

Participant Guide

Legal Aspects

NALP 

NATIONAL APARTMENT
LEASING PROFESSIONAL®

Sample

NALP

National Apartment Leasing Professional

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Acknowledgments

The National Apartment Association Education Institute acknowledges the contributions of countless volunteers who made this program possible. From the first time pencil was put to paper, through development, revisions and updates, pilot programs and expert reviews, the servants of our industry have made the National Apartment Leasing Professional course and designation a reality. We extend our thanks and pledge to maintain the NALP designation as the premier standard apartment industry training program for all Leasing Professionals.

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Message to Apartment Leasing Professionals

This education program was developed by Leasing, Operations, Marketing and Training Professionals working in the multifamily housing industry across the nation.

It was developed and revised at the request of Leasing Professionals and apartment association members, like you, who told us what they need to successfully perform their job responsibilities. It was also developed at the request of your managers, supervisors, owners and employers. They asked for this program because of your importance to the industry. They recognize you as the key to leasing, renewing and serving future and current residents of your communities and buildings.

This is one of a series of eight courses of the National Apartment Leasing Professional designation program. The other courses are:

1. Keys to Success in Leasing
2. Telephone Presentations
3. Leasing and the Internet
4. The Leasing Interview
5. Leasing Demonstration & Follow-Up
6. Rental Policies and Procedures
7. Legal Aspects
8. The Market Survey

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 703/518-6141.

Course Objectives

At the end of this course, students will be able to:

- ▶ Explain how Fair Housing laws apply to the multihousing industry;
- ▶ Identify major components of the Fair Housing law;
- ▶ Apply Fair Housing concepts to the responsibilities and duties of a Leasing Professional;
- ▶ Relate to their positions the provisions of the Equal Credit Opportunity Act, ADA, Criminal Background Checks, and Lead Paint Safe Work Practices;
- ▶ Implement basic emergency contact procedures when required; and
- ▶ Outline the basics of legal compliance, risk management and risk reduction.

Legal Aspects Opening Remarks

The legal information discussed and reviewed in this program is a review of legal aspects that impact the Leasing Professional's responsibilities and duties. All Leasing Professionals are responsible for their own comprehensive understanding of the laws and interpretations of these laws as they relate to the multihousing industry. All specific legal advice should originate from designated company legal counsel.

It is important to seek additional materials, resources, courses, and methods of updated information regarding the laws and guidelines that govern a Leasing Professional's position.

An Overview of Basic Fair Housing Laws

Everyone who works in the multihousing industry must know and understand local, state, and federal Fair Housing laws and guidelines. The Federal Fair Housing law refers to:

- ▶ The Civil Rights Act of 1866
- ▶ The 14th Amendment to the U.S. Constitution
- ▶ The Fair Housing Act and related legislation
 - Title VIII of the Civil Rights Act of 1968
 - 1974 Amendments
 - 1988 Amendments
 - November, 1998 Initiative
 - January, 2000 HUD Final Ruling

Fair Housing legislation has included century old efforts to ensure equal housing opportunity for all Americans.

Current Fair Housing laws involve:

- Responsibility
- Liability
- Penalties

Fair Housing complaints and lawsuits can be filed against any person or company alleged to be engaged in a discriminatory housing practice. This could certainly include the Leasing Professional. Complaints and lawsuits can also be filed against any person, (such as the supervisor or owner) who directs or controls the conduct of another person, (such as the Leasing Professional) with respect to any aspect of the sale, rental, management, advertising, etc., of dwellings. Supervisors, management company executives, owners and even lenders can be liable to some degree.

The Civil Rights Act of 1866

The Civil Rights Act of 1866 provides that, “All citizens of the United States shall have the same rights in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”

This civil rights legislation was originally passed to establish equal rights for African-Americans who had recently been emancipated from slavery and who needed protection from those who would deny them equal rights. Unfortunately, the legislation did not work well and discrimination continued to exist between white and nonwhite segments of American society.

The 14th Amendment of 1866 guaranteed citizenship rights and provided penalties for states that did not implement the amendment. This too did not work as originally intended because ways were found to get around the intent of the law. Jim Crow legislation was officially instituted by the southern states shortly after the Emancipation and abolition of slavery to attempt to re-establish segregation. Jim Crow legislation allowed segregation in some states. Eventually corrective legislative efforts were made and non-discriminatory laws were enacted.

The Fair Housing Act of 1968

The Fair Housing Act of 1968 was a landmark legislation that became the cornerstone of federal Fair Housing policy. This legislation was enacted because of widespread discrimination in many aspects of society.

The Fair Housing Act of 1968 prohibited a wide variety of discriminatory rental practices based on:

- Race;
- Color;
- Religion; and
- National Origin.

The protected class of Sex was added in 1974 to the original four protected groups.

The 1968 Act allowed individuals who believed that they had been discriminated against to file an administrative complaint through The U.S. Department of Housing and Urban Development (HUD) or file a lawsuit in federal court. The administrative route involves an investigation by HUD (or a similar state enforcement agency). Part of the administrative process offers the possibility of resolving the complaint through conciliation or settlement. If conciliation failed, the complainant could pursue redress of grievances through the federal or state court systems.

The Fair Housing Act Amendments of 1988

The Fair Housing Act Amendments of 1988 were in response to the criticism that the Fair Housing Act of 1968 failed to provide sufficient protection to ensure Fair Housing and equal opportunity to other groups who have historically been targets of discrimination.

The new law expanded the prohibitions against discriminatory housing practices to include:

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Under the 1988 Fair Housing legislation, individuals may still file an administrative complaint through HUD or file a lawsuit in federal court. An administrative complaint with HUD or a state agency must be filed within one year from the date the discriminatory housing practice was alleged to have occurred. A private lawsuit must be filed within two years of the discriminatory act.

The single biggest difference between the 1968 and 1988 acts was the addition of two new groups of protected persons: families with children under the age of 18; and individuals with disabilities.

Also part of the change, if HUD finds reasonable cause to believe that the law has been violated, it now has the authority to bring the case to a hearing before an Administrative Law Judge (ALJ); and private enforcement has been strengthened by removing the limitations on punitive damages (previously \$1,000) and making the standard for awarding attorney's fees more like the standard used in other civil rights laws; and it expanded the statute of limitations to two years for lawsuits.

The purposes of the 1988 amendments were:

1. To create an administrative enforcement mechanism that is subject to the use of court enforcement by private litigants and federal enforcement agencies;
2. To extend equal housing opportunity to disabled persons; and
3. To extend equal housing opportunities to families with children.

The 1988 act greatly expanded housing opportunities for previously denied groups of citizens. These acts have also created new business practices.

What are some examples of business practices not specifically mandated by law that many communities follow?

Where should the Equal Housing Opportunity logo or phrase appear?

HUD is stepping up efforts to make people aware of their rights. HUD distributes booklets and delivers public service announcements via newspapers, radio and television stations urging people who feel they have been harmed to file complaints with HUD. This message can also be seen on billboards and on the Internet.

In 2010, claims to HUD based on discrimination are as follows:

- 34% Race Related
- 48% Disability Related
- 15% Familial Related

HUD Final Ruling Regarding Multiple Penalties for Discrimination

Effective January 27, 2000, an Administrative Law Judge (ALJ) can assess a separate civil penalty against a respondent for each separate and distinct discriminatory housing practice. The old procedure could only assess a single civil penalty in cases regardless of how many acts of housing discrimination occurred.



