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HAND FAIR HOUSING SEMINAR COURTESY MEMORANDUM

FROM: Magruder, Cook & Koutsouftikis; Anne M. Magruder, Esq.

RE: Fair Housing Laws - Basic Review of Local Jurisdictions

DATE: November 5, 2015

This memorandum is a basic review of the fair housing laws on federal, state and local levels. The materials provided herein are for informational purposes only and not for the purpose of providing legal advice to the participant or any other individual. Use of any of the information contained herein does not create an attorney-client relationship between Magruder & Associates, P.C. d/b/a Magruder Cook & Koutsouftikis and the participant or any other individual. Any questions regarding this memorandum should be directed to Andrew Palanzi, Esq. at apalanzi@magruderpc.com or to the appropriate agencies whose contact information is provided herein. Although the laws apply to many different persons involved in real estate transactions, this memo will refer to “You” as residential property managers, leasing personnel and resident managers whose behavior the fair housing laws serve to regulate, and to “Tenant(s)” as those seeking or currently living in residential properties whose rights these laws intend to protect.

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I. What are the Federal Fair Housing Laws?

Fair housing laws exist on the federal, state and local government levels. As an owner of residential property doing business in the District of Columbia, Montgomery County, Maryland, and/or Fairfax County, Arlington County, City of Alexandria, or city of Falls Church, Virginia, all of your employees need to be aware of the federal, state/district, and county laws and ordinances currently in effect. As a group, these laws ensure that all persons, regardless of certain classifications, are afforded every opportunity to rent, lease, purchase, or sell any property. The laws set out the rights and responsibilities of landlords, and of members of the real estate industry in real estate dealings. The laws prohibit landlords and members of the real estate industry from exercising personal discretion and biases that affect cost, services, housing choices, and availability. The laws provide remedies for aggrieved persons, including severe penalties for landlords and real estate industry members who violate the rights of tenants and prospective tenants.

Federal Fair Housing Laws

Title VII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act of 1988 (“The Federal Fair Housing Act”) prohibit discrimination in housing because of:

- **Race or color**
- **National or ethnic origin**
- **Religion**
- **Gender**
- **Sex**
- **Familial status**
- **Disability/handicap**

Housing discrimination is prohibited in the rental, sale or financing of dwellings, or the provision of brokerage services or facilities in connection with the rental or sale of a dwelling.

The Fair Housing Act’s prohibition intends to include the following classes as protected:

- a) **“Familial status”**: includes children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18.
- b) **“Disabled/handicapped”**: includes persons with a physical or mental impairment which substantially limits one more of such person’s major life activities. While diseases such as alcoholism and drug addiction can qualify as a physical or mental impairment under federal fair housing laws, addiction caused by the current, illegal use of a controlled substance is not.¹
- c) **Others**: Another protected class includes those persons who refuse to perform sexual favors for Landlords, in retaliation for which Landlords restrict or refuse to provide services or facilities normally provided in connection with the rental of a dwelling have a substantial claim of sexual harassment by the landlord.

¹ See 42 U.S.C. §3602(h).

A **class that is not protected** includes those who would directly endanger the health or safety of others by residing in the apartment or whose tenancy would result in substantial physical damage to the property of other individuals. Persons who have been convicted of the illegal manufacture or distribution of a dangerous controlled substance are also specifically not protected under these laws.²

You should be advised that even though a business practice may not be intentionally discriminatory, it may have a disparate impact/adverse impact on person in a protected class. In June 2015, the United States Supreme Court in *Texas Dep't. of Housing and Community Affairs v. Inclusive Communities Project*, concluded that a plaintiff may bring a claim under the Federal Fair Housing Act using a disparate impact theory. The Court held a plaintiff suing under a disparate impact theory may establish liability, without proof of intentional discrimination, if an identified business practice has a disproportionate effect on certain groups of individuals, and such business practice is not grounded in sound business considerations. A plaintiff's claim, however, cannot be based on racial imbalance alone, but rather there must be a robust causal connection between the business practice and the impact on the protected class.

The regulations issued by HUD further describe and explain the prohibited activities and mandated activities outlined by the Federal Fair Housing Act. The regulations also provide the procedure by which Tenants/prospective Tenants may file administrative complaints and seek remedies under the Act.

A corollary of the Fair Housing Act is Section 1982 of the Civil Rights Act of 1866.³ Section 1982 provides another means for Tenants/prospective Tenants to seek remedies against Landlords who discriminate against them on the basis of race. The Supreme Court in *Jones v. Alfred H. Mayer Co.*, construed Section 1982 to prevent not only government, but private racial discrimination in the sale or rental of housing.⁴ The Court held that all citizens have the same right to purchase real property. A court can order an injunction or any equitable relief to remedy such discrimination in housing. No limits exist for the money damages that the court may award to a Tenant/prospective Tenant suing under this law.

II. What are the Fair Housing Laws for Your State & Local Jurisdiction?

A. District of Columbia

The DC Human Rights Act⁵ and Related Statutes

(1) What does the DC Human Rights Act prohibit?

² Id at §3604(f)(9).

³ 42 U.S.C. §1982.

⁴ 392 U.S. 409 (1968).

⁵ D.C. Code Ann. § 2-1401.01 *et seq.* (2001).

In Section 2-1402.21 of the D.C. Human Rights Act, discrimination in real estate transactions is prohibited on the basis of any individual's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identification or expression, familial status, family responsibilities, disability, status as a victim of intra-family offenses, matriculation, political affiliation, source of income, or place of residence or business.

(2) What real estate transactions are included?

For Your purposes, "transactions in real estate" include exhibiting; listing; showing; advertising; negotiating; agreeing to transfer or transferring, whether by sale, sublease, rent, assignment or other agreement, any interest in real property.

(3) Who is protected by the DC Human Rights Act?

The following characteristics of persons are intended to be protected by the DC Human Rights Act:

- **Race:** classification or association based on a person's ancestry or ethnicity.
- **Color:** skin pigmentation or complexion.
- **Religion:** a belief system which may or may not include spirituality.
- **National origin:** the country or area where one's ancestors are from.
- **Sex:** a person's gender; includes sexual harassment and a woman's right to breastfeed.
- **Age:** 18 years or older.
- **Marital status:** married (same sex or opposite sex), single, in a domestic partnership, divorced, separated, and widowed.
- **Personal appearance:** outward appearance, but is subject to business requirements or standards.
- **Sexual orientation:** homosexuality, heterosexuality, and bisexuality.
- **Gender identity or expression:** your gender-related identity, behavior, appearance, expression or behavior which is different from what you are assigned at birth.
- **Familial Status:** a parent or guardian with 2 or more children under 18.

- **Family responsibilities:** supporting a person in a dependent relationship, which includes, but is not limited to, your children, grandchildren and parents.
 - **Matriculation:** being enrolled in a college, university or some type of secondary school.
 - **Political affiliation:** belonging to or supporting a political party.
 - **Genetic information:** Your DNA or family history which may provide information as to a person's predisposition or likely to come down with a disease or illness.
 - **Disability:** a physical or mental impairment that substantially limits one or more major life activities.
 - **Source of Income:** the origination of a person's finances.
 - **Status as a Victim of an Intra-family Offense:** a person who was subjected to domestic violence, sexual assault and/or stalking.
 - **Place of Residence or Business:** geographical location of home or work.
- (4) What other related D.C. statutes do You need to be aware of?
- **Blind, Deaf, and Disabled Persons:** D.C. Code Ann. § 7-1001 et seq. (2015) provides equal access to all rental housing for blind, deaf, and physically disabled persons. Blind or deaf persons with a guide dog or who later obtain a guide dog may not be denied an apartment because of the guide dog or required to pay an extra fee for the guide dog. The blind or deaf person is liable for any damage done to the premises by the dog. This statute does not require You to modify apartments or provide a higher degree of care for blind or physically disabled persons. You/Your Employer may be subject to a fine of up to \$300 or imprisonment up to 90 days for violating this code (See D.C. Code §7-1007 (2015)).
 - **Families and the Elderly:** D.C. Code Ann. § 42-3505.05 (2015) makes it unlawful for You to discriminate against families receiving or eligible to receive Tenant Assistance Program funds, elderly tenants, or families with children when renting apartments. The D.C. Department of Consumer and Regulatory Affairs investigates these discriminatory acts and imposes fines of not more than \$5,000 for each violation. Repeat violators will be fined not more than \$15,000 per

violation. Civil fines, penalties, fees and attorneys' fees may also be imposed on You/Your employer.⁶

