The Fair Housing Act: Prohibited Practices, Types of Claims, and Compliance Strategies

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This practice note provides an overview of the Fair Housing Act (FHA), including its history, implementation, and application in different states. It also explains the FHA's intersection with other civil rights laws, summarizes the myriad of discriminatory practices and policies prohibited by the FHA, and analyzes the various legal tests applied by courts to assess both intentional and disparate impact discrimination claims. Finally, this practice note addresses specific types of discrimination that frequently serve as the basis of fair housing litigation, with an emphasis on discrimination based on disability including an in-depth analysis of reasonable accommodation and reasonable modification requests under the FHA, a summary of the most commonly requested accommodations and a road map for housing providers explaining how to properly implement fair housing policies.

For guidance on how the FHA is enforced, the potential remedies available to victims of unlawful discrimination, and best practices for avoiding and defending against a discrimination complaint, see the companion note to this practice note—The Fair Housing Act: Enforcement Actions.

The FHA – Origins, Implementation, Adaptations, and Expansions

Origins of the FHA

The Civil Rights Act of 1968 (more commonly known as the Fair Housing Act or FHA), was the third major civil rights law passed in the 1960s. The FHA followed on the heels of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. At the time it was initially passed, the FHA prohibited discrimination based on race, color, religion, and national origin. Sex-based discrimination protections were added in 1974. The FHA was amended again in 1988 to prohibit discrimination based on familial status and disability (Fair Housing Amendments Act or FHAA). Proposed legislation amending the FHA is routinely introduced in Congress, including proposals to prohibit discrimination based on sexual orientation, gender identity, marital status, source of income, and status as a military servicemember or veteran.

Currently, the FHA prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin in the sale or rental of housing, the financing of housing, the provision of brokerage services, and in residential real estate-related transactions. The FHA applies to most housing providers, both public and private, including owners and agents of single-family homes, apartments, condominiums, mobile homes, and others. The FHAs coverage of "residential real estate-related transactions" further includes both the "making [and] purchasing of loans secured by residential real estate [and] the selling, brokering, or appraising of residential real property." 42 U.S.C. § 3605.

The U.S. Department of Housing and Urban Development (HUD), through its Office of Fair Housing and Equal Opportunity (FHEO), receives and investigates complaints under the FHA and determines if there is reasonable cause to believe that an act of discrimination occurred or is likely to occur. Many state and local fair housing agencies are also tasked with investigating complaints arising from alleged acts of discrimination in their jurisdiction, which may cite federal, state, and local fair housing laws. If the alleged discriminatory act takes place in a state or locality that has adopted a fair housing enforcement agency similar to the FHEO, HUD may refer the complaint to that local agency for investigation.

Implementation

The FHA describes the types of housing practices in which discrimination is prohibited and provides illustrations of such practices. 24 C.F.R. § 100 et seq. This includes the sale or rental of a dwelling (24 C.F.R. § 100.60); the provision of services or facilities in connection with the sale or rental of a dwelling; other conduct which makes dwellings unavailable to persons (24 C.F.R. § 100.65); advertising or publishing notices with regard to the selling or renting of a dwelling (24 C.F.R. § 100.70(d)); misrepresentations as to the availability of a dwelling (24 C.F.R. § 100.75); and the denial of "access to membership or participation in any multiple-listing service, real estate brokers association, or other service relating to the business of selling or renting dwellings." 24 C.F.R. § 100.90.

The FHA applies to federal, state, and local agencies as well as discrimination claims related to zoning regulations and providing municipal services. The FHA makes it unlawful for local governments to make zoning or land use policies that exclude or discriminate against protected classes, which includes denying a permit for a group home or refusing to make reasonable accommodations in land use and zoning policies. See Drayton v. McIntosh County (S.D. Ga.) | CRT | Department of Justice. An example of this prohibition could be a zoning restriction prohibiting the number of unrelated adults living in a housing accommodation. If these unrelated persons reside in a group facility for young adults with disabilities—within the number of occupants permitted under fire and health code considerations—then the zoning restriction could be discriminatory. Most likely, the political subdivision would need to show a nondiscriminatory basis for such a zoning restriction.

In some circumstances, localities may make zoning or land use decisions that appear neutral and nondiscriminatory on their face but have an unintended and adverse effect for a protected class. This is also referred to as a disparate impact. Despite the lack of intent, when disparate impact is proven, localities may still be held accountable for discriminatory housing practices. The U.S. Supreme Court upheld this extension of the FHA in the case Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015) which involved a Texas nonprofit organization that brought a suit against the State of Texas alleging that the State disproportionately allocated tax credits to housing projects in majority African American inner-city areas, when compared to majority-white suburban areas. The Supreme Court affirmed a ruling in favor of the nonprofit organization based on a determination that disparate impact claims are permissible under the FHA. 135 S. Ct. at 2507.