The Fair Housing laws allow the parties (the complainant who filed the complaint or the respondent who is accused of discrimination) to choose whether they want an administrative hearing or a civil lawsuit. There is no right to a jury trial at a hearing before an ALJ. However, in a civil lawsuit either party may request a jury to hear the case.

If the case of an **administrative complaint** is found by an ALJ to violate the Fair Housing Acts, the following relief may be provided:

- ▶ Actual monetary damages;
- ▶ An injunction prohibiting any such actions in the future or similar relief;
- ▶ Attorneys fees and costs; and
- ▶ Civil penalties of up to \$16,000 for the first violation up to \$37,500 if the housing provider has more than one violation in the previous five years up to \$65,000 if the housing provider has more than two violations in the previous seven years.

In the case of a **lawsuit** brought before a court, violation of the Fair Housing acts may result in:

- ▶ Actual and punitive damages;
- ▶ An injunction prohibiting any such actions in the future;
- ▶ Attorney's fees and costs; and
- ▶ Civil penalties of up to \$55,000 for the first violation, up to \$110,000 for any subsequent violation.

Compare and contrast the two separate courses of action available to persons with Fair Housing complaints. List the amount and severity of penalties.

Filing a Fair Housing Complaint

There is a process by which Fair Housing complaints are addressed. The U.S. Department of Housing and Urban Development (HUD) is responsible for the enforcement of the federal Fair Housing laws throughout the United States.

Likewise, many states have their own enforcement agencies that could be asked by HUD to investigate a violation. Frequently, these state agencies may handle most of the administrative complaints filed. They often have names like the “Human Rights Commission,” “Housing Rights Commission” or “Equal Opportunity Commission”.

Whenever a complaint alleges a discriminatory housing practice that is within the appropriate jurisdiction, HUD will issue notification of the complaint and refer the complaint to the agency for processing. If a property receives a complaint, legal counsel should be contacted immediately because a response to the complaint is required within a short timeframe (usually 10 days). A civil lawsuit in federal court usually must be answered in 20 days and many state courts allow 30 days. It is important to know whether the complaint is an administrative action or a civil lawsuit.

Complaints can originate in numerous ways. Such sources include:

- ▶ contact with a local or regional HUD office;
- ▶ attorney general office;
- ▶ Fair Housing alliance;
- ▶ advocacy group; and
- ▶ contacting HUD through telephone, e-mail, fax and regular mail.

There are many different discriminatory housing practices of which Leasing Professionals must be aware. The list may be overwhelming. It is critical that all Leasing Professionals attend Fair Housing seminars and read Fair Housing literature for an updated and deeper understanding of these concepts and issues. Leasing Professionals will then be better able to conduct business in an appropriate manner.

The best way to remain non-discriminatory is to follow the “Golden Rules” of Fair Housing: **“Treat everyone the same”** and **“Be consistent”**.

Fair Housing Discrimination

There are two basic categories of discrimination:

- ▶ Discrimination due to different treatment ... is a result of treating or behaving differently toward someone because they are a member of a protected class. (Also known as “disparate treatment”) Sometimes this is referred in everyday language as “intentional discrimination.”
- ▶ A second kind of discrimination by different impact, called “disparate impact” or “discriminatory effect” could be due to a policy or procedure that has a different impact on persons of protected classes. For example, even though the Leasing Professional may follow the company policy of treating everyone equally, the owner or company/management policies or procedures may have an adverse impact on someone in a protected class. A specific example could be a community rule that says all visitors who want to take a tour of the apartment community must have a valid U.S. driver’s license. Such a rule might unfairly impact certain groups who are not U.S. citizens but who are otherwise eligible to rent an apartment. (Also known as “disparate impact”). This is sometimes called “unintentional” discrimination because the discriminatory act, rule, policy or procedure appears to apply to everyone – but really affects a specific protected group. An acceptable alternative is to require a valid government issued photo ID, instead of accepting only a driver’s license.

Prohibited Practices Activity

The Fair Housing Act and rules issued by HUD describe certain things which are considered illegal if done solely because of someone's race, color, religion, sex, national origin, familial status or disability in order to deny them a housing opportunity.

1. Failure to accept and process an application or consider a bona fide offer to lease an apartment home from a member of a protected class who is otherwise qualified to lease. *Example:* A Leasing Professional refuses to accept an applicant solely because the applicant has three rowdy children or because the applicant recently came to the country from Somalia.
2. Uses of different qualifying criteria, rental standards, or procedures from those that apply to other applicants or residents. Some prohibitions include: using different income standards, application requirements, application fees, or credit analysis. *Example:* A Leasing Professional requires a full credit analysis and rental history of a recent immigrant from Mexico and evidence they have lived and worked in the US for the last four years but does not require other prospective residents from the US or European countries to do the same.
3. Use of different provisions in leases with members of protected classifications such as provisions relating to rental charges, security deposits and the terms of a lease. *Example:* A Leasing Professional tells a single woman that the security deposit is \$400 but tells a single man that it is only \$200.
4. Limiting, denying or delaying the use of privileges, services, or facilities associated with an apartment community because of the protected classification of a resident or their guest, or because that person refused or failed to provide sexual favors. *Examples:* A Leasing Professional tells a person with AIDS not to use the swimming pool because their illness is considered a disability. A mother of two active children is asked to restrict their use of the pool to less busy hours or needed maintenance repairs are delayed because they are for a disabled person.
5. Discouraging or refusing any person from inspecting or leasing an apartment home because of their race, color, religion, sex, national origin, familial status or disability. *Example:* A Leasing Professional suggests that a prospective Caucasian or Korean resident might not be happy in a specific apartment building because there are many African-American residents. This is called "steering" and is expressly prohibited by the Fair Housing Act.

6. Discouraging in word or conduct the leasing of an apartment home to protected classes by exaggerating the drawbacks, misinforming the applicant about availability or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development. *Example:* A Leasing Professional tells a disabled applicant that the apartment community has a lot of stairs and uneven areas and fails to point out available ramps. This is another form of steering.
7. Employing codes or other devices to segregate or reject applicants, or refusing to deal with certain apartment locators or agents because they or one or more of their clients are of a particular protected classification. *Example:* A Leasing Professional refuses to use ACE Locator Service because ACE handles the Jewish Charity Appeals Service in the community.
8. Using words, phrases, photographs, illustrations symbols, or forms that convey that apartment homes are or are not available to a protected class. *Example:* ABC Apartments uses only active lifestyle photographs of Caucasian tennis players, volleyball players, golfers, joggers, cyclists and fitness center workout class attendees in its advertising campaign throughout the year. The campaign never depicts and thus does not represent disabled nor non-white prospective residents, which could represent discrimination against leasing to persons on the basis of disability, color and race.
9. Expressing to apartment locators, agents, employees, prospective residents or any other persons a preference for or a limitation of any resident in a protected class. *Example:* An onsite manager tells a Leasing Professional the property is trying to limit the number of families in the community in order to appeal to more roommates and couples. Such a policy would discriminate against families with children.
10. Selecting media or locations for advertising the rental of apartment homes that leaves out particular segments of the housing market regarding housing opportunities. *Example:* An apartment community advertises in all the local newspapers except the *Afro American Times*, a publication that reaches most of the African-Americans in the city.