- **Retaliation against Tenants/prospective Tenants:** D.C. Code Ann. § 42-3505.02 (2015) prohibits You from taking any retaliatory action against a Tenant/prospective Tenant who has exercised her rights under D.C.'s Landlord and Tenant laws. Some examples of retaliating against a Tenant/prospective Tenant are: (1) unlawfully seeking to recover possession of the apartment; (2) unlawfully increasing rent; (3) unlawfully restricting or decreasing services to a Tenant/prospective Tenant; (4) violating the privacy of a Tenant/prospective Tenant; (5) harassing a Tenant/prospective Tenant; (6) refusing to honor a lease; (7) refusing to renew a lease; (8) threatening a Tenant/prospective Tenant; and (9) terminating tenancy without cause.⁷

B. Maryland

*The Maryland Fair Housing Act*⁸:

- (1) What does the Maryland Fair Housing Act prohibit?

The Maryland Fair Housing Act mandates that You may not, on the basis of race, color, religion, marital status, familial status, sexual orientation, disability, national origin, gender identity, and sex:

- Refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of a dwelling, or otherwise make unavailable or deny a dwelling;
- Discriminate in the terms, conditions, or privileges of the sale or rental of a dwelling, or discriminate in the provision of services or facilities in connection with the sale or rental of a dwelling;
- Make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination;
- Have the intention to make any preference, limitation, or discrimination;
- Represent that a dwelling is not available for inspection, sale or rental when the dwelling is available;

⁶ D.C. Code §42-3509.01 (2015).

⁷ Id at §42-3505.02.

⁸ Md. Code Ann. §20-702 (2015). Generally, see M.D. Code Ann. §§ 20-701 to 20-708 (2015).

- For profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person of a particular race, color, religion, sex, disability, marital status, familial status, sexual orientation, or national origin.⁹

(2) Who is protected by the Maryland Act?

As used in the Maryland Act, "**marital status**," "**familial status**" and "**disability**" are defined substantially in the same manner as under the Federal Fair Housing Act; "**disability**" does not include those who currently illegally use or are addicted to controlled substances.

*The Montgomery County Code*¹⁰:

(1) What does the Montgomery County Code prohibit?

In addition to the types of discrimination prohibited by the Federal and Maryland fair housing statutes, the Montgomery County Code prohibits discrimination because of source of income, age, presence of children, ancestry, and family responsibilities.

*The Prince George's County Code*¹¹:

(1) What does the Prince George's County Code prohibit?

In addition to the types of discrimination prohibited by the Federal and Maryland fair housing statutes, the Prince George's County Code prohibits discrimination because of personal appearance, age, political opinion, and occupation.

C. Virginia

*The Virginia Fair Housing Law*¹²:

(1) What does the Virginia Fair Housing Law prohibit?

The Virginia Fair Housing Law prohibits housing discrimination based on race, color, religion, national origin, sex, elderliness, familial status, or handicap.

(2) Who is protected by the Virginia Act?

⁹ Id at §20-705 (2013).

¹⁰ Montgomery County Code, Ch. 27, §§ 27-12 to 27-18.

¹¹ Prince George's County Code, Subtitle 2, § 2-185 *et seq.*

¹² Va. Code Ann. § 36-96.1 *et seq.* (2001).

The Virginia law defines "**elderliness**" as those persons who have attained their 55th birthday; "**familial status**" and "**handicap**" are defined in substantially the same way as in the Federal Act; "**handicap**," however, does not include the current illegal use of, or addiction to, a controlled substance.¹³

(3) What other related Virginia statutes do You need to be aware of?

- **Retaliation against Tenants/prospective Tenants:** Va. Code Ann. § 55-248.39 (2015) prohibits You from retaliating against a Tenant/prospective Tenant who has: (1) complained to a government agency regarding a housing code violation caused by You/Your employer, (2) complained or filed suit against You/Your employer based on an issue arising under the Virginia Residential Landlord and Tenant Act ("VRLTA"), (3) organized or become a member of a tenant's organization, or (4) testified against You/Your employer. Forms of retaliation include: (1) increasing rent, (2) decreasing services, or (3) bringing or threatening to file suit to evict the Tenant. Retaliating against a Tenant/prospective Tenant may result in Tenant's/prospective Tenant's recovery of actual damages and other relief provided for under the VRLTA.
- **Rights of Persons with Disabilities:** Va. Code Ann. § 51.5-45 (2014) provides that all persons with disabilities be entitled full and equal opportunity to rent housing accommodations. Visually-impaired, hearing-impaired, and mobility-impaired persons have full and equal access to housing with their guide dogs. Such persons cannot be required to pay extra rent for the dog, but will be liable for any damage done to an apartment by the dog. Remedies for violations of this law include injunctions, appropriate equitable relief, compensatory damages, and reasonable attorneys' fees.¹⁴
- **Virginia Human Rights Act:** Va. Code Ann. § 2.2-3900 *et seq.* (2001) protects persons from discrimination based on race, color, religion, national origin, sex, pregnancy, childbirth or other medical conditions, age, marital status, or disability, in places of public accommodation, including real estate transactions, and in employment. The types of discriminatory acts prohibited are those defined in any Virginia or Federal statute regarding discrimination on the above bases. The Virginia Council on Human Rights investigates complaints brought under this statute and makes recommendations and findings as to discriminatory conduct, as well as may attempt to resolve issues through conciliation. However, the Council cannot award damages or grant injunctions; unsolved complaints will be referred to HUD.

¹³ Va. Code Ann. §36-96.1:1 (accessed October 2015).

¹⁴ Id. at § 51.5-46.

- **Racial, Religious, or Ethnic Harassment:** Va. Code Ann. § 8.01-42.1 (2001) provides a cause of action for anyone who is subjected to acts of intimidation, harassment, violence, or vandalism motivated by racial, religious or ethnic animosity. A successful complainant can recover damages, including punitive damages, court costs, and reasonable attorneys' fees.
- **Religious Advertisement:** Va. Code Ann. § 57-2.1 (1988) provides that no one may advertise that any person is not welcome, objectionable, or unacceptable because of his religion. Violations of this law may be remedied by injunction.

(4) What do the Virginia Fair Housing Regulations provide?

The Virginia Fair Housing Regulations provide detailed coverage of types of prohibited discriminatory conduct and mandated activities. The regulations also provide detailed procedures for bringing and handling administrative actions filed with the Real Estate Board.

*The Fairfax County Code*¹⁵

(1) What does the Fairfax County Code prohibit?

In addition to the protected classes named by the Federal and Virginia laws, the Fairfax County Code prohibits discrimination on the basis of marital status.

*The Arlington County Code*¹⁶

(1) What does the Arlington County Code prohibit?

In addition to the prohibited bases of conduct provided for by the Federal and Virginia laws, Arlington County's ordinance prohibits discrimination on the basis of marital status and sexual orientation.

*The City of Alexandria Code*¹⁷

(1) What does the City of Alexandria Code prohibit?

In addition to the prohibited reasons for discrimination provided for in the Federal and Virginia statutes, the City of Alexandria's ordinance also prohibits discrimination on the basis of ancestry, age, marital status, and sexual

¹⁵ Fairfax County, Virginia – Code of Ordinances §11-2-4 *et seq.* (accessed -October 2015).

¹⁶ Arlington County Code §31-3 *et seq.* (accessed -October 2015).

¹⁷ Alexandria City, Virginia – Code of Ordinances, Part II, Title 12, Chapter 4: §12-4-1 *et seq.* (accessed October 2015).

orientation.

