude applicants with any prior conviction, or that have policies that are unwritten, inconsistently applied, or not thoughtfully developed and justified.

Best Practices for Criminal Screening Policies

The best recommended practice is to carefully consider what types of offenses pose the greatest threat to the interests of a housing provider; for example, convictions for violent offenses against people or property, or sex offenses.

The justifications in support of these types of concerning convictions should be written down within the policy. In conducting the background test, the most concerning types of convictions should be given greater weight and should be looked at further back in the applicant's record than offenses that pose a lesser concern to

a housing provider (for example, convictions for public intoxication, minor marijuana possession, trespassing, or tax fraud). The greater the concern for a particular type of offense, the greater the weight it should be given in the screening process.

You can find a brief list of Do's and Don'ts for implementing fair and justifiable screening policies on page 15.

DO	DON'T
Have a written and thoughtfully developed criminal screening policy.	Inconsistently apply the screening policy or allow subjective considerations to be part of the decision.
Narrowly tailor the screening policy to reflect legitimate concerns over convictions that directly relate to the legitimate interests of a housing provider.	Ignore mitigating information and fail to review on a case-by-case basis accounting for the time passed since the conviction, the nature and severity of the conviction, and the efforts to rehabilitate.
Write down justifications in support of the legitimate interests for the policy.	Automatically deny any applicant because of the mere existence of prior arrest.
Give greater weight to convictions that reflect the legitimate concerns.	Automatically deny an applicant because of the mere existence of a prior conviction.
Allow an individual the opportunity to explain mitigating circumstances and provide evidence of rehabilitation if he or she is declined for tenancy.	Exempt certain people or classes of people from the screening policy.
Provide detailed training to staff to consistently apply the screening policy and to understand the justifications for the policy.	Use a criminal screening policy as a pretext to exclude certain individuals or classes of individuals.

Pay Attention to Evolving Law

This area of the law is still evolving, and there are areas of tension among HUD mandates, HUD Guidance, and the Supreme Court's opinion. You will want to pay attention to formal agency rules or case law precedent in the coming years for clarification of the standards.

MARIJUANA USAGE

Marijuana is a "Schedule I" drug under the federal Controlled Substances Act, which means that it "has no currently accepted medical use in treatment in the United States." Despite this classification under federal law, almost 30 states and the District of Columbia have laws legalizing marijuana in some form, primarily in cases of medical-related use. Additionally, approximately eight states and the District of Columbia have passed laws legalizing marijuana for recreational use under various limiting conditions. In light of this conflict between state and federal laws, housing providers can expect to receive more frequent requests from residents to use, or even cultivate small quantities of, marijuana in the privacy of their homes.

Housing providers are free to regulate conduct unrelated to any fair housing protected class within an apartment community however they choose. An outright ban on the use or possession of marijuana on site does not violate any landlord/tenant or fair housing laws, even where marijuana has been legalized by local ordinance or state statute. In fact, many cities and states prohibit renters from smoking in apartment buildings.

If a resident claims to be disabled, and indicates that the use or cultivation of marijuana in the home is related to that disability, they could certainly be expected to request a "reasonable accommodation" under the Fair Housing Act. This would allow the resident to take his or her medical treatment for that disability.

Physicians in the United States are not actually permitted to prescribe marijuana, although they can recommend its use for their patients to treat various medical conditions. Certainly, some of those medical conditions could be deemed "disabilities" as defined by the Fair Housing Act. An accommodation that allows conduct in violation of a federal law constitutes an "undue administrative burden." That means that the use or cultivation of marijuana in multifamily housing would not be a reasonable accommodation a housing provider has to allow, even if that use or cultivation is medically recommended for treatment of a disability.

Because the courts tend to look to employment discrimination cases for guidance on rulings under fair housing laws, housing providers should be alert to new judicial opinions upholding protections from discrimination afforded to medical users of marijuana and carefully monitor state law for specific expansion of those protections to the housing industry.

Banning the use or possession of marijuana on site does not violate any landlord/tenant or fair housing laws, even where marijuana has been legalized by local ordinance or state statute. The use or cultivation of marijuana in multifamily housing is not a reasonable accommodation, even if that use or cultivation is medically recommended for treatment of a disability.

In early 2018, the U.S. Attorney General's decision to revoke the "Cole Memo" from the Obama Administration means that the federal Attorneys General around the country will no longer consider enforcement of the Controlled Substances Act against marijuana to be a low priority for law enforcement. This means the risk of legal enforcement of anti-marijuana laws—even in states where its recreational or medicinal use is legal under state law—is increased, and it is even more clear that allowing the use of marijuana in any multifamily community, even as an "accommodation to a disability" would be inappropriate.

ADA Compliance

EMPLOYEE ACCESSIBILITY

The ADA requires employers to provide accessible workplaces for all employees. To ensure ADA compliance for the employees of a property, consider the following.

Disabilities are not always obvious and in fact may be invisible to the eye. As an employer, never assume that someone does not have a disability simply because it cannot be seen. Whenever an employee or job applicant mentions a physical or mental condition that might impact their work, you must treat them according to ADA guidelines.

The process for conforming to ADA requirements is clearly laid out and should be closely followed when determining an employee's workplace disability needs. An employer should follow the official process when investigating an employee's disability and whether reasonable accommodations can be made in the workplace for that disability. Keep in mind that compliance with ADA regulations mean more than just arriving at a solution that the employee finds fair and acceptable. It also means that a business has taken the correct legal route to arrive at that solution by fully documenting every step taken. Document all interactions with the employee regarding disability issues.

Rules underlying the ADA require that businesses avoid using a one-size-fits-all approach to deal with their employees with disabilities. Each case is unique and requires an individualized solution.

It is critical to ensure that digital properties are accessible as well, not only so that employees with disabilities can use them, but also so that they are available to job seekers with disabilities. Your website, job portal, software, inter-office documents and even social media profiles should meet the technical requirements of the latest Web Content Accessibility Guidelines (WCAG).

WEBSITE ACCESSIBILITY

Owners and operators of consumer-facing websites, including websites promoting luxury apartment sales and rentals, are facing a rising wave of lawsuits alleging violations of the ADA, claiming that websites are not accessible to the blind and visually impaired. Because the ADA predates the internet, websites are not specifically included. Complaints typically include claims that websites fail to incorporate screen reader technology and, as a result, visually impaired individuals who use JAWS or other screen reading software/devices to access and "read" content on websites are unable to access the website, or can access only certain portions. In addition to the ADA, website inaccessibility violates the Fair Housing Act in that it makes access to housing, housing services or housing privileges unavailable and, therefore, illegal.

According to the law firm BlankRome, an accessible website is one "that can be used by sighted people as well as those with visual (and other) disabilities." Identified in a 2020 webinar, other conditions that could impact the use of a website include:

* Auditory conditions—need captions for web audio content

* Motor disorders—need full keyboard site navigation and modified "time outs"

* Color blindness—need sharper contrast or black and white applications

* Seizure disorders—need flash effects eliminated or controlled

The federal government has left it unclear as to what it takes for a website to be "accessible" for ADA purposes and this lack of an officially established standard has left businesses exposed to lawsuits. In September 2018, the DOJ issued a letter confirming the ADA applies to websites as "places of public accommodation" and the US House of Representatives passed a bill requiring a notice and cure period, but for "drive-by" and not "surf-by" ADA lawsuits. If your website is not accessible, you may be targeted for non-compliance with the ADA. The best—and probably only—way to protect yourself is to bring your website into reasonable compliance with the ADA.

Landlord Tenant Laws

ADMINISTRATIVE AND AMENITY FEES

Fees can be a valuable tool for recouping certain expenses, as well as an added revenue stream for providing special amenities and services, but they are not a catch-all solution to be applied everywhere and in all situations. The widespread practice of charging multiple move-in fees has left some communities on the wrong side of state and local laws.

The laws in each state differ on the question of reasonable fees (consult with legal counsel when in doubt), but in general, it's important to remember that while administrative fees can help you recover the cost of some activities, they are not meant to recoup the everyday cost of doing business.

For example, if you were to charge both a lease application fee and an administrative fee, that administrative fee can't be intended to cover things like typing up the lease, putting the file together, and making keys. Those activities all fall under the general cost of doing business in the multifamily housing industry.

Fees must be fair and reasonable. It's not a bad idea to look at what your competition is charging, but don't let that be your only guide. Ultimately, if someone challenges you in court, your competition's practices won't save you. You'll need to defend those fees on their own merits.

IDENTITY ISSUES IN VIRTUAL RELATIONSHIPS

Apartment operators and managers are all too familiar with the effects identity fraud can have on their business, but not all instances of the problem are alike. In fact, of the four types of identity fraud commonly encountered in the multifamily industry, synthetic fraud—in which all information about the applicant is fabricated, combining real and fake information to create a new identity—is the fastest-growing, accounting for an estimated 85 percent of all identity fraud in the country. Yet, despite the financial devastation synthetic fraud can cause property owners, including extensive revenue loss and increased liability for resident safety, its occurrence is difficult to identify during the leasing process because it isn't immediately reported as other types of identity fraud are because there is no real physical victim to report the crime.

Property managers can expect to encounter four basic types of identity fraud.

First-Person Fraud:

The applicant is acting for another person when renting an apartment. The applicant uses his or her real identity information on the application but isn't the person who'll be residing in the apartment. The applicant in this instance could be a family member, a friend, or someone renting for short-term rental purposes such as Airbnb lodging.

Third-Party Fraud:

The applicant assumes a stolen identity and uses the victim's personally identifiable information (PII), including name, Social Security number (SSN), and date of birth.