11. Providing false or inaccurate information regarding the availability of an apartment home for rental to any person, including Fair Housing shoppers, regardless of whether such person is actually seeking housing. *Example:* A person arrives at the Information Center and asks to be shown an apartment home. The Leasing Professional is sure the person is a shopper (someone not seriously considering leasing at the community) and does not want to waste valuable company time on someone who is not a prospective resident. The Leasing Professional incorrectly states that no apartment homes will be available for at least 60 days.
12. Threatening, intimidating, or interfering with residents, visitors or associates of such residents in their enjoyment of an apartment home based on their protected class status. *Example:* An apartment community employee makes insulting comments about the Vietnamese guests who are attending an apartment community event to the point that the residents feel compelled to leave the event.
13. Threatening an employee or agent with dismissal or an adverse employment action, or taking an adverse action against an employee, apartment locator or agent, for any effort to assist a person, or any person associated with that person, seeking access to the rental of an apartment home. *Example:* A Leasing Professional is dismissed because she helped a family with children secure an apartment home against the expressed directions of the onsite manager.
14. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging other persons to exercise rights granted or protected by the Fair Housing Act. *Example:* A Leasing Professional is threatened with job loss if he directs a person to the HUD Web site for information in filing an administrative complaint against the apartment community because of an alleged discrimination.
15. Retaliation against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act. *Example:* The manager of an apartment community terminates the lease of a resident without justifiable reason because the resident filed a discrimination complaint.

Fair Housing Activities

Case #1

Donald Short, a Pittsburgh, PA, property owner, leased a duplex apartment building to an organization that provides housing to persons suffering from AIDS. Short did not know that the building would be used to house people with AIDS and other illnesses. When he discovered the purpose of the organization leasing his building, he came onto the property and harassed the residents. He made it clear that he did not want anyone with AIDS living in his building.

He went so far as to place a cow skull, a toilet, and statue of the Lady of Justice on the lawn of the building. The organization that leased Short's building filed charges claiming discrimination.

To which prohibited discriminatory practice(s) found in the previous Prohibited Practices Activity does this case pertain?

What do you think was the verdict and why?

Case #2

A Property Owner repeatedly touched several of his female residents in a way that made the women feel uncomfortable and offered rent reductions in exchange for sex. He threatened to evict anyone who tried to report him to the authorities. A female resident filed a complaint with HUD. The Property Owner said it was her word against his.

To which prohibited discriminatory practice(s) found in the previous Prohibited Practices Activity does this case pertain?

What do you think was HUD's decision and why?



Familial Status

The Fair Housing Amendments Act protects families from discrimination. As of March 1989, it became illegal to discriminate in the rental housing industry on the basis of “familial status”. This change in the law was prompted by the outcry of parents and guardians who experienced difficulty in securing apartment housing simply because they had children. In an April 2002 report, a HUD survey found that only 38% of the general public is aware that it is illegal to treat families with children any differently from households without children.

Familial Status is defined in the Fair Housing Act as:

- ▶ One or more individuals under the age of 18 years living with:
 - A parent or a legal custodian; or
 - The designee of the parent; or
 - The custodian with evidence of written permission.

Protection afforded familial status also applies to any person who is pregnant or is in the process of securing legal custody of any individual under the age of 18.

A rule prohibiting families with children from living on an upper floor due to noisy children is considered by HUD to be a discriminatory housing practice.

While the Fair Housing Amendments Act prohibits housing discrimination against families with children, HUD has refused to establish a national occupancy limit. As a result, housing providers depend on Fair Housing cases to define “reasonable” occupancy limits. HUD has stated that a reasonable limit on the number of persons who can live in an apartment is two persons per bedroom or sleeping space.

It is important that Leasing Professionals understand the difference between a private occupancy restriction and a local building code. Most cities have local building codes that impact occupancy standards; however, building codes are not appropriate for and should not be relied on for setting a proper private housing occupancy standard. In addition, many state and local Fair Housing enforcement agencies use standards that are more restrictive than the HUD guidelines so it is important to be familiar with any such standards in the state where your property is located. The accepted HUD guideline of two persons per bedroom or sleeping space should be followed. [NOTE: under the HUD standard, you should consult your company’s policies before counting an infant or newborn baby as a “person” when determining how many persons may occupy an apartment. Many housing experts recommend against counting infants less than one year of age.]

Fair Housing Activity: Familial Status

Case #1

Ms. Davis and her eight-year-old son visited the Maplewood Park apartment community in Temple Hills, Maryland. Ms. Davis finally decided to lease a one bedroom. At that point the owner explained that it was against his policy to allow one parent and a child to lease a one-bedroom apartment for a variety of reasons. The Property Owner told them they would have to rent a two-bedroom apartment. Ms. Davis decided to file a complaint alleging discrimination on the basis of familial status.

What do you think was the verdict and why?

Case #2

Marlene and Michael Briggs were looking for an apartment home in the Chicago area for themselves and their six-year-old son. They were shown an apartment home by a resident of the building, Ms. Piroshka Kormoczy. Ms. Kormoczy was not the owner but showed apartments for the owners, who were members of her family.

Children lived in the building and had done so for some time. Still, Kormoczy rejected the application of the Briggs family because she did not want children living above her, which was the location of the apartment home requested by Briggs. The Briggs family filed an administrative complaint with HUD.

What do you think was the verdict and why?

Case #3

A couple visits your community and during the leasing tour asks if there are any Muslim families in the community. Yours is a small community and you know that there are three residing families who practice Islam.

How would you answer this question and why?

Fair Housing and Disability Status

The Fair Housing Amendments Act of 1988 had as one of its objectives to extend equal housing opportunity to persons with disabilities. “Disability” is defined as a p_____ or m_____ impairment that substantially l_____ one or more m_____ life activities.

The definition does not include illegal use of or addiction to a controlled substance.

Most individuals with a disability prefer the terms disabled or disability. The term disability is used in these NALP materials and means the same as “handicap”, but the term used in the actual Fair Housing laws and guidelines is “handicap”.

- ▶ Physical impairment includes:
 - any physiological disorder or condition;
 - cosmetic disfigurement; and
 - anatomical loss affecting specific body systems.
- ▶ Mental impairment includes:
 - any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning difficulties.
- ▶ Major life activities means:
 - functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

An important part of the Fair Housing disability provision states that it is discriminatory to refuse to any person with a disability the opportunity to make **reasonable modifications** of existing premises if the modifications may be necessary to afford the disabled person full enjoyment or use of the premises or dwelling, as long as the disabled person pays for the modifications. Modifications are physical changes made to an apartment home or building or common area.

[Note: Under Section 504 of the Rehabilitation Act of 1973, which affects certain federally assisted housing the owner is responsible for the expense of making reasonable modifications. This important federal legislation predates the disability provision of the Fair Housing Act and is sometimes relied upon by the courts in interpreting the disability provisions of the Fair Housing Act.]

An example of a reasonable modification would be the granting of permission by the owner or manager to a person with a disability to have an outside contractor install grab bars in the bathroom in accordance with local building codes and at the expense of the resident.

Another part of the Fair Housing disability provisions requires apartment owners and managers to grant disabled persons **reasonable accommodations** in rules, policies, practices, or services when such accommodations may be necessary to afford the disabled person equal opportunity to use and enjoy an apartment home, including public and common use areas. Accommodations are changes made to property policies, procedures, practices and services.

An example of a reasonable accommodation would be to allow a non-sighted person to keep an assistance or service animal in the apartment home even though the building has a “no pet” policy. An assistance animal is considered a service animal and not a pet.