*The City of Falls Church Code*¹⁸

(1) What does the City of Falls Church Code prohibit?

In addition to the prohibited reasons for discrimination provided for in the Federal and Virginia statutes, the City of Falls Church's ordinance also prohibits discrimination on the basis of marital status.

III. How does the Americans with Disabilities Act ("ADA") correspond to Fair Housing laws?¹⁹

If Your employer receives any federal assistance, including any funds, grants, loans, or contracts provided by HUD with regard to its housing, federal law prohibits Your employer and You from denying participation in or benefits to otherwise qualified Tenants/prospective Tenants based solely on handicap. Denial of participation or benefits to handicapped persons can result in the termination of federal financial assistance.

Further, if any of Your employer's apartment complexes also include any one of the following uses, the ADA's requirements may apply because the apartment complex would qualify as a "public accommodation." Generally, these uses include:

- an inn, hotel, motel or **other place of lodging**;
- a restaurant, bar, or other place serving food or drink;
- a theater, concert hall, or other place of entertainment;
- an auditorium, lecture hall, or other place of public gathering;
- a bakery, grocery store, clothing store, hardware store, or other rental or sales establishment;
- a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, or other service establishment;

¹⁸ Falls Church, Virginia – Code of Ordinances, Part II, Chapter 22, Article IV: §22-77 et seq.

¹⁹ 42 U.S.C. § 12101 et seq.; and § 504 of Rehabilitation Act of 1973, 29 U.S.C. § 794.

- any station used for specified public transportation;
- a museum, library, gallery, or other place of public display or collection;
- any place of recreation;
- any place of education;
- a day care center, senior citizen center, or other social service center establishment; and
- a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.²⁰

The ADA prohibits discrimination on the basis of an individual's disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.²¹ The ADA lists specific prohibited acts of discrimination, certain mandated construction requirements to accommodate disabled persons, and provides remedies for victims of discrimination. If any of Your employer's apartment complexes fall under the definition of "public accommodation" as outlined above, please notify us so that we may further advise You on compliance with the ADA.

IV. What activities do the Fair Housing Laws prohibit and mandate?

Prohibited Activities

As applied to Your employer's business, fair housing laws in every jurisdiction prohibit discriminatory acts committed in the rental of a residence. As such, You/Your employer may not do any of the following for a discriminatory reason based on race or color, physical or mental handicap, religion, national or ethnic origin, family status, age or elderliness, gender or sex, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, source of income, place of residence or business:²²

- refuse to rent or negotiate with a Tenant/prospective Tenant for an apartment;
- impose different prices or charges on Tenants/prospective Tenants;
- make housing unavailable;

²⁰ 42 U.S.C. §12181(7) (2015).

²¹ Id at §12182 (2015).

²² Department of Housing and Urban Development, "Fair Housing – It's Your Right," (accessed -October 2015) http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights. And See 42 U.S.C. §§ 3604, 3617 (2014).

- deny a dwelling;
- set different terms, conditions or privileges for sale or rental of a dwelling;
- provide different housing services or facilities;
- falsely deny that housing is available for inspection, sale, or rental;
- for profit, persuade owners to sell or rent (blockbusting);
- threaten, coerce, intimidate or interfere with anyone exercising fair housing rights or assisting others who exercise that right;
- advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap;
- use different qualification criteria or procedures for Tenants/prospective Tenants;
- use different criteria to evict Tenants;
- include in the application, lease or other document setting out the terms of the tenancy any discriminatory clause, condition, covenant or restriction;
- require different terms for rental of one apartment as opposed to another similar apartment;
- falsely represent that an apartment is not available for occupancy or for inspection when, in fact, the apartment is available;
- refuse or restrict services, facilities, repairs, or improvements for a Tenant/prospective Tenant;
- make, print, publish or cause to be made, printed or published any notice, statement, or advertisement relating to rental or proposed rental of an apartment that indicates or attempts to indicate any preference, limitation or discrimination that is unlawful;
- refuse to make funds available for the alteration, rehabilitation, repair or maintenance of an apartment unit;
- maintain residential occupancy requirements that are more restrictive than: (a) two persons in an efficiency or (b) two persons per the number of bedrooms in an apartment plus one person for an apartment with one or more bedrooms;

- influence or try to influence a person to discriminate in the rental of an apartment or carry out or refuse to carry out the rental of an apartment because of discrimination, prejudice, fear or unrest;
- display any sign that indicates a rental transaction occurred that has not actually been made or that indicates that an offer has been made to rent an apartment that has not actually been made;
- in any way interfere, coerce, threaten, or retaliate against any person who tries to exercise his or her rights under any of the fair housing laws or landlord and tenant laws;
- honor any request from Your employer, a co-worker or another Tenant to use any of the listed discriminatory factors as a basis for a decision regarding availability or selection of housing;
- advertise that housing is available for only certain racial or ethnic groups;
- discriminate in terms of rental or otherwise make unavailable an apartment because of Tenant's/prospective Tenant's handicap or handicap of a person residing with Tenant;
- refuse to permit necessary modifications to an apartment made at the handicapped Tenant's expense if the Tenant agrees to restore the apartment, reasonable wear and tear excepted, to its original condition;
- refuse to make reasonable accommodations in rules, policies, practices, procedures, or services necessary for a handicapped Tenant's/prospective Tenant's enjoyment of an apartment;
- induce or attempt to induce someone to rent by representing the racial, religious, ethnic, gender, age group, family or handicapped make-up of a neighborhood or predicting the make-up of a neighborhood;
- do any of the acts stated above for any reason that would not exist but for an unlawful, discriminatory reason; and
- do any of the acts stated above based on the fact that a person has one or more children who reside with that person.

Mandated Activities

Fair housing laws in every jurisdiction also require that You/Your employer take certain affirmative actions. These mandated activities include:

- posting all fair housing notices from HUD or any human rights office in a conspicuous place where business with Tenants/prospective Tenants is conducted;
- complying with any HUD, human rights office, or court order regarding fair housing practices;
- treating all Tenants/prospective Tenants equally in a professional manner;
- keeping all Tenant records on file while a Tenant occupies an apartment and for at least six (6) months after a Tenant vacates an apartment (we recommend they be kept for at least three (3) years); and
- advertising all housing as available on an equal basis and displaying the fair housing logo on all advertisements.

V. Penalties: Why should you care about Fair Housing and what are the consequences of violating the laws?

Victims of discrimination under any of the federal, state/district or local laws may bring actions against You personally and Your employer by filing a complaint either with an agency, such as the U.S. Department of Housing and Urban Development ("HUD"), or with a court. If the agency or court finds that You discriminated against the Tenant/prospective Tenant, both You and Your employer will be subject to severe penalties. Generally, the penalties for discrimination include: (1) fines that range from up to \$55,000 for the first violation to up to \$150,000 for secondary infractions for each act of discrimination that occurs; (2) various types of damages and costs awarded to the Tenant/prospective Tenant; (3) injunctions and other orders to put an end to discriminatory conduct; and (4) **possible criminal penalties**.

Listed below are the specific penalties for violating a fair housing law. Please note that all of these remedies for the Tenant/prospective Tenant may be enforced against You personally and Your employer. **These penalties are generally NOT covered by Your employer, Your employer's insurance or Your insurance.**

A. Federal

If a Tenant/prospective Tenant files a successful complaint with HUD, You/Your employer will be subject to any or all of the following penalties:²³

- (1) If enforcement is commenced through the HUD Secretary You may incur **a fine of up to \$16,000** for the first violation; **a fine of up to**

²³ 42 U.S.C. 3612.