Identity-Manipulation Fraud:

The applicant alters some of his or her own identifying information in a way that looks as if it could be a typo or spelling error. Common examples include an SSN that's off by one number or includes transposed numbers, a slightly different name, or an altered birthdate.

Synthetic Fraud:

The applicant creates a fake identity by fabricating all identifying information (SSN, name, date of birth), cobbling together an identity from multiple stolen sources, or doing a mix of both. Real SSNs, typically from children, the elderly or deceased people, are often used in combination with made-up names and birthdates, but even the SSN can be fabricated.

Perpetrators of synthetic fraud create fake IDs that combine real data with falsified names. The resulting IDs are easily purchased on Craigslist or other online platforms and can be used to apply for loans, credit and other transactions, including apartment leasing, leading to an epidemic of fraud facing multifamily operators throughout the country.

While rental fraud continues to grow, fraud prevention today is merely reactive, not proactive as it should be. According to TransUnion, 95% of property management companies experience difficulties identifying, mitigating, or preventing fraud. Property management companies need tools that are advanced enough to proactively mitigate the aftermath of a determined fraudster to better protect their business. It is reported that 73% of owner/managers identify fraud after the applicant moves in and over 70% identified the fraud within the first six months after move-in, leading to forced turnover well before the typical end-of-lease cycle.

With fake identities so easy to produce, how can multifamily operators and managers protect their companies? One quick and accurate way to stay ahead of identity thieves is to apply technology that alerts the user when an applicant's identifying data doesn't add up. Resident-screening software, for example, can alert operators when an applicant might be using a fake SSN, based on a discrepancy between the date the SSN was issued and the date of birth or age the applicant provided. Similarly, an alert might indicate an address discrepancy between previous addresses listed on the rental application and those listed on the credit report.

Specialized software programs aren't the only method of combatting synthetic fraud. Congress, too, is working to crack down on this epidemic and in May 2018 enacted the Economic Growth, Regulatory Relief and Consumer Protection Act. The legislation includes a provision directing the U.S. Social Security Administration (SSA) to make a mechanism available to facilitate the verification of SSNs upon request by a certified financial institution. Currently, in order to verify an SSN, an institution must collect and submit a hard-copy, wet (ink) signature on an SSA consent form, which poses a significant obstacle to using SSA services. The new law, however, would allow a certified financial institution to obtain consent from a consumer electronically, which would permit the institution to verify identities more quickly, and in connection with a credit transaction. While the law is geared toward providing immediate relief to banks and other financial institutions, the legislation marks the start of compliance that will eventually help the apartment industry further prevent fraud.

Energy and Sustainability
CLIMATE AND INVESTMENT DECISIONS

In a June 2019 UNITS article, the impact of climate conditions—present and future—was discussed in detail as a factor in investment decision making. No longer relegated to "points" or simply raising awareness, available data can assist investors in assessing risk of natural disasters and changing climate impacts. And while insurance companies take an annual view when it comes to experience-rating and premiums, investors in real estate need a longer-term view. Urban Land Institute Global CEO W. Edward Walter says, "Risks such as sea level rise and heat stress will increasingly highlight the vulnerability not only of individual assets and locations, but of entire metropolitan areas. Factoring in climate risk is becoming the new normal for our industry." Just as portfolios are diversified by market, they may also diversify by climate risk. Climate risk research resources with data and scoring include Carbon Delta; Four Twenty-Seven; Geophy; Jupiter Intelligence and Verisk Maplecroft.

Especially in regard to older buildings—not new builds or LEED-certified structures—ULI research suggests that real estate companies that successfully integrate sustainability into their transactions use a more comprehensive due diligence process that can uncover sustainability opportunities. Many companies are now adding an ESG (environmental, social and governance) checklist to the standard due diligence process. ULI has created a toolkit to help buyers and sellers identify sustainability opportunities in acquisitions, get the "most sustainability bang for their buck" in underwriting and capture value from all sustainability investments at disposition.

Industry leaders have reached out to the US Senate Finance Committee encouraging lawmakers to renew the two expired tax provisions designed to spur energy efficiency—the New Energy Efficient Home Credit and the Energy Efficient Commercial Buildings Deduction. The former allows a $2000 per unit tax credit for residences (single family and low-rise multifamily) that achieve a 50% energy savings for heating and cooling over a 2006 standard. The latter enables owners of buildings with four or more stories to deduct from $.60 to $1.80 per square foot when installing energy efficient systems, HVAC, lighting or building envelope.

IS THERE VALUE IN CERTIFICATION?

Available certifications for sustainability have grown in recent years. Here's a sampling:

1. LEED – devised by the US Green Building Council, 60 projects were registered in a typical month between 2000 and 2006. By 2008, the number increased to 2000 registrations per quarter and today USGBC reports that over 32,000 commercial buildings are LEED certified.

2. Certifications for Upgrades
    • Energy Star – offered by the US Department of Energy, largely for appliances
    • WELL Building – offered by the International WELL Building Institute
    • Passive House – similar to the USGBS, but utilized in Europe
    • RESET – monitors indoor air quality, particulate, temperature and humidity
    • Fitwel – operated by the Center for Active Design

3. In a recent report RENTCafe reports that green certifications for multifamily units have actually dropped to 15% in 2018. The firm attributes that to a slowdown in the delivery of new units, the paperwork needed to obtain certification and the costs involved. The 2018 USGBC Trends report takes the opposite angle and predicts certifications at a 45% level by 2021

THE REGULATORY CLIMATE

As many areas of the country struggle with water shortages, rising temps and energy grid maximization, cities and states have taken a more aggressive approach to conservation and reduction in use. The Journal of Utility Management reports the following:

  • Four cities and the District of Columbia have mandatory energy benchmarks in place for public and commercial buildings

  • 21 cities have mandatory energy benchmarks in place for public, commercial and multifamily buildings

  • The entire state of California has enacted various forms of performance and other conservation requirements; this includes mandatory submeters for water in new multifamily units

  • New York City passed a law in June 2019 that requires all existing buildings of 25,000 square feet or more (there are an estimated 50,000 citywide) to make efficiency upgrades or face stiff penalties. By 2050 lawmakers want to cut overall greenhouse gas emissions by 80% from the city's levels in 2005.

Buildings account for 40% of energy usage in the US and over 1/3 of carbon emissions according to the New Building Institute. They have labelled 2019 as the "Year of Energy Codes". LEED is still the most sought after and recognizable goal for many cities. Many cities and towns are requiring that certification for new city-owned buildings, but in Nashville, TN all projects with more than 5,000 square feet or projects that cost more than $2 million will be required to earn a LEED Silver certification.

GREEN FINANCING

More than 75% of multifamily housing in the US was built prior to 2001 and lacks many of today's water and energy efficiency features. The result is a faster-than-necessary depletion of resources and higher cost for owners and residents. This is particularly noted in drought-prone areas and areas with high heating and cooling costs. Fannie Mae and Freddie Mac—government sponsored enterprises (GSE's)—have taken on significant lending roles when it comes to financing that requires reduction in energy usage.

Fannie Mae has helped to build or retrofit more than 550,000 units since it launched its green financing business in 2010. Extensive research pointed a clear direction toward green financing:

- Owners who made their properties more efficient could expect to recoup their investment within an average of six years, while residents could see annual utility expenses cut by 10% or $145 annually

- Properties in the program are expected to reduce water usage by almost six billion gallons and greenhouse emissions by 287,000 metric tons

- Newly constructed or retrofitted green multifamily buildings are estimated to support 170,000 jobs and contributed $7.2 billion in workers income

Borrowers using the "Green Rewards" program can underwrite a portion of their project utility savings to increase loan proceeds. In addition to lower interest rates, Fannie Mae reimburses for 100% of the energy audit costs. Initially borrowers had to reduce water or energy consumption—the owner can choose either—by 25% to qualify.

Freddie Mac uses its "Green Advantage" program to stimulate energy conservation through upgrades and improvements. Similar to Fannie Mae, significant impacts have been realized:

- Properties in the program have saved 4.7 billion gallons of water and 1.8 billion kBtu in energy

- 450,000 homes have been positively affected

- Cost savings of $138 annually per household are significant since the properties financed are 90% affordable for residents making area median income (AMI) or less

Originally Green Advantage focused on water use reduction of 15% but grew to include a similar reduction in energy usage.

In 2019, the requirement for reduction in consumption grew. In 2018 borrowers had to reduce water or electricity usage by 25% in order to qualify for their loans—that was a big increase over 15% in 2017. But interest rates at up to 30 basis points under conventional financing is attractive. In 2019 the reduction increased to 30% of water and energy—with half of that coming from energy reduction—not the easier water reduction.

Industry Adopters

An increasing number of multifamily operators and suppliers have not only adopted energy conservation and sustainability initiatives, but they have excelled. A June 2019 UNITS article celebrated the ENERGY STAR Partner of the Year Award winners:
- Bozzuto Management Company—a three-year-in-a-row winner
- AMLI Residential
- Lowe's
- Yardi

Chief Energy Officer, Vice President - Sustainability, Vice President of Corporate Responsibility, Head of Global Sustainability, Vice President of Energy Management— these new and expanding roles signify the large and growing need to address and plan for sustainability and conservation activities at properties across the country.

Housing Affordability
THE CURRENT STATE OF AFFORDABLE HOUSING

More than 40 million apartment units have been built over the past three decades, accommodating 27 million new households, replacing older homes and improving the quality of the nation's stock, yet the Harvard Joint Center for Housing Studies 2019 report concludes that ALL housing construction has just barely kept pace with household growth over the last eight years. The report continues that even with the growth in rental housing units only about one in four very low-income renters benefited from subsidies to close any gap between growing market rents and what they could afford to pay. Weak income in low- and moderate-income households has contributed to the affordability pressures. The report cites that the number of units renting for $800 or less fell by 1.0 million in 2017 alone and 4.0 million between 2011-2017.

