

APPLICATIONS, LEASES & RULES FOR RENTAL OCCUPANCY

FACT SHEET NO. 5

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Federal Fair Housing Law states that it is illegal to discriminate in the rental, sale or financing of housing based upon the protected classes of race, color, religion, gender, national origin, disability or familial status. North Dakota state law also protects age and status with respect to marriage and public assistance and South Dakota state law also protects creed and ancestry. Please note that some housing may be exempt from federal and state Fair Housing/discrimination laws.

Applications

Landlords may raise suspicion as to their intent if application questions ask for, or identify, personal characteristics protected under state and federal Fair Housing Laws. Although questions may raise suspicion of illegal discrimination, a suspicion is not absolute proof. However, questions that are suspect suggest that unlawful factors may have been considered in making a housing decision. Questions that directly ask for improper information can, in some cases, be sufficient evidence to prove a violation.

Federal and state law specifically prohibits a housing provider from asking anyone if they are disabled, unless the housing in question is set aside for persons with disabilities. Age may also be asked if the housing is designed for older persons and an age requirement is necessary for occupancy, or to determine if the prospective tenant is old enough to sign a lease and be held liable.

A landlord may also place reasonable occupancy restrictions for a dwelling unit. For instance, HUD recommends a guideline of two persons per bedroom. A landlord has a right to ask the number of occupants who will be living in a dwelling unit, but cannot place restrictions specific to children. For example, a landlord cannot designate a two bedroom unit for only 2 adults/ no children or place a restriction specific to limiting the number of children. This situation could be viewed as discriminatory towards families with children. The only exception is housing designated for older persons. This type of housing must also be advertised as such and other requirements must also be met to qualify. To clarify, any occupancy restrictions must be placed on *all* occupants, not just children, i.e., two persons per bedroom. Restrictions specific to the gender of the occupants could also be ruled as discriminatory.

Landlords should have objective rental criteria established and stick to it. Landlords should also make

sure that ALL employees know of this criteria if they are in any way involved in showing dwelling units or reviewing applications of prospective tenants.

It is also important to point out that any questions or requirements asked or made, must be asked or made of *all* prospective tenants. If a landlord makes an exception in the rental application process for one individual, he or she now must allow that exception to be made for all others. For example, if a criminal background check is performed on a prospective tenant, the background check must then be part of the screening process of *all* applicants.

Landlords may also ask questions concerning someone's ability to meet tenancy requirements: paying the rent on time, obeying building rules, or providing references about past tenant history. As long as these requirements are asked of everyone. For instance, if an income minimum is required for occupancy, a landlord could request verification of income. Verification could include a copy of a pay stub or letter from employer as to the current wage or salary, a letter from a housing representative as to the amount of rental assistance, a copy of a current SSDI payment, or proof of any other financial assistance. All these forms of income should be counted toward monthly income. A credit check is a common reference check performed, although there is typically a cost associated with this check and it typically does not provide a realistic verification of income.

One of the most effective means of determining rental qualifications is a landlord/tenant reference from the previous landlord(s). This reference can be used to determine whether someone paid their rent on time, obeyed building rules, and caused any damage to property. Again, whatever requirements you put in place for rental, they must be applied to everyone. Refusing tenants solely because of their membership in a protected class is illegal.

Building Rules & Guidelines for Occupancy

A landlord has the right to establish reasonable building occupancy rules for tenants. However, any rules or policies must cover all occupants and cannot be specific to children or any other protected class. For instance, a landlord could not have a rule which states that "Children are not allowed to rollerblade on property." An acceptable rule would be "No rollerblading allowed by tenants or guests on property." This makes the rule apply to everyone rather than being specific to children only.