\$37,500 if You/Your employer committed one (1) other unlawful discriminatory practice within a five (5) year period ending on the date of the current complaint filing; and **a fine of up to \$75,000** if You/Your employer committed two (2) or more unlawful discriminatory practices within a seven (7) year period ending on the date of the current complaint filing;

- (2) If enforcement is commenced through the U.S. Attorney General's Office, **a fine of up to \$75,000 for the first violation, and up to \$150,000 for subsequent violations.**
- (3) **payment of monetary damages in the form of compensatory and/or punitive damages, including damages for humiliation or embarrassment;**
- (4) payment of attorneys' fees and costs;
- (5) an order allowing the victim access to the apartment, to a comparable apartment or other equitable relief;
- (6) a temporary restraining order or injunction to stop the discriminatory practices taking place and that could take place in the future;
- (7) an order to comply with government reporting requirements;
- (8) an order to comply with government enforcement and monitoring activities;
- (9) public notice of the fact that HUD has found You/Your employer violated the Fair Housing Act; and
- (10) notice to all relevant government/licensing agencies of Your/Your employer's violation recommending disciplinary measures.

State & Local Penalties

A. District of Columbia

In the District of Columbia, if a Tenant/prospective Tenant files a meritorious complaint with the DC Office of Human Rights or with the DC Superior Court, You/Your employer will be subject to:

- (1) payment of civil fines, penalties, fees, compensatory damages, reasonable attorneys' fees, and hearing costs;

- (2) **a fine of up to \$10,000** for the first violation; **a fine of up to \$25,000** if You/Your employer committed one (1) other unlawful discriminatory practice within a five (5) year period ending on the date of the current complaint filing; and **a fine of up to \$50,000** if You/Your employer committed two (2) or more unlawful discriminatory practices within a seven (7) year period ending on the date of the current complaint filing;²⁴
- (3) a fine of up to \$300 and imprisonment for up to 90 days if You/Your employer discriminate against a blind, deaf or otherwise physically disabled person;²⁵
- (4) a temporary restraining order or injunction to stop the discriminatory acts from occurring;²⁶
- (5) a notice posted on the door of the apartment building indicating that a complaint for discrimination has been filed and that Tenants should rent "at their peril";²⁷
- (6) an order that You/Your employer cease and desist the discriminatory conduct, and a **possible criminal complaint** against You/Your employer for any failure to comply with the order;
- (7) an order allowing the Tenant access to the apartment and all related services and privileges;
- (8) any relief the court deems appropriate; and
- (9) notice to all relevant D.C. government/licensing agencies of Your/Your employer's violation recommending disciplinary measures.

B. Maryland

In Maryland, a successful complaint made to the Maryland Commission on Civil Rights or to a Maryland State Circuit Court will subject You/Your employer to any or all of the following:²⁸

- (1) **civil fines and penalties up to \$100,000 payable to the General Fund of Maryland;**²⁹
- (2) actual damages, punitive damages, and attorneys' fees and costs;

²⁴ D.C.M.R. §4-212 (accessed October 2015) and D.C. Code, Division I, §2-1403.13 (2015).

²⁵ D.C. Code, Division I, §7-1007 (2015).

²⁶ D.C. Code, Division I, §2-1403.07.

²⁷ Id at §2-1403.08.

²⁸ See Md. Code Ann. §§ 20-1028 *et seq.* (2013).

²⁹ Md. State Government Code Ann. §§ 20-1028, 20-1032 and 20-1036 (2015).

- (3) temporary injunctions or preliminary relief while the complaint is being investigated and decided;
- (4) permanent or temporary injunctive relief, affirmative action or other equitable relief to stop discriminatory activities and remedy problems with discrimination;
- (5) notice to all relevant Maryland government/licensing agencies of You/Your employer's violation recommending disciplinary measures;
- (6) **for forcing, threatening, injuring, intimidating, or interfering with a person for a discriminatory reason** -- conviction of a misdemeanor and subject to (1) imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; (2) **a fine of up to \$10,000 or imprisonment for up to a term of up to ten years or both (depending on the extent of resulting bodily injury); or (3) imprisonment not exceeding life if the violation results in death;**³⁰ and
- (7) conviction of a misdemeanor, a fine of up to \$500, and civil liability for discriminating against a blind, deaf, or mobility impaired person.³¹

Montgomery County

In Montgomery County, a valid complaint made to the Montgomery County Human Rights Commission will subject You/Your employer to:³²

- (1) compensation for reasonable attorneys' fees, property damage, personal injury, unreimbursed travel or other reasonable expenses, and interest on any damages from the date of the discriminatory act/violation;
- (2) **payment of damages for humiliation and embarrassment up to \$500,000, payment of an additional civil fine of up to \$50,000, plus attorneys' fees;** and
- (3) compensatory damages of the amount equal to the cost of housing, and/or the difference between the cost of housing sought and alternative housing, and/or moving and storage costs;
- (4) equitable relief to prevent the discrimination or the violation, or any other relief that furthers the purposes of Montgomery County, Maryland Code, Chapter 27, Article 1 or eliminates the effects of any discrimination prohibited;

³⁰ Md. Code Ann. §20-1103(c) (2014).

³¹ Md. Code Ann. §7-707 (2015).

³² Montgomery County, Maryland – Code, Part II, §27-8.

- (5) consequential damages for up to 2 years after the violation; and
- (6) payments to the County as a civil penalty, including:
 - **a fine of up to \$10,000** for the first violation, a fine of up to **\$25,000** if You/Your employer committed one (1) other unlawful discriminatory practice within a five (5) year period ending on the date of the current complaint filing, and **\$50,000 fine** if You/Your employer committed two (2) or more unlawful discriminatory practices within a seven (7) year period ending on the date of the current complaint filing
 - **up to \$5,000** for each violation involving discrimination in public accommodations;
 - **up to \$1,000** for each violation involving intimidation; and
 - **\$500** for any other violation.

The Montgomery County Circuit Court will award damages, injunctive relief, other civil relief, reasonable attorneys' fees, expert witness fees, and costs for any successful Tenant/prospective Tenant alleging discrimination.

C. Virginia

In Virginia, if a Tenant/prospective Tenant files a successful complaint with the Virginia Real Estate Board and Fair Housing Board or with a Virginia State Circuit Court, You/Your employer will be potentially liable for³³:

- (1) **payment of compensatory and punitive damages without limitation as to amount;**
- (2) payment of reasonable costs and attorneys' fees incurred in pursuing remedies;
- (3) enforcement of permanent or temporary injunctive relief or a restraining order to stop discriminatory acts;
- (4) **payment of civil penalties of up to \$50,000 for a first violation and penalties of up to \$100,000 for a subsequent violation;**
- (5) revocation of You/Your employer's relevant real estate license; and
- (6) an award of any other relief deemed necessary and appropriate.

³³ Va. Code §36-96.17.

*Fairfax County*³⁴

Upon a finding by the Fairfax County Human Rights Commission that discriminatory conduct occurred, the Commission will tailor appropriate relief for the aggrieved Tenant/prospective Tenant. Such relief falls into the same categories described above under subsection C.

The Fairfax County Circuit Court can award relief as described above under subsection C.

Arlington County

The Arlington County Human Rights and Equal Employment Division formulates relief for violations pursuant to conciliation efforts between the parties. The types of remedies described above under subsection C may be recommended by the Human Rights Division.

The Arlington County Circuit Court can award relief as described above under subsection C.

*City of Alexandria*³⁵

The Alexandria Human Rights Commission can issue findings that the remedies described above under subsection C be awarded to the aggrieved Tenant/prospective Tenant.

The City of Alexandria Circuit Court can award relief as described above under subsection C.

City of Falls Church

The Falls Church Housing Commission may award any appropriate relief, including monetary relief, in a conciliation agreement³⁶. The Commission can also refer the matter to the City attorney so that other remedies can be enforced through litigation.³⁷

VI. How to Prevent Violations of the Fair Housing Laws

A. "Testers"

³⁴ Fairfax County, Virginia – Code §11-2-18.

³⁵ Alexandria City, Virginia – Code §12-4-21.

³⁶ Falls Church City, Virginia – Code of Ordinances, Part II §22-90.

³⁷ Id at Part II §22-91.

Testers, otherwise known as Shoppers, Auditors or Checkers, are persons who do not intend to rent an apartment but pose as prospective Tenants for the purpose of collecting evidence of unlawful discriminatory practices. Testers **do have** "standing" or the ability to sue You and Your employer for a violation of fair housing laws. The Fair Housing Council of Greater Washington often conducts testing in the DC Metropolitan area.