- Cost-burdened households inched downward to 31.5% of all households. Most of this progress was among homeowners.

- Cost-burdened renter households stood at 47.4%.

- Renters make up 10.8 million of the 18.2 million severely burdened households that pay more than half their incomes for housing.

- 83% of households earning less than $15,000 are cost-burdened, including 72% severely cost-burdened. Those positions have remained the same from 2011-2017.

- Freddie Mac Multifamily has concluded that the fastest growing cities in the US are rapidly becoming the least affordable.

- In June 2019, the Affordable Housing Credit Improvement Act of 2019 was introduced to expand and enhance the Low-Income Housing Tax Credit (LIHTC). If approved, it would make permanent the 12.5% LIHTC increase enacted in March 2018 and add an additional 50% in credit authority. It would also establish a minimum 4% LIHTC rate.

Given the growth in construction of higher end units, CityLab considers the question, "Does building 'luxury' (or market rate) housing in wealthy neighborhoods free up more housing for everyone?" With so many Class A products recently coming out of the ground, the question may be worth asking. Market-rate skeptics maintain that new market-rate housing will only result in high-end units in already-expensive neighborhoods and could exacerbate segregation in wealthy neighborhoods and displacement in low-income neighborhoods. But others feel the new high-end units could ease up demand for existing housing, making it gradually more affordable to middle- and low-income households. The W.E. Upjohn Institute for Employment

Research has found that even expensive new units in wealthy areas help relieve pressure on rent across the market, including less-affluent neighborhoods. Looking at 802 new developments across 12 central cities, economist Evan Mast discovered that by the 6th move in market-rate properties, nearly half of the moves were coming out of tracts with below-median incomes and 20% from the poorest tracts in the city.

THE IMPACT OF RENT CONTROL

While the Upjohn study is a positive perspective, rent control and its growing popularity are presenting new challenges among multifamily operators.

In its June 2019 *units* article "Control Freak: Rent Control Resuscitated," NAA offers that rent control is actually being considered a very real option to address the affordability crisis. While only five states (California, Maryland, New York, New Jersey and Oregon, at this writing) and 36 states explicitly preempt localities from implement rent control laws, the issue is not small, nor is it going away. With Oregon's statewide rent control law enacted March 1, 2019, the concern is that other states will follow suit under the influence and pressure of "renters' rights advocates and their champions." The article cites the results of a poll by the American Economic Review that 93% of all economists agreeing that "a ceiling on rents reduces the quality and quantity of housing available."

In 2017, NAA and NMHC produced a report "U.S. Apartment Demand—a Forward Look" predicting the need for 4.6 million new units by 2030. A construction rate of 328,000 units per year would be necessary and has only been met in the last few years. The pressure for affordable housing is real.

In June 2019, the state of New York enacted sweeping changes to their rent control ordinances. As NAA writes, the main focus of the bill grants other New York municipalities to opt into the New York City rent regulation system. The law casts serious limits on major capital improvements (MCIs) and individual apartment improvements (IAIs) in addition to rent increase caps, extended stays of eviction execution and limits to application and security deposit amounts.

NAA hosts a current chart and map of upcoming rent control initiatives on its website.
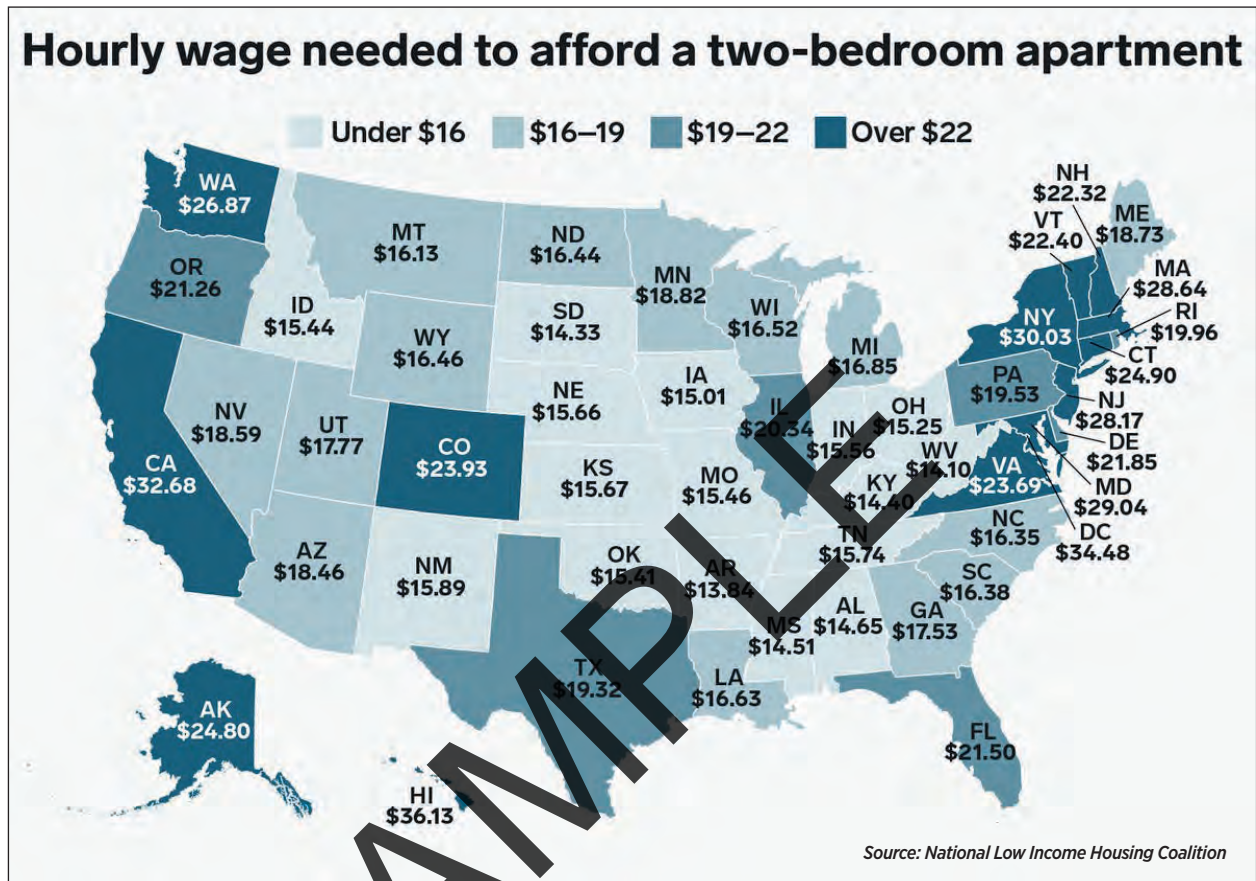
COST BURDENED RENTERS AND INNOVATIVE SOLUTIONS

A renter is "cost-burdened" when 30% or more of their income is spent on housing. The NAA/NMHC Housing Affordability Toolkit estimates that over 1/3 of American households are cost-burdened. Housing choice vouchers and low-income housing tax credits remain the two main rental assistance programs according to the Harvard Joint Center for Housing Studies. Voucher programs have not grown significantly due to lack of funding and higher costs per voucher. LIHTC-funded units have grown from 880,000 in 2000 to about 2.5 million in 2017. In June 2018, a four-person household that made $117,400 qualified for low-income housing in San Francisco and area counties according to HUD.

The National Low Income Housing Coalition has released its latest "Out of Reach" report which shows how America's housing crisis is affecting millions of renters. The report focuses on a central statistic, the Housing Wage, which is an estimate of the hourly wage a full-time worker must earn to afford a rental home without spending more than 30% of his or her income on housing costs. The 2019 Housing Wage is $22.96 for a modest two-bedroom home and $18.65 for a modest one-bedroom home based on the "fair market rent". A worker earning the federal minimum wage of $7.25 per hour would have to work nearly 127 hours per week—equivalent to more than three full-time jobs—to afford the two-bedroom option. That is not just a regional problem. There is not a single state, metro area or county in the country where a full-time worker earning the minimum wage can afford to rent a two-bedroom property.

That problem isn't just confined to workers earning the minimum wage. The research also found that the average renter's hourly wage is $1.08 less than the one-bedroom Housing Wage and $5.39 less than the two-bedroom Housing Wage. That means that an average renter has to work 52 hours a week to afford a modest two-bedroom apartment, which becomes increasingly difficult if that renter is a single parent or somebody working with a disability.

The graphic below represents the hourly wage a full-time worker must earn in order to afford the Fair Market Rent for a two-bedroom rental home—without paying more than 30% of income.