Adaptations by Local Jurisdictions

Maryland

Maryland's fair housing law mirrors the FHA but expands the number and scope of protected classes under the federal law. In Maryland, marital status, gender identification, sexual orientation, and source of income are additional protected classes. Marital status is defined as "the state of being single, married, separated, divorced or widowed." 12 C.F.R. § 1002.2. Sexual orientation means the identification of an individual as to male or female, homosexuality, heterosexuality, or bisexuality. Md. Code, State Government, § 20-101. Gender identity is defined as the gender-related identity, appearance, expression, or behavior of a person, regardless of the person's apparent sex at birth. Md. Code, State Government, § 20-101. Maryland's law exempts rooms or units for rent in a dwelling in which the owner occupies a unit as his/her principal residence. These owners may reject an application for co-residency based on sex, sexual orientation, gender identity, or marital status but cannot discriminate against someone because of his/her race, color, religion, familial status, national origin, disability, or source of income. Md. Code, State Government, §§ 20-101, 20-704, 20-705.

Virginia

Much like Maryland, Virginia's Fair Housing Law follows the federal law. In addition to the protected classes provided under the FHA, the Virginia Fair Housing Law adds several protected classes: elderliness (age 55 years or older), source of funds, status as a veteran, gender identity, and sexual orientation. Va. Code Ann. § 36.-96.1. The Virginia Fair Housing Board enforces the Virginia Fair Housing Law, which applies to owners, real estate agents, banks, managers, insurance companies, savings institutions, credit unions, mortgage lenders, and appraisers. The Virginia Real Estate Board is responsible for investigating discrimination complaints filed against holders of real estate licenses issued by the Commonwealth.

District of Columbia

The D.C. Human Rights Act of 1977 further expands on the federal list of protected classes. Its inclusion of personal appearance protects people from housing discrimination based on style of dress, hairstyle, and facial hair. This act also prohibits discrimination based on the renter's enrollment in an educational program, which bars housing providers from refusing to rent to college students or limit the number of students in a multifamily rental community. The fair housing regime in D.C. also covers place of current residence as well as political affiliation discrimination. The D.C. Office of Human Rights oversees the enforcement of the D.C. Human Rights Act.

Other Political Subdivisions

In addition to state expansion of the FHA's reach and coverage, cities and localities may implement additional, stricter fair housing regulations. Local legislators often propose expanding these laws to address specific housing discrimination issues in their jurisdictions, which may include broadening the list of protected classes for individuals and groups not protected under federal law. It is essential to become intimately familiar with the federal, state, and local fair housing laws at play in your jurisdiction.

Expansions – The FHA and Other Related Federal Laws

Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) are two federal laws that apply to more types of facilities than housing. At times, these laws overlap with the FHA, but they have different, and often narrower, requirements.

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination on the basis of disability by recipients of federally assisted programs or activities. 29 U.S.C. § 794. The Section 504 regulations define "recipient" as any state (or its political subdivision), any instrumentality of a state (or its political subdivision), any public or private agency, institutional organization or other entity, or any person to which federal financial assistance is extended for use in any program or activity (whether directly or through another recipient), which includes any successor, assignee, or transferee of a recipient, but excludes the ultimate beneficiary of the assistance. 24 C.F.R. § 8.3. Obvious examples of recipients include a HUD-funded public housing agency or a HUD-funded nonprofit developer of low-income housing because both receive federal financial assistance and, therefore, are subject to Section 504's requirements. A public housing agency is covered by Section 504, for example, in the operation of its Housing Choice Voucher Program (HCVP)—formerly known as the Section 8 program. However, a private landlord who accepts tenant-based vouchers as payment for rent from a low-income qualified individual is not a recipient of federal financial assistance merely by accepting such payments.

The ADA

The ADA is a comprehensive civil rights law prohibiting discrimination against persons with disabilities and applies to housing (sales and rentals) but only under specific circumstances. 42 U.S.C. § 12101. Title III of the ADA prohibits discrimination against persons with disabilities in commercial facilities and public accommodations, which includes public and common use areas at housing developments when these areas are, by their nature, open to the general public or made available to the general public. 42 U.S.C. § 12132. Title III applies irrespective of whether the public and common use areas are operated by a federally assisted housing provider or by a private entity. However, the accommodation must be open to the public (or a segment of the public) for Title III to apply. 28 C.F.R. § 36. This could include an apartment building's leasing office or the property's pool, if it is open to members of the public (even if only once a year or on special occasions). The ADA also covers commercial facilities, which it defines as "facilities intended for nonresidential use . . . whose operations affect commerce." 42 U.S.C. § 12181. However, it explicitly excludes "facilities that are covered or expressly exempted from coverage under the Fair Housing Act." 42 U.S.C. § 12181.

For guidance on the ADA, see Americans with Disabilities Act: Guidance for Commercial Real Estate Owners.

Who Is Protected by the FHA?