What are some examples of reasonable modifications to the apartment home and building and reasonable accommodations to the community’s policies and procedures?

Fair Housing and Disability Status Prohibited Practices

There are specific prohibitions against discrimination because of the disability status. It is unlawful to:

- ▶ Make an inquiry to determine whether an applicant for an apartment home, a person intending to reside in that apartment home, or any person associated with that person, has a disability or to make inquiry as to the nature or severity of a disability of such a person.

Example: A Leasing Professional should not, while making a routine presentation to a prospective resident, ask if the client is disabled, how they became disabled, or how the disability will limit their ability to live in the apartment community. [NOTE: see exception below regarding requests by the prospect, applicant or resident for a reasonable modification or accommodation.]

- ▶ Discriminate in the rental, or to otherwise make unavailable or deny, an apartment home to any leasing applicant because of a disability.

Example: A Leasing Professional should not tell a person who is HIV positive or in a wheelchair that there are no available homes when indeed there are vacancies.

- ▶ Discriminate against any person in the terms, conditions, or privileges of the rental of an apartment home, or in the provision of services or facilities in connection with such apartment home because of a disability.

Example: A Leasing Professional tells a parent that the pool is off limits to children with epilepsy because it is too dangerous.

Some inquiries are NOT prohibited as long as these inquiries are made of all applicants, whether they are disabled or not:

- ▶ Inquiry to determine whether an applicant is qualified for an apartment home that is available ONLY to persons with disabilities or to persons with a particular type of disability.
- ▶ Inquiry to determine whether an applicant is qualified for a priority available to persons with disabilities or to persons with a particular type of disability.
- ▶ Inquiry into whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
- ▶ Inquiry as to more information about the specific kinds of modifications or accommodations requested by a disabled prospect, applicant or resident and reasonable verification as to the necessity of the request when the nature or extent of a disability is not known or obvious to the Leasing Professional.

If you are unsure how to handle your leasing presentation to a person with disabilities or respond to a request for a reasonable modification to the premises or an accommodation to your company's policies, ask your supervisor for assistance or guidance. Even though the disabled prospect, applicant or resident is usually responsible for the cost of the modifications to the apartment, you should verify this with your supervisor. Sometimes an owner or manager will absorb minor costs or those that may be necessary to correct an improperly constructed apartment that is not up to code. Other times the requested change could be unreasonably expensive and you would not want to inadvertently obligate your company for the cost of making such changes.

Fair Housing Disability Status Activities

Activity #1

Case #1

Julie, a disabled resident, asks you:

- ▶ to make an exception to your rule banning equipment or items with wheels from your business center to accommodate her wheelchair;
- ▶ to install a ramp at her expense so that she may access your center using her wheelchair; and
- ▶ to let her bring her guide dog with her to the business center.

Is Julie asking too much?

How would you handle this request? Use Fair Housing laws to support your answer.



Case #2

A physician has just diagnosed one of your best residents with “multiple chemical sensitivities”. She gives you a list of approved cleaning fluids and pesticides for use in her apartment, the hallways and other common areas of the apartment community. Chemicals other than the ones on this list will make her sick.

How would you handle this situation? Use Fair Housing laws to support your answer.

Sample

Activity #2

Scenario #1

A prospective resident calls to schedule an appointment for a leasing tour. She explains that she has limited mobility and will need to be met in the parking lot and helped out of her automobile.

What do you say and why?

Scenario #2

A long time resident is getting married. His new wife has a child with a disability. Their apartment is on the first floor and the child does not have any problems getting his wheelchair in and out of the apartment. The problem is the carpet. It is very deep and plush. The child cannot get around the apartment home in his wheelchair.

The Property Manager denied a request for new carpet. Another resident living at the community suggests that the resident pursue the matter with HUD under the disability provisions of the Fair Housing Act. The Property Manager is thinking about terminating the lease of the resident who recommended filing the Fair Housing complaint.

What should you do or say to the Property Manager about her course of action for handling this situation?



Fair Housing Testers

Fair Housing “testers” are persons hired by an independent housing advocacy group or housing enforcement agency to investigate violations of Fair Housing laws. One of the most effective tools of housing advocacy groups or government agencies that are responsible for enforcing Fair Housing law is the use of the tester. Although “testers” are sometimes referred to as “shoppers”, the term “shopper” is generally reserved for outside vendors who are hired by your company to evaluate your leasing skills or compliance with the company’s Fair Housing policies and procedures. Many Fair Housing cases that have resulted in monetary awards and damages involve the use of testers.

Testers generally operate in pairs or teams. Testing involves the use of one person who because of their status or characteristics is in a protected category and considered to be a potential “target” of discrimination. The other tester has a different status or characteristic, which is suspected of giving him or her special preference. Both testers are given identical “scripted roles” and instructions on how to conduct the test in order to compare how one is treated versus the other.

For example, tester A is an African-American female. She takes a leasing tour of ABC Apartments and indicates a preference for a one-bedroom apartment home in a specific building. When she is told that there are no vacancies in that building, she leaves the community.

Soon after, tester B, a Caucasian female, visits ABC Apartments, takes a similar leasing tour, and expresses an interest in a one-bedroom apartment home in the same building that tester A requested. If tester B is told that such an apartment home is available, the testers or the organizations they represent may file a Fair Housing complaint.

A Leasing Professional may not refuse a leasing presentation or deny a tester, or anyone else, permission to visit or tour the apartment community. You may request a valid government-issued photo ID prior to conducting a tour of the apartment or community if that is your company’s policy. The solution:

“Treat everyone the same.”

“Be consistent.”

Additional Leasing Procedures to Avoid Discrimination

Listed are some additional procedures that a Leasing Professional can follow to reduce the chance that discrimination will occur to a tester or anyone else:

- ▶ Treat everyone fairly and consistently;
- ▶ Always have accurate documented information that can be substantiated;
- ▶ Make sure all conversations, communications and leasing presentations follow your company's policies and procedures;
- ▶ Maintain good records or documentation as proof that discrimination did not occur;
- ▶ Document which apartments are shown to each prospective resident;
- ▶ Update with regular training to ensure compliance with the Fair Housing laws;
- ▶ Maintain a consistent professional attitude with all visitors regardless of their differences; and
- ▶ Use a specific, defined tour route and presentation when demonstrating the apartment community.



- ▶ Comply with the company's occupancy guidelines and practice leasing within them;
- ▶ Ask how many occupants will be living in the apartment;
- ▶ Immediately notify your Property Manager if a request for a modification or an accommodation is received from a prospect, applicant or resident;
- ▶ Ask your supervisor before promising anything other than what you are routinely authorized to offer to a prospect, resident or visitor;
- ▶ Offer the same rates, fees, concessions, and specials to every prospective resident who seeks to lease a specific apartment home. Special rates should be designated to specific (or all) apartment homes, not to a specific prospective resident or profile. If your company authorizes you to "negotiate" on concessions, move-in specials or rental rate, be sure to confirm the rules for offering special rates and how to document what was offered; and
- ▶ Ask about your local and state Fair Housing laws and practice leasing within them. Review the Fair Housing laws regularly. Decline answering questions about the kinds or groups of people who live at the apartment community if asked by a prospect or resident. For example, you do not want to answer the question, "Do white people live here?" Instead you may say "Fair housing laws do not allow us to answer that question, but anyone who meets our rental qualifications may live here."