Hourly wage needed to afford a two-bedroom apartment

Legend: Under $16 | $16–19 | $19–22 | Over $22

- WA $26.87
- OR $21.26
- ID $15.44
- MT $16.13
- ND $16.44
- MN $18.82
- SD $14.33
- WY $16.46
- WI $16.52
- MI $16.85
- NH $22.32
- VT $22.40
- ME $18.73
- MA $28.64
- RI $19.96
- NY $30.03
- CT $24.90
- PA $19.53
- NJ $28.17
- NV $18.59
- UT $17.77
- CO $23.93
- NE $15.66
- IA $15.01
- IL $20.34
- IN $15.56
- OH $15.25
- WV $16.10
- DE $21.85
- CA $32.68
- KS $15.67
- MO $15.46
- KY $14.40
- VA $23.69
- MD $29.04
- DC $34.48
- NC $16.35
- AZ $18.46
- NM $15.89
- OK $15.41
- AR $13.84
- TN $15.74
- SC $16.38
- AL $14.65
- GA $17.53
- MS $14.51
- AK $24.80
- TX $19.32
- LA $16.63
- FL $21.50
- HI $36.13

Source: National Low Income Housing Coalition

Innovative solutions are beginning to arise:

1. According to Bisnow, school districts in several cities are finding creative ways to house their teachers who cannot afford to live close to their schools.

   a. Santa Clara School District has built apartment buildings specifically to rent to their teachers at below-market rates.

   b. Metro Nashville public schools are offering to trade an 11-acre plot of land to any developer willing to build affordable housing for its teachers.

2. The New York Times reports a new app "Landed" in Silicon Valley to help teachers locate units.

3. Workforce housing continues to provide relief for those households making between 60% and 100% of area median income (AMI). Investors are drawn to workforce housing due to oversupply in Class A and only minor wage growth which will push people into B and C properties.

4. In 2019 Microsoft announced a $500 million affordable housing fund for the Seattle area. Projects with a minimum of 100 units will support middle-income and low-income families all within a 60-minute commute of Bellevue.

5. The "Housing Lab", a new accelerator program that will financially and operationally support new approaches to housing challenges, has been launched by the Terner Center for Housing Innovation at the University of California, Berkeley in partnership with the Chan Zuckerberg Initiative. Applications are being accepted for confirmation in the fourth quarter 2019.

6. Affordable Central Texas has created a private equity fund to purchase and conserve affordable housing, with a goal of 5,000 affordable units in five years for Austin's working class.

7. In a move similar to other cities, Seattle's new Mandatory Housing Affordability (MHA) legislation hopes to add 6,000 low-income housing units over the next decade.

8. In the largest plan to date, Google has announced a commitment of $1 billion for housing in the Bay Area over the next 10 years. The plan includes a) at least 15,000 residential units on $750 billion of land; b) incentives to enable developers to build at least 5,000 affordable units across the market; and c) $50 million in grants dedicated to nonprofits focused on the issues of homelessness and displacement.

Representatives at Habitat Affordable Group and Evergreen Real Estate Group are offering three creative approaches and encouraging others to think differently: a) identify opportunities to subsidize the cost of these units with market-rate residences and commercial space housed in the same development; b) combine affordable housing with a public service, such as a library; and c) target adaptive reuse programs that take advantage of older or blighted properties.

OPPORTUNITY ZONE FUNDS

Established late in 2017 as part of the Trump administration's Tax Cut and Jobs Act of 2017, the opportunity zone fund program was created to drive economic development in underserved communities in exchange for a significant tax break. Eligible communities were determined by the 2010 census. Each state nominated designated tracts that were certified by the Treasury Department. More than 8,700 communities nationwide are designated opportunity zones. The incentives included receiving a 10% to 15% tax discount or a tax-free break on capital gains depending on how long owners held or sold these assets.

Key Characteristics:

1. The "Qualified Opportunity Fund (QOF)" may not actually be a fund—it can be a corporate or a limited liability corporation (LLC). Bisnow reports that it could be a two-person partnership. It would be a real estate developer and a city that get together and pool their capital gains and purchase a property in one of these zones and renovate it.

2. OZ investors will have to make improvements to the property based on the value of the building (double the basis when renovating).

3. Property and managers have to prove that 50% of their revenue is derived from activity (providing services, paying wages, etc.) in the zone.

4. Governors were allowed to choose up to a quarter of their state's low-income census tracts as opportunity zones.

5. The tax advantages are in capital gains tax relief and/or deferral. The tax from the capital gain made by the QOF will be paid at the sale of the QOF or by December 31, 2026.

6. If the investment is held for five years, the amount of gain to be taxed will be reduced by 10%. If held for at least seven years, the reduction grows by 5%. Finally, if the investment is held for at least ten years, the appreciation in the value of the QOF is tax exempt after 10 years. (Greenspoon Marder LLP).

A SOLUTION TO AFFORDABLE HOUSING?

Affordable housing advocates have expressed fear that the tax breaks may not trigger development in neighborhoods that really need it but instead just spur activity in communities that were already targeted for investments. They also worry that rents are going to increase when properties meet the required "substantially improved" status.

SP Group out of Washington DC has researched this possibility. They analyzed the current state of rental affordability in the designated opportunity zones using the 30% rule – that a household that spends more than 30% of its income on housing cost is considered cost burdened. After comparing the rents relative to incomes, they found that most of the cost burden tracts were in California, Florida, New York, Illinois and New Jersey.

Since there are no restrictions as to rents and/or the people that live in the OZ properties, investors who make substantial improvements will be able to charge more rent. SP further discovered that if rents in the improved properties were raised 30%, about 80% of the OZ tracts would become cost burdened.

THE BOTTOM LINE

Investors and lenders who are looking at opportunity fund deals caution that a potential opportunity fund deal has to make sense without using the OZ—not because of it. Principals at both Capital One and Madison Realty Capital to name two confirm that an opportunity fund does not turn a bad deal into a good one and underwriting standards will continue to rule decision-making. By mid-June 2019, Real Capital Analytics reports that access to the funds is, in fact, moving capital.

The Sharing Economy

Just as Rent the Runway has filled the need for luxury apparel without spending the money to buy those items, so sharing in virtually every aspect of housing has come into vogue. In fact, Rent the Runway has just partnered with Nordstrom's in a Los Angeles experiment using drop boxes to exchange clothing. Downtown areas are full of bikes and scooters and have become the bane of many local governments. Uber, Lyft, Transit, Rideshare are all viable ways for consumers to get from point A to B without owning, maintaining or parking a vehicle. In fact, a small study completed by QuoteWizard confirmed that by 2027 it will be cheaper to use Uber or Lyft than to own a vehicle in Seattle or Denver.

Consider some of these other sharing alternatives:

1. **Furniture sharing –** the apartment industry has long rented furniture, providing a wide array of "furnished" apartments. Student and military housing are prime consumers of this approach to multifamily living. But companies like Fernish (in Seattle and Los Angeles) and even West Elm (in an agreement with Rent the Runway) are providing standalone packages to elevate your apartment surroundings without buying anything – right down to the accessories. IKEA launched a furniture sharing app in Switzerland in 2019. Can't afford that leather couch for your apartment? Rent it!

2. **Corporate housing –** multifamily companies have long offered furnished corporate housing in a variety of marketplaces. Urbandoor has taken a new approach to corporate housing and has grown quickly, with major apartment

owners using this app to locate over 500,000 apartments in more than 1,300 cities. Opening its doors in 2017, it serves as an electronic platform to connect companies with corporate units available and consumers who need them. Other national companies include CorporateHousing and Homelike along with many others operate on a more local or regional basis.

3. **CODI –** lets people rent out part of their living room to local freelancers who prefer not to use a coffee shop or shared workspace. A seed round was just completed and apps for iOS and Android devices are ready.

4. **Coliving** – residents are now sharing their living space with others through partners such as Common, Open Door, Co-Dwell and WeLive (a subsidiary of the giant WeWork). Particularly in high demand, high price markets, it is a way for residents to live in locations they prefer at a fraction of the full market price. Growing student loans, housing affordability concerns and rising construction expenses have created a perfect storm. Cushman & Wakefield defines this living choice as not exactly apartments, but not hotels or micro units either. Typically, these residents live in multi-family-like buildings but share common areas like kitchens and living rooms with other residents. Starcity is developing an almost 800-unit coliving facility in San Jose. Multihousing Pro reports that between 12-18 people will share kitchen and living room, with four of each per floor. Co-Dwell goes as far as to offer childcare and elder care on certain floors. Students and Generation Z are perfectly happy with frugality and shared living.

5. **Coworking –** residents are also sharing their workspaces—especially if they work from home, have a remote office or flexible officing. The Global Coworking Unconference Conference predicts that coworking members will boom from 1.7 million in 2017 to 5.1 million in 2022. Multifamily owners are increasingly swapping out clubroom or lobby space for coworking arrangements. In addition, WeWork, WorkFlourish, Craftwork, Common Desk and others are adding curated services like coffee, executive suite services, bars and snacks. Some landlords are even allowing users of the apartment coworking space to use the apartment amenities.

6. **Living with Fitness –** Lifetime Living with Lifetime Fitness combines the active lifestyle with high-end apartment features, coordinated fitness regimens and full wellness programs

7. **Blended Real Estate Uses –** At the NMHC Board of Directors meeting in June 2019, Dror Poleg of rethinking RE noted a multifamily firm purchased Equinox gyms and is adding coworking spaces to them. RXR is combining coworking/flex space (operated by WeWork), a hotel (operated by Airbnb) on several floors and a member lounger/conference center (operated by Convene).

The Way We Live

ATTOM Data Solutions reported in January 2019 that renting a three-bedroom property is more affordable than buying a median-priced home in 59% of US counties. While we have become a renter nation, we are doing so in a variety of ways.

A mid-2018 study completed by the Urban Land Institute and RCLCO provides interesting findings into the role of urban living in the growth of rental housing offerings:

- Population growth in urban places are approaching suburban growth rates for the first time in decades.

- 29 million Americans live in urban neighborhoods. 17% of the population lives on just 1% of the land area in the top 50 MSAs.

- Upscales urban places are among the most racially and ethnically diverse types of neighborhoods.

- Almost a third of urban households are headed by millennials.

- Rental apartment development is now concentrated in urban locations— between 2010 and 2017 this inventory grew by 32% compared to 16% for suburban locations.