B. Practical Suggestions

To ensure automatic safeguards against fair housing violations exist, You/Your employer should implement the following suggested practices:

- (1) Treat **all** Tenants/prospective Tenants the same. Give them the same marketing packages, including specials;
- (2) Enforce the same rental qualifications for **all** Tenants/prospective Tenants;
- (3) Routinely require a copy of **all** Tenant's/prospective Tenant's driver's licenses at application time;
- (4) Routinely verify Tenant's/prospective Tenant's employment;
- (5) Verify Tenant's/prospective Tenants' banking and credit information;
- (6) Ensure Tenants/prospective Tenants **completely** fill out rental applications;
- (7) Obtain Tenant's/prospective Tenant's past landlord references and personal references;
- (8) Require all Tenants to comply with reasonable rules and regulations governing behavior in the building. Post the rules and regulations in the apartment building lobby. Provide each Tenant with a copy of the rules and regulations upon signing of a lease;
- (9) Conspicuously post all vacancies in each apartment building in the office where business is conducted with Tenants/prospective Tenants, so that they can be clearly viewed by prospective Tenants. List the size of the apartment, the apartment number, and the monthly rental amount. Ensure that the resident manager updates this list as changes occur;
- (10) Post all income requirements for prospective Tenants in each apartment building in the office where business is conducted with prospective Tenants, so that they can be clearly viewed by prospective Tenants. Inform prospective Tenants that child support, welfare, social security, and other government benefits are included as a part of income, and that if

they do not meet the income requirements, You will consider them if a co-signor or guarantor meets the income requirements and agrees to sign the lease or a guaranty. Ensure that the resident manager updates this notice as changes occur;

- (11) Keep accurate, up to date, orderly files on each Tenant and prospective Tenant. Include leases, applications, credit and reference reports, copies of drivers' licenses, copies of rent checks, etc. Make sure to keep records on file for at least three (3) years after the Tenant vacates the apartment;
- (12) Keep written records of all Tenant/prospective Tenant inquiries regarding available apartments, including the date, time, name of person making the inquiry, the subject of Your conversation and the outcome of the inquiry;
- (13) Keep files of all prospective Tenant applications for apartments, whether or not the prospective Tenant actually moves in;
- (14) If You keep waiting lists, maintain a record of the following: the prospective Tenant's name, address, and telephone number; the best time of day to contact the prospective Tenant; the date the name was placed on the waiting list; the type of apartment the prospective Tenant is interested in; the date after which the prospective Tenant will no longer be interested in the apartment; space to keep notes on efforts made to contact the prospective Tenant; and space to record the prospective Tenant's response. You should have a clear policy on how You will contact persons on the waiting list. For example, You should decide how long You will wait for a response if You notify the prospective Tenant by mail or how many times You will try to call the prospective Tenant. You should also decide if waiting lists will include only persons whose applications have been approved or anyone who applies for an apartment; and
- (15) Keep records of all Tenant maintenance requests and Your responses to maintenance requests.

VII. What is the procedure when a Tenant/prospective Tenant brings a complaint against You?

Federal Administrative & Judicial Actions

Complaints filed with HUD are investigated by the Office of Fair Housing and Equal Opportunity.³⁸ A claim filed with HUD must be brought within one (1) year of the

³⁸ Department of Housing and Urban Development, "Fair Housing – It's Your Right," (accessed October 2015) http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights.

discriminatory event. Once filed, HUD is required to give notice to You/Your Employer within 10 days. You/Your Employer may file an answer to the complaint not later than 10 days after receipt of notice from HUD. Within 100 days of filing the complaint, HUD will investigate and make a determination whether reasonable cause exists to find that discrimination occurred. If such a determination occurs, HUD informs the parties who then have the option of having their case heard in an administrative hearing or Federal District Court. Both parties have 20 days after receipt of discrimination charges to elect whether they will proceed with an administrative hearing or civil trial.³⁹

Fair Housing Act Conciliation: During the complaint investigation, HUD is required to offer You/Your Employer and the Tenant the opportunity to voluntarily resolve the complaint with a HUD Conciliation Agreement. A HUD Conciliation Agreement provides individual relief for the Tenant/prospective Tenant, and protects the public interest by deterring future discrimination by You/Your Employer. Once You/Your Employer and the Tenant sign a HUD Conciliation Agreement, and HUD approves the Agreement, HUD will cease investigating the Tenant's claim. All conciliation agreements are made public, unless You/Your Employer and the Tenant agree to confidentiality, which must be approved by HUD. If the Tenant believes that the You/Your Employer violated the Conciliation Agreement, the Tenant may report You/Your Employer to the HUD Office that investigated the complaint. If HUD determines that there is reasonable cause to believe that You/Your Employer violated the Conciliation Agreement, HUD will ask the U.S. Department of Justice ("DOJ") to file suit against You/Your Employer in Federal District Court to enforce the terms of the Conciliation Agreement.⁴⁰

Complaint Referrals to State or Local Public Fair Housing Agencies: If HUD has certified that your State or local public fair housing agency enforces a civil rights law or ordinance that provides rights, remedies that are "substantially equivalent" to the Fair Housing Act, HUD must promptly refer the complaint to that agency for investigation and will notify the tenant of the referral. The State or local agency will investigate the complaint under the "substantially equivalent" State or local civil rights law or ordinance. The State or local public fair housing agency must start investigating the complaint within 30 days of HUD's referral, or HUD may retrieve the complaint for investigation under the FHA.⁴¹

Administrative Law Judge ("ALJ") Hearing: If the complaint is not successfully conciliated, then HUD determines if there is reasonable cause to believe that You/Your Employer discriminated against the Tenant. If so, HUD will issue a Determination of Reasonable Cause and a Charge of Discrimination. You/Your Employer and the Tenant have twenty (20) days after receiving notice of the Charge to decide whether to

³⁹ See 2 U.S.C. §§ 3610(a), 3612(a).

⁴⁰ Booklet from U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, "Fair Housing and Equal Opportunity for All" Pages 10-11 (accessed October 2015)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws. And See 42 U.S.C. §3610(b).

⁴¹ Booklet from U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, "Fair Housing and Equal Opportunity for All" Page 11 (accessed October 2015)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws. And See 42 U.S.C. §3610(f).

have the case heard by a HUD ALJ or to have a civil trial in Federal District Court. If neither party elects to have a Federal District Court trial before the 20-day period expires, then HUD will promptly schedule an administrative hearing. At the administrative hearing, HUD litigates the case on the Tenant's/prospective Tenant's behalf before an ALJ. The Tenant/prospective Tenant may also intervene in the action and be represented by his/her own attorney. The ALJ will hear the evidence and decide whether discrimination occurred. If the HUD ALJ concludes that You/Your Employer violated the Fair Housing Act, You/Your Employer can be ordered to pay up to \$16,000 for a first violation, up to a \$37,500 fine if a previous violation has occurred within the preceding five (5) year period, and up to a \$75,000 fine if two or more previous violations have occurred within the preceding seven (7) year period..⁴²

Either party – complainant or respondent – may cause the HUD-scheduled administrative proceeding to be terminated by electing instead to have the matter litigated in Federal court. Whenever a party has so elected, the Department of Justice takes over HUD's role as counsel seeking resolution of the charge on behalf of aggrieved persons, and the matter proceeds as a civil action. Either form of action – the ALJ proceeding or the civil action in Federal court – is subject to review in the U.S. Court of Appeals.⁴³

Civil Trial in Federal District Court: If either You/Your Employer or the Tenant/prospective Tenant decided to have the case heard in Federal Court, HUD must refer the case to the U.S. Department of Justice for enforcement. The Attorney General will file a suit in the U.S. District Court where the discrimination allegedly occurred, and litigate the claim on the Tenant's/prospective Tenant's behalf before a Federal District Judge. The Tenant may again choose to intervene in the case and retain private counsel. Either You/Your Employer or the Tenant may request a jury trial, and you each have the right to appear in person, to be represented by legal counsel, to present evidence, to cross-examine witnesses, and to request subpoenas in aid of discovery of evidence. A judge or jury will hear the case, evaluate the evidence and decide whether discrimination occurred. If a decision is made in favor of the Tenant, You/Your Employer may be ordered to pay a civil penalty to the U.S. Treasury to vindicate the public interest, in an amount not exceeding \$75,000.00 for a first violation of the Act and in an amount not exceeding \$150,000.00 for any subsequent violation of the Act, as well as comply with any of the remedies listed above in Section V (Penalties).⁴⁴

Private Civil Lawsuit in a Federal District Court: Tenants/prospective Tenants who are victims of discrimination may file a private civil lawsuit in a Federal District Court. A complaint must be filed within two (2) years of the most recent date of alleged discrimination. A Tenant/prospective Tenant need not exhaust her administrative remedies before pursuing a court action, and may bring an action against You/Your Employer in a federal district court even if HUD previously dismissed the Tenant's

⁴² Id at Page 12. *And See* Department of Housing and Urban Development, "Fair Housing – It's Your Right," (accessed October 2015) http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights.

