

# What's Old May Be New Again

Old rules may warrant new examination as HUD and advocates put more emphasis on fair housing compliance.

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There are cycles within the realm of fair housing where it seems there is often something new to be considered by the multifamily industry. Other times there is a lull in developments and applications of the all-important and always-impactful Fair Housing Act. Currently, the scenario is somewhat of a hybrid, as older issues and topics are getting recent fair housing attention from HUD and advocates.

The new year is often an impetus to look back at where we were and forward to where we are going. So perhaps there is wisdom in looking back at your policies and procedures and taking steps to better plan for going forward with fair housing compliance. The overall plan for this would be to:

- Review each of your rules, policies and

procedures to reconfirm that they are really needed;

- Analyze whether in fact each rule or procedure is accomplishing its intended purpose;
- Document the goal (the "why") of each rule or procedure so that you can present a well-articulated written response should anyone in the fair housing world take issue with any policy or rule.

What are some of the rules and policies that might need this analysis because of their potential to create fair housing issues?

- 1 Rules for children. In some parts of the country there have been recent fair housing challenges to rules that limit where children may



go (or what they may do or use) at an apartment community. If you have rules that limit children (either in general or by age), the analysis plan above just might be beneficial.

Do you prohibit children from riding bikes and skateboards? Why? Does it not make sense to limit all residents from doing so? Do you have an age limit for unaccompanied children at your pool? Why? Is there an ordinance in place that might control your decision? Do you have a rule that requires all children to be accompanied by an adult when in the common areas? Why? If behavior is your concern, why not establish behavior rules for all residents and guests? A rock thrown through a window is just as destructive if thrown by an adult as if by a child. (And "no unaccompanied children outside" cases are cropping up regularly.)

- 2 Criminal background checks. Do you have a policy by which anyone with any felony conviction is precluded from residing at your community? Why? If your reason is safety and liability, consider whether your policy would result in Martha Stewart not being able to become your resident. Yes, she has a felony conviction, but does she

really present you with a risk? Perhaps you should consider a policy that limits only certain types of felonies, like ones that do present safety and liability issues for you. Would you deny the application of a 1960s hippie who had too many drugs in their possession half a century ago? Perhaps some time limits on certain types of felonies warrant your consideration.

- 3 Occupancy standards. How many people can live in your units? What are the considerations that have gone into that decision? While two people per bedroom is often an appropriate standard (as per the HUD Keating memo) there are reasons why that might not be the case. Do your units have a great deal of square footage as compared to other communities in your area? Is there a local ordinance that might come into play? Is there a loft, a "den" or other room or space within the unit that could be considered a sleeping place?

You absolutely need to have rules, policies and procedures to operate your business, but sometimes those can create problems you did not anticipate. Whether directly or indirectly, you could be making it more difficult for people to live at your community or discouraging them from even considering your community as their apartment home. And therein lies the rub—or the possibility of a fair housing complaint or charge. So take the time to analyze what you do and why, and reduce that risk. [MHN](#)

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The information contained in this article is not to be considered legal advice, and Nadeen and FRMS strongly recommend that you consult with your own counsel as to any fair housing questions or problems you may have.

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