- Urban locations tend to face greater affordability issues than suburban locations.

SHORT TERM RENTALS

Short term rentals refer to any of the variety of partners currently available to multifamily operators to provide housing in atypical rental situations. Often times the rental is shorter term than a typical lease and can be executed between a renter and his or her own customer or the management company. There are a number of options for this relationship as well as a number of challenges. There is a school of thought held by many municipalities that when these units are removed from the housing stock and convert them into short term rentals, remaining housing becomes less affordable.

1. **Airbnb –** this is the original disruptor to the rental housing industry, causing concerns for constant resident turnover, security and privacy issues and allowing residents to sublease their own units. Some owners have bought in and seen it as a way to fill hard to fill units. In fact, Airbnb has created Niido to assist landlords in maximizing home-sharing for their units. Others have threatened lease violations and evictions to residents who are subleasing their own units. Adding another dimension, cities and states are considering new laws and regulations to secure "hotel" taxes and other compliance hurdles. Massachusetts passed a bill effective July 1, 2019 that will require such operators—including Home Away (Expedia's acquisition of Pillow and ApartmentJet)—to register with the state, secure insurance and potentially pay a hotel tax. Los Angeles passed a similar ordinance.   Airbnb continues to fight battles in the US and abroad.   At the same time Airbnb is completing the development of branded communities that will rent to both short-term and long-term residents. Properties in Orlando and Nashville are already available, with as many as 14 planned by 2020.

2. **Vacasa –** this is another short-term rental program. In late 2018, they opened Vacasa Multifamily specifically designed to optimize and manage vacant units for the purposes of listing them as short term rentals on Vacasa. Vacasa offers these units on the Airbnb and Home Away platforms but includes certain management functions as well as legal services.

3. **Single Family Rental Communities –** New single-family rental communities are being developed specifically aimed at those who want the feel of a house but not the mortgage. NexMetro is such a developer and has completed 8 as of 2018, with an intentional growth to 50% of its entire portfolio.

HOUSING CONFIGURATIONS

The way we live is being reflected in the configuration of the housing we select with a variety of new players in this field. Beyond the single-family home, popular now:

1. **Micro Units –** originally successful in high barrier markets, micro units continue to prevail as rents continue to climb across the US. These units are providing quality middle-income housing options in urban markets. The challenge is in construction or conversion, the largest costs are in the kitchen and baths no matter what the size of the living area. The configuration is also seen as appealing to the younger urban renter rather than broader appeal in different markets or for different residents.

2. **Furniture Revolution –** In connection with smaller apartments, furniture needs have shifted. The Murphy-bed is back. This wall unit containing a bed is now accompanied by high end cabinetry and advanced technology for lowering and lifting. Another player, Bumblebee Spaces has developed furniture that descends from the ceiling when needed for use and disappears upward when not needed. Military-grade webbing is used to ensure a safe process. This is currently being offered as an upgrade in some properties.

3. **Component/Modular Housing -** This building method has seen new life after debuting several decades ago. In this structure, individual units are factory-built then assembled with cranes on site and finally sheathed in an exterior "skin" that makes the building look cohesive. In late 2018, Cortland Partners was in talks to buy a stake in a European module homebuilder to bring the technology to the US. Place Properties was building three modular properties in Atlanta at the end of 2018. Modular builder Panoramic Interests claims they can build modular apartment buildings for $80 less per square foot than conventional builds.

4. **Tiny Homes –** These homes have been developed as an alternative form of housing for homeless or low-income clients, for retirees, for homeowners in high rent areas where homes can be built on and rent from their land and for repurposing RV parks into resort communities. Typically, 150 to 600 square feet or less, these communities typically have common area amenities and gathering areas.

5. **Container Living –** Stacked shipping container construction is a growing method of recycling used shipping containers and inexpensive housing options. Developments with multiple units are now appearing throughout the country with sophisticated developments like the Cargo District in North Carolina. Some of the advantages include the fact they are prefab, easy to transport and site, have a fairly predictable cost and contribute to recycling. But disadvantages include the limited real recycling available, many structural issues if modifications are significant, uncertainty about what was transported in the life of the container, space and shape are limiting and the lack of insulation. Nonetheless, larger developments are the latest rendition appearing almost the same as modular construction.

PARTNERSHIPS

A host of new partnership opportunities have presented themselves with the changes in how we live and the economic influences affecting our nation.

Hotels and Hospitality

Globe St. reports that retail owners are finding the benefits of adding boutique hotels to shopping centers. This mirrors the retail evolution to a more experience-driven relationship—a similar paradigm for multifamily. Entertainment, office and residential elements along with retail are creating destination locations. Multifamily is exploring those possibilities as well.

1. **Extended Stay Hotels and Apartments** – a unique blend of hotel and apartment living has made a successful appearance in the marketplace. Marriott and Riverwalk rolled out several properties in previous years and now Waterwalk— a hybrid and third development for Dunne Investments—will open in Richardson, Texas. The apartment component is joined by a hospitality perspective with fully equipped kitchen, on-site fitness center and 24/7 front desk service—available for apartment dwellers as well. Ten to 15 additional properties will be developed over the coming years. Full-service packages include accommodation, housekeeping, complimentary breakfast, DirecTV and DVR.

2. **WhyHotel –** This short-term provider, along with others, rents apartments for short periods during the project's lease-up. While it may take 8 to 24 months to fill an apartment after construction is complete or completing, the short-term provider injects immediate occupancy and revenue. As the building fills, the provider winds down their units. Multifamily providers are using these units to test new amenities like smart home features and noise-monitoring systems. Typically, WhyHotel units are relegated to certain floors so true residents may not even know they are there. So successful, Bisnow reports WhyHotel has opened a new division, Hospitality Living which will offer a flexible combination of multifamily and hospitality units on a permanent basis.

Commercial/Retail

1. **Similar to WhyHotel's repurposing of vacant apartment space, Bluelofts and other similar groups are renting vacant office space and converting the space for short term apartments.** Working with a German manufacturer, Bluelofts has created a modular "box" for its apartments that includes the kitchen, bathroom and all the plumbing. It comes pre-built and can be plugged into the building systems. They use the exterior space, reserving the space in the middle of the floor for coworking facilities and other amenities.

2. **Retail/Commercial Partners –** A variety of partnerships can assist multifamily with retail in their mixed-use developments.

    a. Storematch will help landlords and other retailers find the right match for your empty retail space.

    b. Spacegrab is a disruptor for commercial space similar to Airbnb for residential space. Commercial leaseholders can sublease a portion or all of their space to another user.

SAMPLE

Marketing Trends and Marketing Stack

Today's marketing mix has gone far beyond the five P's of yesterday—price, promotion, place, people and product. What was a very structured approach to marketing has become more fluid, even if the components remain the same. A CAPS professional will use a significantly altered playlist to ensure his or her portfolio is being seen and heard, marketed and re-marketed. As with any aspect of supervision, a CAPS may need to draw on his or her own resourcefulness or may be strongly supported by a corporate marketing structure.

Today localized social marketing (LSM) is the latest identifier that consolidates all forms of specially crafted content to capture the attention of engaged local residents at the individual property level. It is the opposite of a one-size-fits-all national social media approach from a corporate account. Messages today must touch people where they live, work and play in and around any given property with a consistent brand and message.

The term "stack" or "vertical" identifies the wide variety of components that make up today's marketing initiative. We will explore these trends.

PSYCHOGRAPHICS AND DEMOGRAPHICS

Unlike demographics, psychographics is the study of a customer's attitudes, interests and opinions. From that study, both physical and experiential amenities are created. As today's customers have become more demanding in terms of both options and personalization, multifamily operators are responding.

Demographics segment the market almost clinically by age, marital status, income, gender, ethnicity, etc. The findings can trigger structural response such as resort-style pools and recreation areas, high end fitness areas, meditation gardens and full-array pet services. In contrast psychographics seek to define a whole person, present and future. The customer's attitudes about lifestyle, hobbies, convenience and social issues at large are used to provide more subjective than objectives amenities. The industry is seeing more farmers markets and food trucks, charitable activities, sommeliers and chef-taught classes at the property.

These attitudes, interests and opinions are usually gathered through surveys, social media and websites constructed to encourage engagement and participation. The use of analytics is strong! As a portfolio supervisor, it is important to determine if, when and how your firm might participate in re-structuring the amenity packaging along these lines. The marketing team at Linnell/Taylor Marketing suggest the following line of questions to guide your response:

    a. Are my social media audiences more distinct rather than everybody?

    b. Are my ads emotionally compelling?

    c. Do we troll corporate and community websites for content topics?

    d. Are conversation pathways easy and evident on our websites?

    e. Is our brand being reinforced directly and indirectly?

    f. Are our email blasts more targeted and relevant to the segment we seek?

    g. Are we regularly using aspirational messaging and imagery?

OUTREACH METHODS

While this section will focus on social outreach and localized social marketing, outreach marketing has long occurred via other deliveries. Some of these methods remain viable today, such as public relations, service and retail partnerships, trusted brand alliances, and elevated physical appearance.

The industry has transitioned far away from print, banners, Craigslist and even Facebook. Social media outlets often prioritize the content in their feed that it makes it very hard to be seen. In meeting the customer, companies are strategically focusing on multiple communication channels rather than just one or two. Phone, chat, text, email or social media options are available. In a 2019 12-month survey, Anyone Home reported that of all customers setting property tours, 52% used the phone, 31.5% used email, 13.5% used an online scheduling tool and 2.5% used chat.