Leasing in the Multicultural Marketplace

Today more than ever before, the Leasing Professional must be sensitive to the increasing numbers of prospects from different countries and cultures. As immigration numbers surge in the United States, the Leasing Professional must ensure all prospects are treated with respect for their cultural backgrounds – yet maintain such treatment in a fair and consistent manner. Even if language is not a barrier, understanding that one culture may accept that a woman can shake a man's hand, another may not.

In an article written in early 2004, Dr. Sondra Thiederman gives us some guidance in understanding certain principles that can help to minimize misunderstandings when confronted with prospects from a variety of cultures. Dr. Thiederman holds a doctorate in cross-cultural studies from the University of California Los Angeles and is a speaker and author on diversity, bias reduction, and cross-cultural issues.

1. **It is acceptable to notice the cultural differences between people.** In fact, it is good to note an individual's cultural uniqueness. If we do not, we are being disrespectful and diminishing the person's value. When you notice that your Asian residents look away from you when making a request or voicing a complaint, it is important for the Leasing Professional to know that the avoidance of eye contact is an expression of respect in the Asian culture. It does not mean the person is not sincere or is hiding something.
2. **Resist the temptation to stereotype.** This is a common problem for all of us as we group so many things, much less people. The truth is that there are often more differences within an ethnic or immigrant group than there are between groups themselves. It is important to take the time to get to know the individual.
3. **Do not lump groups together.** A Laotian is not a Cambodian and a Cambodian is not a Vietnamese, anymore than a Frenchman is an Englishman or a German is a Swede. Not only can such lumping together lead to misunderstandings, it is disrespectful to that individual's heritage and national origin.
4. **A heavy foreign accent does not automatically indicate the speaker is uneducated or that he or she cannot understand what you are saying.** In truth, an accent just tells you where someone is from. The roots of many languages are considerably different than those of English and an accent is difficult to lose. Do not assume someone is new to the country because of the accent. Be patient and make no assumptions about education, socioeconomic status and birthplace.



5. **Non-native speakers of English may sound rude and demanding when they do not intend to do so.** If you have ever taken a foreign language in high school or college, you might recall how it feels to speak slowly and try to say the correct word. English is filled with phrases such as “Would you mind?”, “When you have a chance,” and “I hate to bother you but...” all of which are ways we soften or explain ourselves a bit better. Many immigrants are unaware of these nuances and may speak quite directly.
6. **Communicate better by choosing your vocabulary carefully.** Use simple terms and avoid jargon, acronyms and slang. If you have said something one way and it is not understood, do not continue to repeat the same thing. Try to find a different and clearer way to express yourself. Avoid using vague modifiers like “barely”, “scarcely” and “almost”. These are very difficult terms to define.
7. **Avoid using negative phrasing.** Try to avoid telling someone “not” to do something or say you will “not” be able to do something. It is too easy for the “not” to get lost as the person is working on translating what you are saying. There is a big difference between “You will be able to paint the bedroom that color” and “You will not be able to paint the bedroom that color.” An alternative approach is to say what can be done.
8. **Watch for signs that you have not been understood.** In the Asian culture, it is particularly important not to “lose face”. An individual may be embarrassed to admit that he or she has not understood what you have just said. He or she may also not want to cause YOU loss of face by implying you have not been clear. After asking “Do you understand?” watch for the following: perpetual smiling and nodding at inappropriate places; embarrassed laughter; lack of questions; lack of interruptions; or statements like “I think I understand.”
9. **Participate in the communication process.** A person is much less likely to remember English words and pronunciations when he or she is upset, frightened or self-conscious. Help the prospect to relax by slowing yourself down, lowering your voice and accepting some of the responsibility for the fact that the person does not understand.
10. **Take time to build relationships slowly.** In the United States, we have a tendency to build relationships quickly and just as quickly leave them. This works for us but may not work for an immigrant who is used to order, formality and hierarchy in relationships. We get familiar quickly but others may not. It does not mean that immigrants are cold and uncaring; it just takes them longer to adjust sometimes. Follow their lead. Use last names and respectful titles, address the elderly with respect, avoid physical contact, accept offerings of shared food and get to know all of the family members as you build acceptance.

New Fair Housing Issues on the Horizon

Linguistic profiling – Testing for discrimination based on sound, tone, or accent of caller's voice. This type of discrimination is easy to test.

Name profiling – Testing for discrimination based on the person's name if it sounds Middle Eastern, African American, Hispanic or some other ethnicity. This type of discrimination is also easy to test.

Visitability – Accessibility for disabled visitors and guests of residents, even if the resident is not disabled.

Domestic violence victim eviction – Generally both the victim and the perpetrator are evicted – which may impact women more than men (disparate impact.)

Target marketing – Marketing with a limited distribution to certain areas or zip codes only.

Source of Income – Already on the books in some states and municipalities, this further adoption of this new category would protect against discrimination based on the source of income to cover the rent (i.e. AFD welfare payments, social security benefits, housing subsidies.)

Limited English Proficiency (LEP) – Providing written and spoken communication to applicants whose primary language is something other than English.

Resources for Fair Housing Information

National Disability Rights Network
900 Second Street, NE, #211, Washington, DC 20002
202/408-9514
www.napas.org

National Fair Housing Alliance
1400 "Eye" Street, #530, Washington, DC 20003
202/898-1661
www.nationalfairhousing.org

U.S. Department of Housing and Urban Development (HUD)
Office of Fair Housing and Equal Opportunity
451 7th Street, SW, Washington, DC 20410
202/708-1112
www.hud.gov

The Fair Housing Institute, Inc.
www.fairhouse.net

The Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) main objective was to expand opportunities and protection under the law for persons with disabilities. Leasing Professionals will interact with persons with disabilities. The Fair Housing “Golden Rules” apply:

“Treat everyone the same.”

“Be consistent.”

The Rehabilitation Act of 1973 was the first step towards full recognition of the rights of persons with disabilities. Many of the definitions and features of the ADA are directly from the 1973 legislation.

There are five parts, or Titles, to ADA:

- ▶ **Title I** – Employment. Prohibits discrimination against an applicant or an employee with a disability (covers employers with more than 15 employees).
- ▶ **Title II** – Public Services. Not applicable to multihousing industry under most circumstances.
- ▶ **Title III** - Public Accommodations and Services Operated by Private Entities. This is the section of ADA that has the most impact on the multihousing industry. The law requires that facilities that are open to the public consider the needs of persons with disabilities. Such facilities include “rental establishments,” which typically includes the Information Center of the apartment community. Therefore, persons with disabilities who visit Leasing Centers must have access to all services and amenities such as parking, curb ramps, stairs/ elevators, public drinking fountains and restroom facilities, and public telephones.
- ▶ **Title IV** - Telecommunications. Not applicable to multihousing industry under most circumstances.
- ▶ **Title V** - Miscellaneous Provisions. Like the Fair Housing law, this title prohibits retaliation or coercion against anyone seeking to exercise their rights under the ADA.

The Fair Housing Act of 1988 and the Americans with Disabilities Act of 1990 are designed to complement each other. An easy rule of thumb is to remember that the ADA applies primarily to the leasing office and the areas providing access to the leasing office. The Fair Housing laws primarily pertain to the common areas and the actual apartment homes. Not all parts of a management or leasing office are open to the public.

