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THE LOWDOWN ON LEASING & FAIR HOUSING CONSIDERATIONS

Leasing in common interest communities has garnered increased attention over the last few years, especially with the advent of short-term leasing website platforms such as Home Away and Airbnb. Owners are capitalizing on the fact that renting a home – or even a room, in the DC Metropolitan Area can command a small fortune.

In recent years, courts and the legislature in Virginia have increasingly followed the view that association action must be based *only* on authority established in the recorded governing documents or condo-

minium instruments or by statute, particularly if the action being taken affects ownership rights such as the right to lease property.

In fact, legislation adopted by the Virginia General Assembly in 2015 and 2016 amending the Condominium Act and the Property Owners' Association Act proactively limits the authority of associations to charge rental fees or require the use of an association form lease or lease addendum, unless *expressly authorized* by the governing documents or condominium instruments. This recent legislation does au-

thorize, however, an association to require that the owner provide the names and contact information of tenants and authorized occupants under a lease, as well as vehicle information for these individuals. Also, the association may require the owner to provide the association with an acknowledgment from the tenant that he or she has received and agrees to abide by the governing documents and association rules and regulations.

As community association boards and managers grapple with the administrative and legal challenges posed by the booming



rental market and ever-evolving Virginia law, it is easy to lose sight of the fact that fair housing issues can come into play as well in the leasing context. As a housing provider, community associations are required to abide by fair housing laws. And, because the imposition of leasing restrictions or special requirements may infuriate owners and tenants who may qualify as a protected class under the fair housing laws, these fair housing considerations should not be given short shrift, by anyone.


One primary consideration which is often unknown or overlooked is that the fair housing laws protect not only owners but also current tenants and even prospective tenants.

Virginia common interest community associations cannot discriminate against tenants or prospective tenants based on race, color, religion, national origin, sex, elderliness, familial status, or disability. The locality in which the community is located may contemplate additional protected classes.

Where community associations oftentimes

unwittingly become exposed to liability is in the screening of tenants. Even in those circumstances where the governing documents or condominium instruments authorize the screening of tenants, a community association must exercise extreme care on the types of information requested. For instance, the Office of General Counsel of HUD has issued formal guidance regarding the use of criminal records by housing providers in screening prospective tenants. Any screening practice should be vetted by legal counsel for the community association.

Other leasing-related rules or practices which may trigger a fair housing complaint are rules which limit the number of roommates, treat tenants differently than owners or treat similarly situated tenants differently. Even if the rule is neutral on its face and adopted with the best of intention, if the rule has a disparate (unequal) impact on a protected class, the rule may violate fair housing laws.

Consistency of application, familiarity with fair housing laws, and consultation with legal counsel are all ways an association can reduce exposure to fair housing-related claims. Also, communities should ensure that the association director's and officer's liability insurance policy includes coverage for fair housing violations. 



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