In a white paper titled "Converting Leads to Leasing" written by D2Demand Solutions in May 2019, research on 33 multifamily operators showed that every website surveyed offered a distinct "call to action (CTA)." The CTA is a basic marketing principle in any business. Their survey found that 74% of those CTA's were easy to use. 70% of those CTA alternatives were to "Contact us", while 21% were to "Email Us" and 9% were to "Schedule a Tour." In fact, 58% of websites provided the prospect the opportunity to schedule that tour direct from the website.

Findings of a multi-company survey published by SOCi in the "The Property Management Guidebook for Localized Social Marketing," reveal that most social engagement occurs on a local level with 72% on local pages with 80% of those engaged saying their opinions were swayed by opinions of others. A site's physical attributes are important, but odds favor strong social marketing

Critical elements to consider in strong digital outreach include:

Customized websites	Reputation Management
Apartment templates and planners	Social Media
Voice bots	Heat Mapping
Chat	Search Engine Marketing
Search Engine Optimization	Tracked Video Tours

The CAPS can set their portfolio up for success in ensuring that the social media footprint is working as hard and effectively as it can. The Property Management Guidebook warns to watch out for:

• Inconsistent branding across all networks and methods used

• Generic content and creatives can stifle property individuality and brand

• Talking without listening means you're not marketing, you're lecturing

• Not segmenting audiences properly using and failing to deliver personalized marketing

• Not geofencing online ads, which help you react and appear more local

• Ad fatigue by running the same ad everywhere and not using tools to help you manage the ad groups

• Creating one adset for all locations which is counterintuitive to today's prospect and likely does not reflect your portfolio

• Ignoring local analytics and have no idea how the paid social media is performing

INTAKE HANDLING

Once the prospect has moved through the successful AIDA marketing track (Create Awareness, Generate Interest, Deepen Desire, Trigger Action), how will your properties handle their contact? While a phone relationship continues to be a virtually essential step to a consummated lease, many other intake activities can occur.

Since much of our outreach is social and digitalized, we must ensure our intake handling fits the method of arrival:

1. Access for computer and mobile applications

2. Create user-friendly, short website forms—most are 5-10 fields per D2Demand Solutions

3. Both agent accompanied and self-guided virtual tours. Use linked technology for security, temperature and lighting.

4. Virtual tours synced to vacant apartments may be coming soon

5. Self-scheduled tours aid busy leasing professionals.

6. Use CRM to match prospects with available units to create scored leads

7. If email is the lead source, respond in the same day. A 2019 D2Demand Solutions survey found 30% of properties surveyed did not respond to email at all.

8. With email response, use "drip marketing" to ensure a pre-set number and variety of response is provided. Only 27% of properties did this in 2019. This is important since a 2019 PERQ survey of almost 17,000 prospects showed that 53% of prospects were looking to move in 90 days—plenty of time for drip marketing.

9. For phone leads, harvest numbers and consider responding by phone on the same day.

10. While chatbots can be extremely useful, consider bringing the leasing office to the prospect. For busy professionals, coffee or other pop-up conversation areas can take personal attention to another level. In some markets, leasing professionals no longer occupy office space on site—rather they set appointment, tour and visit like a realtor would selling a house.

INTERNAL MARKETING WITH RESIDENTS

Many of the same elements in outreach and intake apply to the relationship a portfolio supervisor has with residents. The perspective defines the difference. At the foundation of strong internal marketing is customer relationship management or CRM. Whether CRM exists with a third-party partner or is handled organically within the organization is largely driven by culture and capacity. Communication is king—just like outreach and intake, communication needs to occur on multiple levels with multiple options. Texting, chatbots, website portals, email and face-to-face opportunities thicken the resident connection.

REPUTATION MANAGEMENT AND INFLUENCE

Online reputation management firm Binary Fountain found in a survey that 93% of prospective residents use online reviews at some point in their search for an apartment. When they do, 64% were more likely to choose a location with positive reviews.

Clearly, as a CAPS, you know the many advantages of a strong, managed digital brand. Since 92% of respondents in the above survey consider it helpful when a manager responds to reviews, 89% said that they themselves would post a review if they were asked by a manager. Your role is in encouraging responses from residents and prospects, proactively posting on review sites and responding to reviews when they occur.

In just the past year or two, reputation technology has become more pervasive and sophisticated. It is critical that you drive for and use a reputation management structure that works for your organization. A variety of third-party partners are available to help you:

- Who will post to websites and media?

- What level of oversight will you require?

- Will you incentivize customers to post?

- Will you provide approved templates and/or permit manager customization?

- Who will develop a proactive calendar?

- Who will be responsible for harvesting material to post?

MARKET ANALYTICS

In the days of big data and extraordinary ability to mine preferences, impressions and competitive positions, you must adopt a ready understanding of analytics. For all the digital access, users of all kinds—including your team—leave footprints that can be traced, retrieved and acted upon. Third party provider options have grown beyond the monthly market survey data grabs, to algorithms that measure economic activity, digital journeys, amenity use and even recommended renovation plans to maximize ROI. Predictive analysis allows you to make strategic marketing decisions drawn from tactical and anecdotal evidence. Our largest industry property management software providers have heard the demand and begun to offer a wide variety of options.

If the options and directions seem confusing and ever-changing—you're right. They are. Your marketing focus must be learned and then executed. From Duke University come the following recommendations:

- **Allocate time every week to think long term –** brand building, customer relationships.

- **Invest in your marketing capabilities –** don't just try to hire it, develop it.

- **Drive decisions from data –** today data is used only 39% of the time!

- **Focus on growth –** whether that's engagement, new services, new markets or new partners.

- **Deepen cross-functional ties –** use other corporate departments to collaborate.

- **Fund marketing for the long term –** stay away from short term solutions as a stand-alone; think 12% of overall budget.

- **Demonstrate the impact of marketing –** prove it quantitatively using data grabs and property activity. You won't get more money or access without it.

- **Don't compete on price, add value –** this is an essential in today's customer-centric environment. You don't drive price.

People

PERSONAL DEVICES IN THE WORKPLACE

In the rental housing industry, smartphone technology is and increasingly will be used to provide the conveniences that users demand. For example, applicants, residents, site employees and companies expect to be able to conduct all their business via their mobile devices. Prospective residents can take virtual tours of properties, chat online with a leasing agent, complete, sign and submit a leasing application, authorize credit and rental history checks, and sign a lease without ever meeting a leasing agent face-to-face. Leasing agents can respond to maintenance requests, provide notification of deliveries, follow up on inquiries or generally manage the property through an app.

For many reasons, however, including the ubiquity of personal smartphones in employees' everyday lives and the heavy IT costs to maintain a fleet of mobile devices, there is a growing use of personal smartphones for work purposes. Creating a strong policy around the acceptable uses of, and minimum standards for, personal devices is a critical safeguard against improper use and privacy and security concerns.

To craft a Bring Your Own Device (BYOD) policy, owners and operators must account for the business and personal concerns at the core of allowing employees to use their own personal smartphones to access company systems, including (1) network and information security; (2) employee privacy; (3) wage and hour compliance and (4) policy and procedure compliance.

NETWORK AND INFORMATION SECURITY

It is convenient and useful to allow employees remote access to company systems for work purposes. At the same time, such access creates serious risks for employers and their clients. From a company perspective, the largest risk of the use of any mobile device is network and information security, including protection of resident and employee information and company intellectual property.

Security is a real concern, regardless of whether your network is accessed via a company-issued or personal BYOD device; however, the use of BYOD devices adds an additional layer that must be considered when addressing IT security risks. BYOD usage creates the scenario where only certain aspects of the device are subject to employer control, and only if the BYOD policy adequately accounts for the balance between employer and employee interests in the device.

To create a BYOD policy, start by identifying the areas of the device that will be permitted to access company systems, and thus in turn will be accessible by the company for normal business purposes. The company should be clear that the employee has no expectation of privacy in his or her use of company resources, such as email or other work-related applications available on the personal smartphone.

Second, a mobile device management plan should be implemented to deal with the physical and virtual security risks, and include contingencies such as when, where and how an employee can access company systems, as well as installation of software that will permit the employer the ability to remotely locate and erase the device if lost or stolen.

The BYOD policy should implement basic information security protocols, such as requiring the employee to maintain any necessary software patches and updates, installation of anti-virus and anti-malware programs, requiring that data on the BYOD device is fully encrypted, and requiring devices be password-protected in line with policies for company-owned technology.

Employees should be locked out of the system on termination of employment and employers should preserve the right to inspect personal devices that have been used for company purposes to protect company intellectual property. While "wiping" the device of a separating employee is an option, it should be taken only if the employee first refuses to turn the device over to IT for inspection.

EMPLOYEE PRIVACY

In many states, employees have a legal right to privacy in their smartphone usage. In addition, there are federal and state laws that provide additional protections for employees. These laws have been used by employees to sue employers for violations of the right to privacy and other legal protections based on an employer's alleged unauthorized access to personal smartphones used for work purposes. Many employers get into trouble when they treat a BYOD device the same as a company-issued device.

In the BYOD context, it is essential that employers notify employees that: (1) the company will have complete access to company-related programs and information, such as company email, company data in mobile applications, etc.; and (2) that employees have no expectation of privacy in their personal smartphone to the extent it is used for work purposes. Company access includes remote monitoring, retrieval, data backup, logging, deletion, etc. Employers should clarify that those areas of the personal smartphone that are unnecessary for work, such as an employee's personal email, photos and personal applications, will not be monitored or accessed without the employee's authorization.