A landlord also has the right to change rules or policies. A landlord should be sure to alert ALL residents to any change of rules or policy and include any effective dates for this change. If the change is substantial, the landlord should implement the rule only upon agreement of the tenant under a term lease, at a tenant's lease renewal or by giving 30 days notice for month-to-month tenants. Proper notice may be given by posting a notice near the mailboxes or in common areas, as well as providing a notice under all the tenant's doors. The landlord should also give tenants the option of being let out of their lease if the change in rules or policy dramatically affects their living there. For example, if a building is changed from a smoking building to a non-smoking building. In this situation, if current residents are not "grandfathered" in, then these tenants must be given the option of vacating their lease without penalty if they are no longer able to meet the new non-smoking requirements. Prospective tenants also need to be informed in advance to renting of *all* building rules to ensure they can meet the requirements for occupancy.

Under state and federal laws, private landlords can designate properties as having "no pets". However, service/assistive animals for people with disabilities are not considered pets and must be allowed, even in "no pets" buildings. Accommodations must be made in "no pets" policies for anyone who qualifies for a service/assistive animal and the tenant with the disability needs to alert the landlord of this accommodation. (See FHD Fact Sheets 2 & 3 for more information.)

Questions a Landlord MAY ask a Prospective Tenant

- Have you been convicted of the illegal manufacture or distribution of a controlled substance?
- List the name and phone number of your last two landlords.
- Would your tenancy be a threat to the health and safety of other people?
- Have you ever been convicted of any drug-related or alcohol-related activity? If yes, please explain.
- Have you ever engaged in the sale of illegal drugs?
- Are you known by any other names?
- Who should we contact in an emergency?
- What is your total household monthly income? Please provide verification.

Questions a Landlord MAY NOT Ask a Prospective Tenant

- Do you have a disability?
- Tell me about your disability. How severe is it?

- May I have permission to see your medical records?
- Do you plan on becoming pregnant?
- Do you have someone who can vouch for your safety?
- What does your spouse do?
- Why do you receive disability benefits?
- Is anyone in your family receiving medical attention?
- Have you been in a drug treatment program?
- Have you ever suffered a serious illness?
- What is your nationality?
- Do you have a mental disability?
- Are you able to live independently?
- Where does your income come from?
- Have you ever used drugs or alcohol?
- Have you ever filed any personal injury lawsuits or workers compensation claims?

Landlord Training/Police Programs

Under current federal and North/South Dakota state laws, individuals with criminal records are not protected from discrimination. Because of this, we have recently seen in North and South Dakota the development of Landlord Training Programs by local police departments. Typically, these programs are established by the local Police Department and in exchange for the landlord participating in a few hours of training, the Police Department provides free criminal background checks to landlords in their screening process on prospective tenants. These background checks may include such information as a local or national criminal record, as well as contacts with police/police reports. (Typically, a cost is associated with a national check.)

If the landlord receives police reports, it is important that the landlord educate themselves on what the reports mean. A prospective tenant should not be penalized for calling the police because of a noisy party or if they were concerned about their safety. Court records may also be obtained by landlords through the county/state/federal court system in regards to convictions.

When Can a Landlord Legally Reject a Potential Tenant?

A landlord may reject an application if the prospective tenant cannot meet the obligations that apply to all tenants, such as being able to pay the rent and complying with reasonable rules and regulations. Such a rejection must be based on concrete evidence.

A tenant can also be rejected if their living there would directly threaten the health or safety of other individuals or would result in substantial physical damage to the property of others. Again, this rejection must be based on concrete evidence and not just assumptions.

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 • The Fair Housing of the Dakotas is a private, non-profit organization that serves North and South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all. The Fair Housing of the Dakotas is located at 909 Basin Avenue, Suite 2, Bismarck, ND 58504. Phone: 701-221-2530 or 1-888-265-0907. ND TDD: 1-800-927-9275 or ND Relay: 1-800-366-6889 (voice). SD TDD: 1-866-273-3323 or SD Relay: 1-800-877-1113. Email: info@fhdakotas.org Web: www.fhdakotas.org Alternative formats will be made available upon request. The work that provided the basis for this publication was supported by funding under a grant/cooperative agreement with the U.S. Department of Housing & Urban Development. The substance and findings of this work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in the publication. This information is not itself legal advice; for legal advice about a particular situation, contact an attorney.