Equal Credit Opportunity Act

The Equal Credit Opportunity Act makes discrimination unlawful with respect to any aspect of a credit application on the basis of:

- race;
- color;
- religion;
- national origin;
- sex;
- marital status;
- age; and/or
- because all or part of the applicant's income is derived from any public assistance program.

State and local laws often provide even broader coverage and prohibit discrimination based on additional protected classes not covered under this federal act.

When a prospective resident is asked to complete an application for rental, it could seem like an invasion of privacy and viewed as a complicated process. The application process should be fully explained to all applicants to reduce anxiety and misunderstanding of the process. If an application (and not the person) must be denied the opportunity to lease an apartment, this should be done with compassion and understanding.

Fair Credit Reporting Act (FCRA) (1996)

The Fair Credit Reporting Act is designed to protect the privacy and insure the accuracy of consumer report information and to guarantee that the information supplied by Consumer Reporting Agencies (CRAs) is as accurate as possible. It also requires Property Owners to deny a lease based on information in the applicant's consumer report to provide the applicant with an "adverse action notice". Three of the most significant CRAs or providers of credit information are Equifax, Experian and Transunion. Other companies who provide credit screening services are also covered by the FCRA.

As a part of the prospect screening procedure, the Leasing Professional may use a third party screening firm or make multiple calls and inquiries. A consumer report (also called a credit report) contains information about a person's credit characteristics, character, general reputation and lifestyle. It may also include information about someone's rental history, such as information from previous Property Owners or from public records like housing, court or eviction files.

If the contents of the consumer report require that the applicant be denied or that additional deposits or rent are required, the FCRA governs how to respond. The Leasing Professional should carefully follow company policy and consult with his or her supervisor before relaying the CRAs findings to the applicant.

If a rental application is denied, the applicant must be given a proper written notice of the reason for the denial and contact information for the CRA that provides the adverse credit information. . The notice should also disclose that a consumer has a right to a free credit report and the right to dispute the accuracy of the information found in the consumer credit report. Lastly, adverse action notices should include the disclosure of credit scores and information relating to credit scores if a credit score is used in taking adverse action.

Fair and Accurate Credit Transaction Act (FACTA) (2003)

Late in 2003 and responding to the dramatic increase in identity theft and fraud, the Fair and Accurate Credit Transaction Act (FACTA) was signed into law. The Act substantially changes the FCRA's impact on property owners. In addition to reauthorizing the FCRA, the Act addresses consumer concerns about identity theft and inaccuracies in consumer reports and gives consumers the right to limit how businesses can use their non-public personal information. The FACTA has been incorporated into the FCRA.

For the Leasing Professional, consumer reports may now appear with fraud alerts and file blocks when consumers claim identity theft or fraud. Similarly, if the community provides data to consumer reporting agencies such as collection agencies, there are new requirements to respond to notices of alleged identity theft. Leasing Professionals should always confirm these reports with the Property Manager and respond according to company policy and screening criteria.

Previously, only consumer reports issued by Trans Union, Experian, and Equifax required notifying a prospective resident. Now, reports from tenant-screening services, reference-checking services, and other information providers that either use credit reports from a credit bureau or rely on information about the resident's rental history also require notifying the prospective resident. Such notice is not required when an owner or his employees verify the information supplied in the application.

Leasing Professionals should be aware that the Act also impacts:

- ▶ The types of records that will be submitted to collection agencies and release of business records to the victim in an identity theft situation.
- ▶ New procedures for verifying collection account accuracy and re-investigating if the account is disputed.
- ▶ Limitations on a corporate entity to "share" information between its sister properties for the purposes of marketing.

All of these factors impact applicant screening at the community. The Leasing Professional will be certain to be aware of what his or her role is in applicant screening.

Additional Consumer Protections

Along with the various available ways to communicate with consumers, a variety of laws and regulations are being considered. While many of these protect the personal information and records of consumer, they have serious implications for the multihousing industry and for Leasing Professionals.

Do Not Call. The Do Not Call Registry has been established and consumers may elect to join that registry and avoid interstate and intrastate telemarketing calls. This includes apartment management firms.

Do Not Fax. According to the Federal Trade Commission, Junk Fax Prevention Act, which was passed by Congress in 2005 states:

“The rules provide that it is unlawful to send unsolicited advertisements to any fax machine, including those at both businesses and residences, without the recipient’s prior express invitation or permission. Fax advertisements, however, may be sent to recipients with whom the sender has an EBR (Existing Business Relationship), as long as the fax number was provided voluntarily by the recipient. Specifically, a fax advertisement may be sent to an EBR customer if the sender also:

- ▶ obtains the fax number directly from the recipient through, for example, an application, contact information form or membership renewal form; or
- ▶ obtains the fax number from the recipient’s own directory, advertisement, or site on the Internet, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the fax number in question; or
- ▶ has taken reasonable steps to verify that the recipient consented to have the number listed, if obtained from a directory or other source of information compiled by a third party.

If the sender had an EBR with the recipient and possessed the recipient’s fax number before July 9, 2005 (the date the Junk Fax Prevention Act became law), the sender may send the fax advertisements without demonstrating how the number was obtained.

Opt-out Notice Requirements: Senders of permissible fax advertisements (those sent under an EBR or with the recipient’s prior express permission) must provide notice and contact information on the fax that allows recipients to “opt-out” of future faxes. The Leasing Professional must carefully comply with these standards.

CAN-SPAM. In May 2008, the CAN-SPAM Act was updated. This law put heavy restrictions on unsolicited commercial e-mail, known as spam. It affects all businesses that conduct marketing by e-mail and includes apartment communities. It applies to e-mails that are used largely for advertising or promotion of a commercial product or service.

When marketing by e-mail, the Leasing Professional must be aware that under the CAN-SPAM law, marketing e-mails must have:

- ▶ identification that it is an advertisement;
 - ▶ In general, it clarifies that in the “From” window, your recipients should be clearly recognizable as belonging to your organization.
 - ▶ the opt-out mechanism must not be complicated that allows the consumer to elect to not get future e-mails; and
- a valid return e-mail address and a physical postal address and meets USPS registration guidelines. E-mails confirming transactions that the recipient previously agreed to or about changes relative to the recipient’s relationship with the company are not included in these rules.

A Leasing Professional communicating with a prospect or resident with whom there is an ongoing business relationship and which references arrangements, details, schedules, fees, changes in terms or other related information is likely within the CAN-SPAM regulations.

As with any and all business conduct and duties, it is the Leasing Professional that stays abreast of current industry activity, including new laws that affect common business practices.

Applicant Screening

It is customary in our industry to “screen” applications to determine if they meet the criteria your company has set for residency at your property (see NALP course Interviewing and Qualifying Residents). Generally the following areas are checked and, in the event of a negative report, can cause the rejection of an application.

- credit history
- income
- rental history
- eviction records
- criminal background
- Social Security Number (SSN) or Individual Tax Identification Number (ITIN)

The Leasing Professional must understand that these and other criteria will have thresholds determined by company policy and that they are responsible for complying with the policies. It is recommended that company criteria for credit, income, employment, etc. be printed and posted prominently in the leasing office. Many companies give signed copies of the criteria to every applicant in order to avoid any misunderstanding about the screening process.

Identity documents (such as a valid governmentally issued photo ID) are generally required to show an apartment but they are also mandatory in approval or rejection of the application to lease. Even if you do not know how to determine a real document, you may be able to spot inconsistencies that point to fraud or you may be able to document important information for later legal action.