WAGE AND HOUR COMPLIANCE

The use of personal smartphones by non-exempt employees creates wage and hour compliance challenges. This is because the Fair Labor Standards Act requires employers to pay all non-exempt employees at least minimum wage for all compensable time worked, and overtime pay at a rate of not less than one and one-half times their regular rate of pay for time worked over 40 hours in a workweek. Employees who have access to company mail and other systems may be tempted or may feel pressure to work when they are off the clock. Use of a personal smartphone can exacerbate these issues.

Another issue that arises is reimbursement for work usage of the personal smartphone. In jurisdictions that require companies to reimburse employees for business expenses incurred during employment, companies run the risk that smartphone usage will be considered a reimbursable business expense, even in situations where the employee has an unlimited minutes/messaging/data plan. Given the amount of time employees spend at work, an amount that is 25 percent to 50 percent of a typical monthly mobile bill is a good rule for reasonable reimbursement.

POLICY AND PROCEDURE COMPLIANCE

Some employers have gone to great lengths to prohibit the use of social media in the workplace, such as forbidding the use of personal social media during work hours. However, there is little evidence these policies are effective, or even complied with. A better practice is to recognize that BYOD devices grant employees increased access to their personal email accounts and other external content while they are at work and blurs lines between work and private life. For this reason, employers must be vigilant about updating and enforcing their anti-discrimination and anti-harassment policies and providing clear and direct harassment prevention training that addresses the impact of BYOD usage. A BYOD policy should explicitly inform employees that the use of BYOD devices does not exempt them from the company's anti-discrimination and anti-harassment policies.

Source: https://www.naahq.org/news-publications/units/march-2018/article/solving-companys-byod-policy

UNCONSCIOUS OR IMPLICIT BIAS

Along with heightening emphasis on diversity and inclusion training and awareness, unconscious (implicit) bias has become widely recognized as an underlying cause of harassment and discrimination. Major employers such as Starbucks, Apple, Google and Facebook are not only training staff in diversity and inclusive thinking but are making these programs available for public use.

Dr. Neal Goodman, PhD, defines unconscious bias as "...the result of messages (from a wide array of sources) introduced into our subconscious at an early age. Many of these prejudices that are deeply held in our unconscious can unconsciously influence how we act toward one another in our organizations." Think of the classic "halo" or "pitchfork" effects when it comes to hiring or evaluating. Add to that "conformity bias," beauty bias" and "affinity bias" and you get the picture.

MindTools.com offers the following example for consideration:

> "Say you've got two of your team members in mind for a promotion. Both Jorge and Felipe have great skills and it's a difficult decision, but you decide to go with Jorge because he seems to have good ideas about marketing your property. You feel like you've made the right choice, based on the evidence. But what if the decision was based on something else, without you being aware of it? As difficult as it is to admit, it's possible to be unconsciously biased regarding race, gender, age, social class and more."

The advantage to unconscious bias is it saves us time and effort in processing information about people, allowing us to spend more of our mental resources on other tasks. The obvious disadvantage is that it can lead us to assumptions about someone and, worse, take action based on those assumptions.

Here are some actual statistics about studies that looked at unconscious bias:

- In a 2016 study of law firm hiring bias, a male's resume that subtly signaled privilege—sailing and classical music as hobbies—received nearly 4 times as many callbacks as ones that didn't

- In one study, two identical resumes with different names were sent in for a lab manager position. "Jennifer" was rated as less competent than "John" and hiring managers recommended paying her, on average, $4,000 (13%) less than John.

- Women more than men are penalized by hiring managers for "vocal fry". One study found that young women with creaky voices were judged as "less competent, less educated, less trustworthy, less attractive and less hirable."

- In a landmark study, researches sent identical resumes for one position. Those with African-America sounding names—Jamal Jones, Lakisha Washington— were only half as likely to receive a callback as those with white-sounding names, like Emily Walsh or Greg Baker.

AWARENESS IS NOT ENOUGH

Dr. Sondra Theiderman, PhD has written extensively on reducing bias and maintains that awareness is a great first step, but actions and protocol need to be changed in order to alter outcomes. Behavior has to be changed in terms of making those discussion part of the daily business conversations and structurally changing how we evaluate new hires and employees for evaluation and/or promotion. Blind selection is a widely used protocol—where identifying factors are wiped from the documents undergoing evaluation. In 2014, Intel began to require at least two women or members of underrepresented groups on panels evaluating new hires. Diversity quickly increased.

Concrete rules such as "We will not hire for a position until we have it posted for at least 30 days to a job board geared toward minority candidates" will be more effective than education and awareness campaigns.

Business Essentials

DATA AND TECHNOLOGY ARE GAME CHANGERS

As technology and augmented applications take on a larger and larger role, the demand for data and its interpretation have taken center stage with multifamily operators. Every aspect of the multifamily business has been and will continue to be affected. Not only is the expectation that the information is readily available, but that it can be manipulated and used to guide all aspects of decision-making. Consider the role of Predictive Analysis. Providers such as Enodo, Truedge AI and Skyline AI use advanced artificial intelligence to drive underwriting recommendations, while Rentlytics and others look at efficiencies in daily operations.

A recap in *units* magazine from an Apartmentalize 2019 panel listed the game-changing innovations that are already disrupting multifamily technology. The list goes beyond mobile devices, cloud computing, social media and blogging—most of which are already in place.
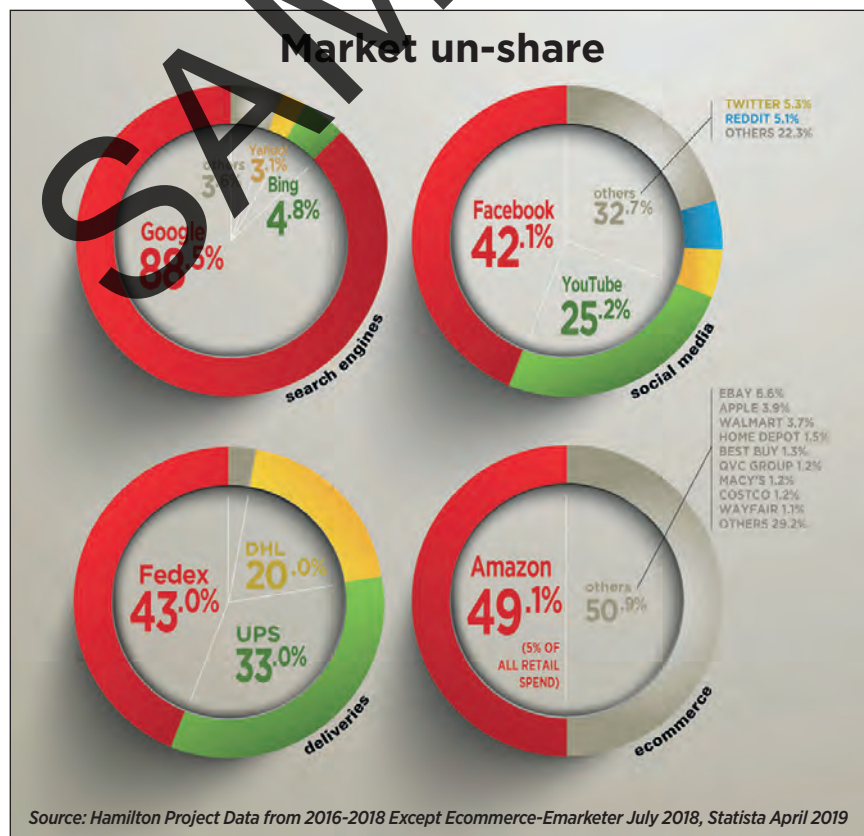
1. **Augmented and Virtual Reality –** supports the touring of prospective residents. 3-D tours and self-guided tours can eliminate the need for models and reduce staff time.

2. **Autonomous Vehicles –** while not widely ready, we are already seeing the impact of reduced allowances for parking spaces in new developments and the rapid rise in ride-sharing solutions.

3. **Battery power –** battery power is improving getting more efficient and longer lasting. As this improves, people will make the move to battery operated vehicles, making charging station a necessity, not an amenity.

4. **New money –** meaning cryptocurrency for payments, including rent. We will take a deeper look at this prospect later in this module.

5. **Artificial Intelligence –** as chatbots become more sophisticated, they are taking on a broader role in leasing and operations. Simplistic, repetitive tasks are easily and more reliably managed by automated intelligent solutions.

6. **On Demand/Gig Economy –** the on-demand, when-I-need-it culture is well in place. Office hours and open for business have to be accommodated in the "always-on" environment, including remote workers and home-grown businesses.

7. **Social Media as Customer Service –** a new appreciation and respect for the customer who drives our brand. Social media communication, both reactive and proactive, sets the tone for the business. Authenticity, transparent and quick must be characteristics of this relationship development.

8. **Smart Homes –** already in place in many developments and infiltrating others in varying degrees from keyless entry and smart home commands now to voice assistants, smart meters, predictive maintenance, shopping, alarms and reminders (pay my rent?)

9. **Voice Search –** Internet searches are being done by more and more by voice, so learning and utilizing the way that customers ask and respond to questions will be essential.

10. **Automation –** leasing transactions are already most affected and will likely be completed without an actual agent in the next few years. Consider building maintenance, inventory management and resident management as the next frontiers.

PRIVACY AND OVERREACH CONCERNS

With every advance in technology comes the discussion about its impact on personal privacy and choice. Many people are concerned that the larger the reach of the organization, the more the potential for abuse of reach.