⁴³ Department of Housing and Urban Development, "Fair Housing – It's Your Right," (accessed October 2015) http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights.

⁴⁴ Id at Page 13-14.

complaint or is currently in the process of evaluating the complaint.⁴⁵ The U.S. Department of Justice may also prosecute cases on behalf of victims in federal court. An aggrieved Tenant may not commence civil action for a discriminatory action which forms the basis of a charge issued by HUD if an ALJ has commenced a hearing.⁴⁶

State & Local Administrative Actions

In the **District of Columbia**, the Office of Human Rights and Local Business Development (“OHR”) investigates and conciliates discrimination complaints. A Tenant/prospective Tenant must file a claim with the OHR within one (1) year of the discriminatory practice or discovery thereof. In cases involving complaints against the private sector, OHR within 120 days of the filing of the complaint,⁴⁷ (and for cases involving the public sector, within 180 days of the filing of the complaint) will determine whether probable cause exists to find that You discriminated against the Tenant/prospective Tenant.

Upon the filing of the complaint by the Tenant/prospective Tenant, OHR will notify You by service letter of the filing of the complaint within five (5) days from the filing date and will set a future date for mediation, generally within 2 to 5 weeks.⁴⁸ Mediation is an alternative to investigation and is not a legal process and as such legal representation is permitted only in an advisory capacity. The session lasts about 2 hours, takes place at OHR and is conducted by a mediator. The purpose of mediation is to eliminate those cases that are without merit and are outside of the jurisdiction of OHR. If mediation is successful, the parties are asked to sign an agreement and the case is closed. If mediation is unsuccessful, the investigation continues.

If the evidence does not support the Tenant’s/prospective Tenant’s allegations of discrimination, and no probable cause is found, the case is dismissed. The Tenant/prospective Tenant may then apply within 30 days to OHR for reconsideration of the finding and/or may institute court proceedings.

If, on the other hand, the evidence supports the Tenant’s/prospective Tenant’s allegations of discrimination and OHR renders a determination of “probable cause,” then the parties are invited to attend a conciliation conference. If conciliation fails, the complaint is certified to the Commission on Human Rights for a public hearing. The Commission assigns the case to a hearing examiner or tribunal panel. If the evidence supports the Tenant’s/prospective Tenant’s allegations of discrimination, the

⁴⁵ The tenant may not file a private civil lawsuit while HUD is processing the complaint if: (1) a HUD Conciliation Agreement has been signed; or (2) a HUD ALJ has commenced an Administrative Hearing for the complaint. See Booklet from U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, “Fair Housing and Equal Opportunity for All,” Page 14 (accessed October 2015)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws.

⁴⁶ Booklet from U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, “Fair Housing and Equal Opportunity for All,” Page 14 (accessed October 2015)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws. And See 42 U.S.C. §3613(a) (January 2014). And See 2 U.S.C. §3613(a).

⁴⁷ D.C. Code §2-1403.05 (2015).

⁴⁸ Id at §2-1403.04 (2015).

Commission issues an order in favor of the Tenant/prospective Tenant, which may include an award to the Tenant/prospective Tenant for compensatory damages and attorneys' fees. The specific penalties that the Commission can order are outlined above in Section V. If the Tenant/prospective Tenant disagrees with the decision of the Commission, the Tenant/prospective Tenant may apply to the Commission for reconsideration of its decision or may appeal the decision to D.C. Court of Appeals.

In **Maryland**, the State Commission on Civil Rights can investigate and conciliate housing discrimination cases. The aggrieved party must first file a complaint with the State Commission within one (1) year of occurrence or termination of the alleged discrimination.⁴⁹ The Commission will investigate and determine if the violation occurred within 100 days of filing.⁵⁰ The first step in the administrative process is to enter into a conciliation agreement subject to Commission approval. If the agreement is breached, litigation or arbitration will occur to resolve the dispute. If the Commission and parties cannot agree or perform the agreement and the Commission finds probable cause to believe discrimination occurred, the claim is certified. The aggrieved party has 20 days to elect court action or an administrative hearing.⁵¹ Remedies awarded to the successful Tenant/prospective Tenant are outlined above.

In **Montgomery County**, the County Commission on Human Rights investigates housing complaints. The Commission holds a fact-finding conference to encourage settlement. If the Commission's full investigation finds an act of discrimination occurred, the Commission proposes a voluntary agreement to end the discrimination and to provide relief for the aggrieved party. If the agreement fails, the complaint is heard before the Housing Panel. The Housing Panel has the authority to order a plan to correct the discriminatory practice and order appropriate relief for the victim.

Virginia's Fair Housing Office ("VFHO"), the investigative arm of Virginia's Real Estate Board and Fair Housing Board (the "Board"), accepts complaints of discrimination in housing. The complaint must be filed within one (1) year of the occurrence of the discriminatory conduct.⁵² VFHO assigns the complaint to an investigator who will usually interview the Tenant/prospective Tenant, You/Your employer and relevant witnesses. The investigation process may take between 60 to 100 days to complete. During the investigative process, a program conciliator may attempt to resolve the dispute and, if appropriate, help the parties reach a conciliation agreement. Conciliation is a voluntary process and if unsuccessful, the investigation of the complaint continues.

After the investigator evaluates the Tenant's/prospective Tenant's claim, the investigator submits to the investigative supervisor, a final report summarizing the evidence gathered. The supervisor reviews the report before presenting it to the Board. Upon reviewing the report, the Board makes the determination whether to dismiss the

⁴⁹ Md. Code Ann. §20-1021 (2015).

⁵⁰ Id at §20-1022 (2015).

⁵¹ Id at §§ 20-1026 (2015).

⁵² Va. Code §36-96.9.

complaint, issue a charge of discrimination, or accept the conciliation agreement. After review of the evidence, the Board will decide whether to dismiss the complaint and take no further action, or issue a charge of discrimination and refer the charge to the Attorney General for further action. The decision of the Board is communicated to the parties in writing.

In **Fairfax County**, the Human Rights Commission accepts written complaints within one (1) year of the discriminatory event.⁵³ The Commission investigates complaints and uses informal methods of persuasion, conciliation and mediation to end the wrongdoing. If conciliation is unsuccessful, the Commission can hold a public hearing to resolve the dispute. The Commission makes recommendations to the parties to resolve the dispute by cease and desist orders, payment of compensatory damages, and other relief tailored to the situation.

In **Arlington County**, the Human Rights and Equal Employment Opportunity Division accepts complaints of discrimination in housing. The Human Rights Commission then serves the complaint on the alleged wrongdoer. The Commission investigates the complaint and determines whether reasonable grounds exist to believe a violation occurred. Conciliation is attempted between the parties to resolve the dispute. If conciliation is unsuccessful, a public hearing may be held in all cases except those of discrimination based on sexual orientation. If a determination of discrimination is made at the public hearing, the Commission can recommend that You/Your employer: (1) cease and desist the discriminatory conduct; (2) pay compensatory damages to the Tenant/prospective Tenant; or (3) provide other relief tailored to the circumstances of the dispute. The Commission can also request that the court enforce any recommendation it makes, including a temporary restraining order or preliminary injunction.