Criminal Background Checks

This business practice involves the review of the criminal activity or criminal background of all rental applicants (and sometimes even includes lease renewals). Before any review or check is conducted, the Leasing Professional must inform the applicant that the criminal background check will be done and obtain an appropriate written authorization to check the applicant's criminal history. An owner or management company representative determines the scope of the checks.

All applications must be checked using the same consistent process for the same criteria to avoid discriminatory treatment. Typically the owner or a management company's policies and procedures determines when an application or renewal will be denied due to the results of the criminal background check. The denial could be based on any felony within a designated amount of years or it could be based on designated felonies such as those against a person (assault, murder, rape, sexual abuse, etc.) within a designated amount of years. Determining which crimes will result in denial of a rental application can be a difficult job. Also, records must often be checked in multiple states or jurisdictions going back at least two years in time. This is particularly important if the applicant lived in other cities or states before moving to the current area.

The Lease and Legal Issues

Leases are contracts. They generally describe the nature of the relationship between the resident and owner. In some states, when a prospect signs an application, he/she has a legal responsibility to sign a lease providing the application is approved. The Leasing Professional must be aware of what the application requires from both the applicant and the Leasing Professional.

Once the application is approved, the Leasing Professional should be familiar enough with the lease that he or she can give a brief explanation of what each section means. The lease determines the agreed rights and responsibilities about issues such as:

- Address of the leased apartment
- Rent and other fees due (late, NSF, etc.)
- Damage to the apartment
- Maintenance requests
- Utilities
- Subletting
- Authorized occupants
- Notices

Generally community rules are also a part of the lease. In addition, a number of documents—called lease addenda, contain important rules about service requests, amenities, pet agreements, utilities, etc. The lease addenda are also part of the contractual agreement made by the owner and the new resident. As a Leasing Professional, it is your job to understand these elements and understand the basic legal responsibilities and duties for the residents and owner.



Other Occupancy Issues and Possible Lease Violations

As a member of an onsite team, the Leasing Professional will generally be aware of certain legal issues regarding residents, maintenance requests and lease violations. As a professional, you understand that these issues are not to be publicized or discussed with other residents (unless a necessary part of an investigation conducted by management) as they affect the personal lives of your residents. Nonetheless, you should be aware that the onsite manager will deal with legal issues regarding the resident and:

- Habitability—the owner’s suitable maintenance of the property
- Provision of access to basic utilities—water, electricity, etc.
- Common areas that meet health codes
- Nuisance control of other residents—ventilating, overcrowding, disruptive noise complaints, etc.
- Resident’s responsibility to reasonably maintain the interior of the unit
- Satellite dishes or antennae
- Reporting safety or health issues to management—locks not working, water leaks, mold, etc.
- Disputes between neighbors
- Crime on the property
- Injuries to residents or damages to their personal property
- Privacy and rights to enter

Lead-Based Paint Safe Work Practices

Regulations under Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act became effective September 15, 2000. The LBP regulations require that property owners who operate conventional market rate apartment communities that were built before 1978 and those communities that receive federal assistance, including project and also all of those voucher-assisted Section 8, and FHA-insured properties must:

- Distribute to new residents copies of the EPA pamphlet “How to Protect Your Family from Lead in your Home” and advise of any known evidence of lead-based paint in the community;
- Repair any defect in a painted surface that causes paint deterioration;
- Dust test any repair work that disturbs a painted area greater than 20 square feet outside, two square feet inside or 10% of a small surface building component, such as a window frame;
- Notify residents of repair work and distribute to them copies of the EPA pamphlet, “Renovate Right”;
- Keep records of all repair work for a minimum of three years; and
- Provide HUD-approved training for anyone who performs repairs.



- Ensure that inspectors and testers are certified according to the EPA regulations;
- Use lead-safe work practices during renovations and repairs;
- Monitor and re-evaluate lead-based paint;
- Maintain lead-based painted areas to ensure that paint remains intact and that safe practices are used around the paint; and
- Test bare soil of apartment property play areas, including playgrounds and ball fields.

The disclosure pamphlet and accompanying form must be given at the time a new lease is signed. If a resident renews after receiving the original disclosures, the disclosures do not have to be distributed again—unless new information has surfaced. Then the new information must be disclosed in writing to the resident. Exception: The disclosure rules do not apply to pre-1978 rental sites that have been inspected and declared lead-free by a certified lead inspector. A copy of the cover follows for identification purposes.

A pamphlet entitled “Renovate Right” must be distributed if there is repair work that goes on in the unit that disturbs over 6 square feet of interior paint or on the outside that disturbs over 20 square feet of exterior paint.

Copies of the EPA pamphlet, disclosure forms and other information are available at:

www.hud.gov/offices/lead/disclosure/index.cfm and www.epa.gov/lead/pubs/renovation.htm

Resident's Personal Safety Activity

There is no nationally recognized standard for acceptable apartment property management safety practices and measures regarding crime on the property. Legal interpretations vary widely in different states. Most courts apply a standard of inquiry that asks what was a reasonable response, given the specific facts of each situation.

A management company can, even under the right circumstances, be held liable for a resident's injuries or loss of property even if it was caused by an unpredictable criminal attack. Negligence is determined by whether a court or jury feels that the management failed to keep the premises safe due to some form of unreasonable conduct. For example, a management company could be held liable for a sexual assault on a resident's child if management was aware of a prior similar attack and failed to send out warning notices to all residents so that they would be more careful of their child's safety. This is called a duty to warn residents about reasonable risks of criminal attack.

A management company can be held liable for injury caused due to its failure to repair something that causes an apartment or common areas to be unsafe for normal use. Negligence is failure to perform a duty that reasonably subjects a resident, occupant or guest to harm.



Case #1

Your lease says that the resident assumes all responsibility for the condition of the apartment after move in. The resident becomes injured while attempting to flee a fire in the apartment home, tripping on a loose or defective stair step in a rear breezeway that she seldom used. The resident sues claiming that she would not have fallen if management had properly repaired the stair step.

What is your verdict?

Case #2

An unknown person who entered the apartment home by prying open a sliding glass door sexually assaults a resident. The resident sues on the grounds that the property owner is liable for the resident's attack because it knew about a recent break-in burglary and failed to warn residents. She also claims that management refused to give her a special device known as a "Charlie bar" that would have prevented the sliding glass door from being forced open.

What is your verdict?

It is important not to use the term “security” guards, and rather refer to them as “courtesy” personnel. It is also important to never guarantee such a service because realistically it cannot be offered indefinitely and to all residents and their guests **at all times everywhere throughout** the property. Generally speaking, owners and managers or apartment communities do not provide or offer security services to prevent, detect or deter crime or other common emergencies that can occur. Apartment management should not market or guarantee that the property is safe from crime or any similar type assurance. As a Leasing Professional, you must never make such representations.

The key points here are **security** and **courtesy**. Courtesy officers are there for the benefit of the owner and management – not the resident.

There should be no expectation given of security provided to the resident. By not calling these individuals “security personnel”, you help remove any misconception. The second issue is that whatever person you provide and whatever services they provide, both are either a courtesy to the residents or a service to the property. Do not confuse the residents.

Under the law, it is clearly the responsibility of residents to assume responsibility for their own personal safety and that of their families and guests. It is also incumbent upon all of the apartment community staff to help make the apartment community secure from known dangers or conditions.

What are some opportune times when a resident’s personal responsibility for safety can be communicated?