The May/June 2019 issue of Multihousing PRO listed the following market shares of major organizations of interest:

Market un-share

search engines: Google 88.5%, Bing 4.8%, Yahoo 3.1%, others 3.6%

social media: Facebook 42.1%, YouTube 25.2%, others 32.7% (TWITTER 5.3%, REDDIT 5.1%, OTHERS 22.3%)

deliveries: Fedex 43.0%, UPS 33.0%, DHL 20.0%

ecommerce: Amazon 49.1% (5% OF ALL RETAIL SPEND), others 50.9% (EBAY 6.6%, APPLE 3.9%, WALMART 3.7%, HOME DEPOT 1.5%, BEST BUY 1.3%, QVC GROUP 1.2%, MACY'S 1.2%, COSTCO 1.2%, WAYFAIR 1.1%, OTHERS 29.2%)

Source: Hamilton Project Data from 2016-2018 Except Ecommerce-Emarketer July 2018, Statista April 2019

Big technology companies such as Facebook, Google, Amazon and Apple are in the crosshairs of regulatory oversight—something that has occurred for years in Europe—but not yet in the US.   The Justice Department is involved and the Federal Trade Commission looked in detail into Facebook's privacy practices. Currently, Facebook is facing a $5 billion fine for misuse of subscriber data and privacy violations. More scrutiny will likely be on the way.

The General Data Privacy Regulation (GDPR) is a regulation that applies to the European Union and has the US keenly focused on data privacy. Data privacy is a rapidly growing concern for the multifamily housing industry given the recent enactment of the California Consumer Data Privacy Act, which governs required opt-out options and disclosures regarding the collection and use of consumer personal data. The industry actively collects consumer personal data through its marketing, application and screening processes, and additional states have followed suit with laws similar to California's. This has created a patchwork of various requirements across the nation, which can be difficult to administer for firms operating in multiple states. As part of your application process, it is advised to disclose all purposes for which the applicant's data will be used. Additionally, it must be ensured that all applicant and resident data is properly secured and inaccessible to anyone without a proper business justification for having access to such information.

As technology forges ahead, more and more monitoring is occurring:

1. Drivers' licenses, passports and mugshots are searched by the FBI using facial recognition technology. In fact, Amazon has supplied facial recognition support to law enforcement since 2013.

2. Apple's 1-step sign-in (iOS 13 in Fall 2019) promises private transactions. Facebook and Goggle, on the other hand, track and monetize user data.

3. A study conducted by Office Team in 2017 shows that the average employee spends five hours a week on tasks that having nothing to do with work. Consequently, more than half of firms with over $750 million in annual revenue are using "non-traditional monitoring techniques" on employees in 2018.

    a. Typical monitoring includes emails, conversations, computer usage and employee movements around the office.

    b. Some firms even monitoring heart rates and sleep patterns to see how they affect performance

    c. In 2015, 30% of larger firms used these. The prediction for 2020 is 80% coverage.

The question will remain—how much monitoring is appropriate and when does it get abusive?

BUSINESS BASICS

The multifamily business fundamentals are strong and have been so for several back-to-back years. While there is continuous discussion on market correction or economic downturn, access to capital, interest rates and lender underwriting basics remain in place. There are several disruptors that are influencing those well-known dynamics.

Real estate crowdfunding started with the Jumpstart Our Business Startups (JOBS) Act in 2012. This bill allowed startups and small businesses to market private investments to the public for the first time. Individuals have the opportunity to invest in real estate transactions in which they would not previously have had access. Individuals with an income exceeding $200,00 annually or $300,000 together with a spouse or those with a net worth of more than $1 million can participate. It also provides another way for sponsors to raise capital. The Securities & Exchange Commission passed some final rules in 2016 and the crowdfunding transaction level will show an annual increase of 29% by 2022 according to Tore Steen, CrowdStreet CEO.

The investment packages offered are extremely diverse with different minimum investment amounts and accreditation requirements. The newest investment offerings are largely being purchased by everyday people, not real estate insiders, according to ArborCrowd.

Several institutions have created affiliated platforms to raise funds and sponsor investments. ArborCrowd and CrowdStreet are two such successful groups. As this investment model matures these organizations are tweaking their offerings including lowering minimum purchases, providing initial capital for the deal and then backfilling with the crowd money and maximized transparency.

Just as the "GoFundMe" model has been successful in private and philanthropic fundraising, so the crowdfunding method has secured its position in multifamily asset ownership.

BLOCKCHAIN AND CRYPTOCURRENCY

As a matter of introduction, these disruptors are beginning to change the way business is conducted and recorded and how monies are transacted. According to law firm Greenspoon Marder, active in the technology practice, blockchain is the technology used for cryptocurrency like Bitcoin or Ethereum. Cryptocurrency transforms capital into a digital asset. That asset could be dollars, shares or other interest and it is represented by a token rather than a paper certificate. Cryptocurrency needs blockchain, but blockchain does not require cryptocurrency. Blockchain is a peer-to-peer digital ledger that allows for sharing of files and digital assets without generating duplicate copies.

BLOCKCHAIN NETWORKS

Blockchain is a network designed around the concept of "distributed trust" in order to facilitate online transactions. It is the technology that supports cryptocurrencies like bitcoin (see below).

According to Logan Soya with Aquicore, blockchain "has the potential to streamline real estate investments by making them safer and more liquid as well as increasing spend and reducing costs of transactions." Ultimately, blockchain is about efficiency, transparency and simplification, according to Casey Kuhlman CEO of Monax.

Blockchain represents a fundamental shift in how we store and share information. In a single real estate transaction (think purchase and sale transactions), the legal, regulatory and compliance documentation is exceptional. Blockchain provides a remote platform with only specific subscribers who share and update data, with notifications to others anytime the file is modified or even opened. It is a secure, digital transaction technology that can be programmed to keep a record of virtually anything of value, making tampering with records almost impossible. Third party intermediaries may no longer be necessary.

Blockchain has already disrupted the payments and insurance business—think of claims adjusting! ADP payroll is developing blockchain technology to help manage payroll payments, benefits tracking and more secure transactions. For multifamily, any routine task that requires sharing of information or collaborative program development can be performed on a secure platform. In addition, fraud can be virtually eliminated and privacy protection assured. Consider the impacts for employee interactions, legal defense, new property development and construction, casualty loss dispositions and document management of purchase and sale transactions.

CRYPTOCURRENCY AND BITCOIN

A cryptocurrency (or crypto currency) is a digital asset designed to work as a medium of exchange that uses strong cryptography to secure financial transactions, control the creation of additional units, and verify the transfer of assets.

Investopedia reports that cryptocurrency made the leap from being an academic concept to (virtual) reality with the creation of Bitcoin in 2009. While Bitcoin attracted a growing following in subsequent years, it captured significant investor and media attention in April 2013 when it peaked at a record $266 per bitcoin after surging 10-fold in the preceding two months. Bitcoin sported a market value of over $2 billion at its peak, but a 50% plunge shortly thereafter sparked a raging debate about the future of cryptocurrencies in general and Bitcoin in particular. So, will these

alternative currencies eventually supplant conventional currencies and become as ubiquitous as dollars and euros someday? Or are cryptocurrencies a passing fad that will flame out before long? The answer lies with Bitcoin.

Bitcoin is a decentralized currency that uses peer-to-peer technology, which enables all functions such as currency issuance, transaction processing and verification to be carried out collectively by the network. While this decentralization renders Bitcoin free from government manipulation or interference, the flipside is that there is no central authority to ensure that things run smoothly or to back the value of a Bitcoin.

For example, our present currency is fiat money—government-issued currency that is not backed by a physical commodity, such as gold or silver. Fiat currency is backed by the full faith and credit of its government. Fiat currency issuance is a highly centralized activity supervised by a nation's central bank. While the bank regulates the amount of currency issued in accordance with its monetary policy objectives, there is theoretically no upper limit to the amount of such currency issuance. In addition, local currency deposits are generally insured against bank failures by a government body. Bitcoin, on the other hand, has no such support mechanisms. The value of a Bitcoin is wholly dependent on what investors are willing to pay for it at a point in time. As well, if a Bitcoin exchange folds up, clients with Bitcoin balances have no recourse to get them back.

Bitcoins are created digitally through a "mining" process that requires powerful computers to solve complex algorithms and crunch numbers. They are currently created at the rate of 25 Bitcoins every 10 minutes and will be capped at 21 million, a level that is expected to be reached in 2140. In mid-2019, TIME magazine announced that Facebook is introducing a digital currency called Libra. Like Bitcoin, it will allow users to make financial transactions on a stand-alone app or through Facebook Messenger and WhatsApp.

Cryptocurrency in real estate got its birth with home and condo transactions. Many foreign investors in the US condominium market use online currency like Bitcoin or Ethereum (both cryptocurrencies) to transfer wealth and currency from one nation to another. Now Miami-based Housing Trust Group (Florida's largest affordable housing developer) is looking at bitcoin for rent payment sometime in the future. The challenge with cryptocurrency is the fluctuation in value from purchase to settlement—many investors are not comfortable with the possible swings and volatility.

Steven DeFrancis with Cortland Partners and Mill Creek Residential's Chad DuBeau agree that bitcoin is not yet ready for rent payment. NAA spokesperson Todd Usher agrees that most members are taking a wait-and-see attitude about this method of transaction. Lenders are leery so there would have to be a shift in consumer perception.

CONCLUSION

From fair housing to energy, from affordability to technology, our multifamily industry is on the move. Compliance with the changing regulatory environment is more important than ever. Our renters and the way renters live and work are rapidly crafting new lifestyles that demand our attention and response. A Certified Apartment Portfolio Supervisor bears the incumbent responsibility to engage clients, customers and coworkers in effective ways to meet the contemporary forces impacting daily operational expertise. It is to these challenges that we welcome your participation!

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