In the **City of Alexandria**, the Human Rights Commission accepts written complaints of discrimination occurring within 365 days of the act of discrimination.⁵⁴ The complaint is served on You/Your employer via certified mail, return receipt requested. The Commission investigates the complaint to determine if probable cause exists for the complaint. If it finds such cause, the Commission makes conciliation efforts to resolve the dispute. The parties enter into a written conciliation agreement. A public hearing may be held if any party breaches the conciliation agreement. If a breach is found during the hearing, the Commission will recommend further conciliation efforts or will refer the matter to the city attorney for litigation. The Commission can request the court enforce injunctive relief. Any party dissatisfied with the Commission's findings can request that the court review such findings.⁵⁵

In the **City of Falls Church**, the Housing Commission receives written complaints alleging discrimination that occurred within one (1) year of filing the

⁵³ Fairfax County, Virginia – Code of Ordinances, §11-2-10.

⁵⁴ City of Alexandria, Virginia – Code of Ordinances, §12-4-16.

⁵⁵ Id at §§ 12-4-17 and -18.

complaint.⁵⁶ The Commission investigates the complaint within 100 days of filing, if practicable. The Commission summarizes its findings in a report and determines whether reasonable cause exists to believe the discrimination occurred. The Commission then makes efforts to have both parties enter into a conciliation agreement. The agreement can award monetary relief and other appropriate relief. If conciliation fails, the Commission can refer the matter to the city attorney for litigation.

State & Local Judicial Actions

*DC Superior Court:*⁵⁷ A Tenant/prospective Tenant may file suit within two (2) years of the occurrence of unlawful discrimination as long as the Tenant/prospective Tenant has not filed a complaint with the D.C. Office of Human Rights or has withdrawn a complaint filed with such office. The court may award appropriate relief to the successful Tenant/prospective Tenant as stated above.

*Maryland Circuit Courts:*⁵⁸ Tenants/prospective Tenants must file civil actions in Maryland courts within two (2) years of the occurrence or termination of the discrimination or breach of the conciliation agreement. The earliest a complaint may be filed is 130 days after filing the complaint with the State Commission on Civil Rights.

*Virginia Circuit Courts:*⁵⁹ A county or city attorney may bring a civil action against You/Your employer upon breach of a conciliation agreement or other circumstances necessary to remedy a dispute regarding housing discrimination. A Tenant/prospective Tenant can file a private cause of action not later than two (2) years after the discriminatory event has occurred or upon breach of a conciliation agreement or to obtain appropriate relief for discrimination. A Tenant/prospective Tenant can also file within 180 days of the conclusion of an administrative action or within two (2) years of the discriminatory event, whichever date is later. A court may award appropriate relief as outlined above.

VIII. What are some examples of Fair Housing issues?

Listed below are some common fair housing questions and answers regarding issues that often arise in the context of the apartment rental business. These questions were taken from materials provided by HUD, the Human Relations Commissions in D.C., Montgomery County, Maryland, and Alexandria, Virginia, and the Fair Housing Council of Greater Washington, but which apply to issues arising in all jurisdictions.

Q: Can You deny an apartment to a prospective Tenant if the prospective Tenant has children?

⁵⁶ Falls Church, Virginia – Code of Ordinances §22-86.

⁵⁷ D.C. Code §2-1403.16 (2015).

⁵⁸ Md. Code Ann. §20-1035 (2013).

⁵⁹ Va. Code §36-96.18.

- A:** Housing discrimination because of children is an illegal act. Only communities specifically designated for occupancy by persons over the ages of 55 or 62 can retain an all-adult status.
- Q:** A prospective Tenant who has two small children wishes to rent an apartment. Because the children are very young, You are concerned that they could do damage to the apartment that adults would not typically do. Can You charge this prospective Tenant a higher security deposit?
- A:** No. You cannot require an additional or higher security deposit for a family with children that is not required of a Tenant/prospective Tenant without children.
- Q:** A prospective Tenant who has three small children wishes to rent an apartment. Many older persons without children reside in the apartment building. You are afraid that renting to families with children will upset the older tenants. Can You designate a certain section of the apartment building for Tenants/prospective Tenants who have children?
- A:** No. You cannot segregate families with children to certain areas of an apartment complex.
- Q:** A family with two children, one boy and one girl, wishes to rent a two bedroom apartment. Can You deny them the opportunity to rent because the children will have to share the same room?
- A:** No. You cannot deny rental of an apartment because persons of the opposite sex will share one bedroom.
- Q:** Tenants' children make a lot of noise running around the apartment complex pool. You are concerned about the noise and concerned for the children's safety. Can You restrict use of the pool to adults?
- A:** No. You cannot limit the use of any pool, elevator, or other apartment services or facilities to adults only. But You can make reasonable rules guiding behavior for all Tenants who use the apartment complex's services and facilities.
- Q:** A prospective Tenant wishes to rent an apartment, but asks that she be assigned a parking space close to her unit because she is mobility

impaired. You don't think she is really disabled enough to get special treatment. Can You ask the prospective Tenant to prove how severe her disability is?

A: No. You cannot inquire into the nature or severity of a Tenant's/prospective Tenant's disability.

Q: A disabled prospective Tenant wishes to rent an apartment. You think the other Tenants will be disturbed by this prospective Tenant's handicap. Can You put all disabled Tenants/prospective Tenants in one area of the apartment complex?

A: No. You cannot segregate disabled Tenants/prospective Tenants in certain areas of a housing complex.

Q: You are aware that a particular Tenant/prospective Tenant has AIDS. You are afraid that this Tenant/prospective Tenant is contagious. Can You deny the Tenant/prospective Tenant use of the pool, weight room, or other facility?

A: No. A Tenant/prospective Tenant with AIDS or who is HIV-infected is "handicapped" and cannot be denied services or facilities provided to all Tenants/prospective Tenants.

Q: A prospective Tenant arrives at the leasing office dressed in clothing indicative of her membership in a certain minority religion. You are afraid the other Tenants in the building will be offended if they have to live next to this prospective Tenant. Can You inquire into this prospective Tenant's religious affiliation or deny this prospective Tenant an apartment if she otherwise qualifies as a Tenant?

A: No. You cannot inquire into this prospective Tenant's religious beliefs or affiliation with a certain religious group. You also cannot refuse to rent to a prospective Tenant based on the prospective Tenant's religion.

Q: You wish to place the following ad in the paper: "Single apartment available in exclusive apartment complex, restricted, private, Asian area, no children, singles preferred, Methodist church nearby, mature adult males preferred, prefer bright and healthy person." Is the ad OK?

A: No. This ad reflects an unlawful preference for a certain age, gender, religion, and ethnic background. The ad expresses a preference against

the handicapped and families. A permissible ad might read: "Quiet neighborhood, parks nearby, gated, houses of worship nearby."

Q: Can Your employer direct You to show apartments only to certain groups?

A: No. To do so would put both You and Your employer in violation of fair housing laws. This exclusionary practice would render You both liable for all the penalties stated above.

Q: Can You require a double security deposit for an unmarried couple?

A: No. You may not require a double security deposit from an unmarried couple if the reason for the double security deposit is based solely on the couple's marital status.

Q: Can You be accused of discrimination if You do not rent to prospective Tenants in wheelchairs because Your apartments are not adequate to accommodate them?

A: Current law requires Your employer to accommodate Tenants/prospective Tenants with physically or mentally handicapping conditions provided that the Tenant/prospective Tenant pays for the modifications and agrees to restore the condition of the apartment, reasonable wear and tear excepted.

Q: If there is a no-pet policy in an apartment building, can a blind/deaf Tenant/prospective Tenant still live there with a guide dog?

A: Yes. By law, guide dogs (seeing or hearing) are exempt from no-pet policies.

Q: If a Tenant/prospective Tenant asks about the racial/ethnic or religious make-up of a neighborhood, can You tell him/her about that particular area?