Safety Hazards

All residents and onsite management staff should be alerted to possible safety hazards and encouraged to notify management as soon as a possible safety hazard is discovered. Unsafe conditions should be identified and corrected promptly.

Typical safety practices onsite teams should perform include:

- ▶ Proper labeling and storing of chemicals such as paint removers and acids in a secure place;
- ▶ Ensuring and inspecting for the proper functioning of self-closing limited access gates around pool areas and easy access to pool safety equipment;
- ▶ Communicating to residents the local building safety codes and property policies regarding the use of grills; and
- ▶ Communicating to residents that appropriate authorities should be contacted first in an emergency and then notifying the owner or property representative.

Generally speaking, many building codes prohibit use or storage of any kind of grill for cooking on a balcony or porch due to the high risk of fire.

Resident Safety Practices

Following is a list of some **personal** safety procedures that should be included in the orientation session with **new residents**. This is not an exhaustive list. Many companies have entire documents, which list more extensive procedures.

- ▶ Never leave a window or door unlocked;
- ▶ Maintain renter household insurance on all property;
- ▶ Mark all valuables with an identifying number – videotape all valuables;
- ▶ Keep an inventory of all valuables;
- ▶ Communicate with your neighbors and form a collective watch;
- ▶ Do not give keys to anyone including friends or relatives;
- ▶ Call police for suspicious occurrences;
- ▶ Report all crimes to proper authorities and then to management;
- ▶ Never unlock a door or a car or apartment to anyone you do not know and trust; and
- ▶ Devise a personal escape plan in the event of fire and practice using alternative escapes from the apartment.



Other resident personal safety practices:

When asked if an area is safe, a Leasing Professional should respond: “Please understand that I, along with any other apartment community, cannot guarantee your personal safety. In fact, no place in the U.S. today is 100% safe. It is best if you use good common sense and practice basic safety precautions as you would anywhere else. For more information regarding the safety of our community, I encourage you to go online to find out more about this area and its safety records.”

If asked whether there is crime on the property, you must either decline to answer and defer the question to your supervisor or answer truthfully. You are not allowed to say something like, “This is generally a safe property, but has some crime.” Any comment that a property is “safe” or “free from crime” can be later used by a resident who was the victim of crime to say that he or she was misled and would not have rented if they had known about the “crime problem.”

You Be the Judge Activity

Case #1

A resident was struck by an unidentified intruder in her apartment, leased from Garden Gate Apartment.* There was no sign of forced entry. At the time of the attack, the front door lock of the woman's apartment home was not part of the apartment community's master key system and only the resident, her sister, and the apartment community's manager had keys to the door. The apartment community installed pin locks and "Charlie bars" in the sliding glass doors of other residents' homes, but not in hers. The apartment community once had a history of the company's maintenance person entering unannounced into apartment homes so there was an agreement that no Garden Gate employee would enter this resident's apartment home without the manager in attendance. The resident claims that the only way someone could have gained access to her apartment was if it was a management employee or if the management company negligently allowed unauthorized and uncontrolled access to the management's keys.

Should the management be held liable for this attack?

Decision:

*Real case



Case #2

Linda Leaser* and her mother moved into Garden Grove Apartments. During their orientation session, they signed a lease that included a statement that local law enforcement authorities, not management, were responsible for security. The lease further said that the property employed patrol guards for the sole purpose of watching the rental offices and the physical plant, not for the residents' personal protection. However, the resident and her mother both remembered the Leasing Professional saying that security was excellent at Garden Grove and that there was no crime in the area. Soon after moving in, Linda was criminally assaulted and sued Garden Grove Apartments for liability.

Decision:

*Real case; fictitious names

Case #3

Sarah Subletter* lived in the apartment home of Owen and Ona Owners. A professional management company managed the apartment. While in the apartment home, Sarah gave birth to two children during her first two years of residency. Then the apartment home was sold to Ventura Ventures. Three years later, Sarah's children were evaluated and diagnosed with high blood lead levels. She filed suit against the Owners and the company that had managed the property for about 16 years. The Owners settled out of court but the management company went to court and based its position on the common law of that state and the city code which provided that a Property Owner was not liable for a defective condition on the property unless he either knew or had reason to know of the condition and had a reasonable opportunity to correct it.

Decision:

*Real case; fictitious names



Emergency Contact Situations: Fire

A brochure on emergencies with emergency contact information including telephone numbers should be part of the move-in packet for new residents. Leasing Professionals should know how to deal with basic emergency situations.

In the event of a fire, there are three steps that must be taken:

1. Notify the fire department;
2. Evacuate the building; and
3. Cut off utilities when safe.

There are steps one can take to diminish the possibility or impact of a fire on the property:

- ▶ Know where all cut off valves are located;
- ▶ Know where all charged extinguishers are located and how to operate them;
- ▶ Clean out storage areas;
- ▶ Clean up after painting jobs;
- ▶ Check electric appliances, especially cords and plugs;
- ▶ Keep furnace room clean and the fire door closed;
- ▶ Check alarm systems regularly; and
- ▶ Request the local fire department inspect the property at least annually.

Emergency Contact Situations: Police/Sheriff

The local police and/or sheriff department should be contacted for any instances of assault, burglary, vandalism, disorderly parties and violent arguments or fights. Steps can be taken to reduce the chances of lawlessness.

Steps to Reduce Risk

- ▶ Control or eliminate master keys;
- ▶ Keep vacant apartment homes locked at all times;
- ▶ Utilize sound, secure locks—preferably deadbolts—on all doors;
- ▶ Maintain proper lighting around buildings, grounds and parking areas;
- ▶ Do not keep large amounts of cash in the Information Center; and
- ▶ Inform others when leaving the office or Information Center.

If possible, Leasing Professionals should get to know the police officers and sheriff in the community. The public relations department of the local police department can be an excellent resource for information. It is important to know which jurisdiction to call for assistance.



Summary

Because of your participation in this NALP course, you are now able to:

- ▶ Explain how various Fair Housing laws apply to the multihousing industry and to the responsibilities and duties of the Leasing Professional;
- ▶ Identify major components of the Fair Housing laws;
- ▶ Apply Fair Housing concepts to the responsibilities and duties of a Leasing Professional;
- ▶ Relate the provisions of the Equal Credit Opportunity Act, Criminal Background Checks, and Lead Paint Safe Work Practices to the Leasing Professional position;
- ▶ Implement basic safety practices and emergency contact procedures that should be demonstrated while on the job; and
- ▶ Outline the basics of legal compliance and risk management.

For additional and updated information, students should contact other resources for materials and knowledge about the legal aspects that impact a Leasing Professional's job. An excellent resource is the local apartment association and company legal counsel.

Exam

The NALP exam is comprehensive and delivered online. The NALP Exam is 100 questions and timed for 1 hour and 30 minutes. All participants must enroll in the designation program to be eligible to sit for the exam. To enroll in the NALP course, go to the NAA Web site at:

www.naahq.org/education

You will need an Eligibility Code in order to sit for the exam. Eligibility Codes are unique to each participant and are the key to unlocking the exam. Your Eligibility Code will be given to you by your instructor or Sponsoring Organization.

The passing point for the comprehensive exam is 70 or above.

You must work individually on the exam. No books are allowed to be used as a reference.

For more detailed information on the exam and to download the Candidate Handbook, please visit the NAA Web site:

www.naahq.org/education/designationprograms/Pages/OnlineExams