A: No. Current law specifically prohibits commenting on the racial/ethnic or religious composition of a community. You may suggest that they explore the neighborhood themselves.

Q: What should You look for in selecting a prospective Tenant?

- A:** You must use the same set of standards or requirements for all prospective Tenants. These standards cannot be based upon any discriminatory criteria. The most important thing for You to determine is whether the prospective Tenant will be able to pay the rent in a regular and timely manner. You will also want to know that the prospective Tenant will not disturb other Tenants and will keep the apartment in reasonable condition. These questions can often be answered by references from previous landlords, employment verification, or information for a credit bureau.
- Q:** Can You set a dollar amount on the income You require of Tenants/prospective Tenants?
- A:** Yes. Your employer can determine how much its Tenants/prospective Tenants should make, but this figure must be applied equally to all prospective Tenants, regardless of their source of income.
- Q:** Do You have to accept prospective Tenants who receive welfare, child support, social security, or other government benefits?
- A:** Yes. You must accept child support, welfare, social security and other benefits recipients if their income is sufficient to meet income requirements. The law includes source of income as a protected class and thus it is illegal to discriminate solely on the basis of source of income.
- Q:** Your employer wants a racially balanced building. Can You maintain a quota?
- A:** No. Quotas of any kind may be illegal, because in order to maintain a quota it might be necessary to discriminate against some people.
- Q:** Does the law limit the content of Your employer's advertising?
- A:** Yes. The law does not allow Your employer to advertise a preference for a particular type of prospective Tenant. The law prohibits advertising a rental requirement that would be illegal in practice. For example, You cannot advertise for a particular race, a particular age or for a family only.
- Q:** Do Fair Housing laws require You to give a reason for eviction?

- A:** Yes. Your employer must state the reasons for eviction of a Tenant.
- Q:** Can You refuse to rent apartments to a family solely because the family includes a minor child?
- A:** No. You cannot discriminate against families with one or more children.
- Q:** Can You make rules that govern the conduct of children?
- A:** Not specifically, but You may make reasonable rules regulating the conduct of all Tenants.
- Q:** If it is against Your religious convictions for an unmarried couple to live together, do You have to rent to them?
- A:** Yes. You cannot discriminate on the basis of marital status.
- Q:** If You rent to unmarried persons, You want to be sure that each one can pay the rent in case one of them moves out. Can You require separate income qualifications for unmarried persons?
- A:** No. The same requirement must be met by either married or unmarried persons. If married persons are allowed to combine their income, then unmarried persons must be allowed to do the same.
- Q:** Must You rent to a person in a wheelchair who may damage or mark the walls?
- A:** Yes. This person cannot be denied housing because of a physical handicap. Upon vacating, You can require the Tenant to pay for restoring the apartment to its original condition, reasonable wear and tear excepted, as is the case with every other Tenant.
- Q:** You manage a 300 unit apartment complex with 450 parking spaces that are available to Tenants and guests on a "first come, first serve" basis. A prospective Tenant, who is mobility impaired and unable to walk more than a short distance, applies for an apartment. The prospective Tenant requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. Must You honor the prospective Tenant's request?

- A:** Yes. It is a violation for You to refuse to make this accommodation. Without a reserved space, the prospective Tenant might be unable to live in the apartment at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford the prospective Tenant an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.
- Q:** You've had problems with selected ethnic and age groups in the past. Do You have to rent to them again?
- A:** Yes. Stereotyping can be dangerous, unfair and illegal. Each prospective Tenant must be judged on his/her own merit. You cannot decide not to rent to a whole group of people because of previous experience with some individuals.
- Q:** A handicapped Tenant/prospective Tenant requests modifications to her apartment that include widening the doors, lowering the kitchen sink, and installing grab bars in the bathroom. Must You allow such modifications?
- A:** Yes. These modifications are reasonable and feasible. The modifications must be allowed at the Tenant's/prospective Tenant's expense. The Landlord can also require the Tenant/prospective Tenant to pay for restoration of the apartment to its original condition, reasonable wear and tear excepted.
- Q:** You are offering a rent special. Must You offer it to all prospective Tenants?
- A:** Yes. All terms and conditions of rental should be the same for all prospective Tenants regardless of any characteristic of the prospective Tenant.
- Q:** A prospective Tenant walks into Your office and asks to view an available one-bedroom apartment. You have one one-bedroom apartment available, but You don't like the "looks" of this prospective Tenant. Must You show the apartment?
- A:** Yes. All prospective Tenants must be treated the same. You cannot falsify the availability of an apartment.

Q: In filling out her rental application, a prospective Tenant indicates that her last residence was a mental institution. Can You reject her because she does not have a typical rental reference?

A: No. Check with the prospective Tenant's personal references, such as persons who knew or worked with her, including medical personnel.

Q: Can You charge higher rent and higher security deposits for disabled Tenants/prospective Tenants?

A: No. You must give all Tenants/prospective Tenants the same leasing information regarding rents and security deposits for a specific apartment.

Q: Must You show all available apartments meeting the size requirements the prospective Tenant requests?

A: You must show all prospective Tenants the same number of apartments.

Q: What are Your responsibilities and rights as a Landlord?

A: As an apartment manager, leasing personnel or owner, You and Your employer have the responsibility to:

- consider equally all qualified applicants;
 - indicate no preference when advertising or showing apartments;
 - give all applicants accurate, complete information about available apartments, occupancy dates and rental terms and conditions;
 - refrain from making written or verbal inquiries about an applicant's ethnicity, religion, sex or marital status; and
 - be consistent in applying rental policies.
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IX. Additional Resources

1. Federal Government: U.S. Department of Housing and Urban Development (HUD); website:
http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination
2. In D.C.: D.C. Office of Human Rights and Local Business Development (202) 727-4559 (phone); website:
<http://www.ohr.washingtondc.gov/ohr/site/default.asp>
3. In Maryland: 410-767-8600, State of Maryland Commission on Civil Rights – Housing Department
1-800-637-6247 (phone); website:
<http://mccr.maryland.gov/HousingDiscrimination.html>
4. In Montgomery County: Montgomery County Office of Human Rights, Mr. James L. Stowe, Director, 240-777-8450 (phone); 240-777-8460 (fax); website:
<http://www.montgomerycountymd.gov/humanrights/index.html>; ; and
<http://www.montgomerycountymd.gov/humanrights/about/who.html>
5. In Prince George's County: Human Relations Commission, Mr. Michael Lyles 301-883-6170 (phone); 301-780-8244 (fax); email: HRCStaff@co.pg.md.us; website:
<http://www.princegeorgescountymd.gov/sites/humanrelations/Pages/default.aspx>
6. In Virginia: Department of Professional and Occupational Regulations, Fair Housing Office, (804) 367-8530 or (888) 551-3247 (phone); (866) 480-8333 (fax); website: <http://www.dpor.virginia.gov/FairHousing/> ; email: FairHousing@dpor.virginia.gov
7. In Fairfax County: Human Rights Commission, 703-324-2953 (phone); 703-324-3570 (fax); website: <http://www.fairfaxcounty.gov/hrc/>
8. In Arlington County: Arlington Human Rights Commission 703-228-3929 (phone); website:
<http://www.arlingtonva.us/departments/commissions/HumanRights/HumanRightsMain.aspx>
9. In the City of Falls Church: Housing and Human Services Office, 703-248-5005 (phone); 703-248-5184 (fax)
10. In the City of Alexandria: Fair Housing Center of Northern Virginia, Melodie Seau – Program Coordinator, (703) 746-4990 (phone); website:
<http://alexandriava.gov/housing/info/default.aspx?id=361#FHTRPM>

11. In Prince William County: Prince William Human Rights Commission, Phyllis Aggrey – Executive Director (703) 792-4680 (phone); (703) 792-6944 (fax); website:
<http://www.pwcgov.org/government/dept/hrc/Pages/Contact%20the%20Human%20Rights%20Commission.aspx>

Prince William Office of Housing and Community Development (703) 792-7530