Protected Classes

Discrimination based on certain characteristics is prohibited under the FHA. In some cases, the statute may specifically define a protected category; but, in other instances, it may indicate additional relevant information on exemptions or how to interpret a protected characteristic. 42 U.S.C. § 3602. Remember, the FHA prohibits discrimination on the basis of race, color, religion, national origin, familial status, sex, or handicap.

The terms race, color, religion, and national origin are not specifically defined in the FHA. The FHA defines familial status to mean parents or others having custody of one or more children under 18 years of age. 42 U.S.C. § 3602(k). Familial status discrimination does not apply to housing dedicated to older persons (e.g., generally speaking, a community solely for residents age 55 plus or age 62 plus is not, on its face, a violation of the FHA).

Under the FHA discrimination based on a person's sex includes refusing to rent or sell to someone, or treating someone differently, because of their gender, gender identity, or gender expression. The FHA also prohibits sexual harassment, which can include any unwanted sexual advance, request for sexual favors, or other unwelcome verbal or physical contact of a sexual nature by someone of the same or opposite sex in exchange for housing considerations. In housing, sexual harassment may fall under two categories. The first, Quid Pro Quo Sexual Harassment is when a housing provider or their employee, agent, or contractor conditions access to or retention of housing or housing-related services or transactions on a tenant's submission to sexual conduct. The second, Hostile Environment Sexual Harassment is when a housing provider or his employee, agent, contractor, or, in certain circumstances, another tenant, engages in sexual behavior of such severity or pervasiveness that it alters the terms or conditions of tenancy and results in an environment that is intimidating, hostile, offensive, or otherwise significantly less desirable. More information on the FHA's treatment of discrimination based on sex and sexual harassment can be found here and here.

Lastly, the FHA also prohibits housing providers from discriminating against applicants or residents (or persons associated with either) on the basis of a disability. The act defines disability as a physical or mental impairment that substantially limits one or more major life activity. 42 U.S.C. § 3602. Common examples of major life activities that may be impacted at a housing accommodation relate to communications and interactions with others (seeing, hearing, learning, and speaking) and using or accessing various areas of the housing accommodation (breathing, walking, performing tasks, and caring for one's self), among others. Accordingly, the FHA requires housing providers to make reasonable accommodations (changes, exceptions, or modifications) to their rules, policies, practices, or services, when such accommodations are necessary to afford persons with disabilities an equal opportunity to use and enjoy their housing.

Expansion of the FHA is well underway. In February 2021, HUD released a memo stating that it would begin accepting complaints for discrimination based on sexual orientation or gender identity, and that FHEO would conduct "all other activities involving the application, interpretation, and enforcement of the FHA's prohibition on sex discrimination to include discrimination because of sexual orientation and gender identity." HUD's published guidance further explains that "the Fair Housing Act's sex discrimination provisions are comparable to those of Title VII and that they likewise prohibit discrimination because of sexual orientation and gender identity."

Exemptions to the FHA

Although the FHA is broadly applicable, it includes some exemptions. First, the FHA does not apply to single-family homes that are rented or sold by a private owner (without the use of a real estate agent) who owns no more than three single-family homes at the same time, provided that certain other conditions are met. 42 U.S.C. § 3603(b)(1). In addition, neither a religious group nor a nonprofit entity run by a religious group is prohibited under the FHA "from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, or national origin." 42 U.S.C. § 3607(a). The FHA also does not prevent a private club "from limiting the rental or occupancy of lodgings to its members or from giving preference to its members" if those lodgings are not operated for a commercial purpose. 42 U.S.C. § 3607(a). Housing for older persons, as the term is defined by the FHA, is exempted from its proscription of discrimination on the basis of familial status. In other words, "housing for older persons" may exclude families with children. 42 U.S.C. § 3607(b).

Categories of Discrimination Claims

FHA discrimination claims generally fall into two categories, disparate treatment discrimination and disparate impact discrimination. See The Fair Housing Act (FHA): A Legal Overview. Disparate treatment claims allege that a housing provider discriminated with intent or motive. See Texas Dept. of Hous. & Cmnty Affairs v. Inclusive Communities Project, 135 S. Ct. 2507, 2513 (2015). Disparate impact claims, on the other hand, involve allegations that a covered practice, even one that is facially nondiscriminatory, has "a disproportionately adverse effect on [a protected class] and [is] otherwise unjustified by a legitimate rationale." See Larkin v. Michigan Protection and Advocacy Service, 89 F.3d 285, 289 (6th Cir. 1996).

Disparate Treatment

Intentional discrimination claims under the FHA can be supported either through (1) direct evidence of discrimination or (2) indirect/circumstantial evidence. Courts apply a variety of legal analysis to assess claims involving direct and indirect evidence. "Direct evidence is evidence showing a specific link between the alleged discriminatory animus and the challenged decision sufficient to support a finding . . . that an illegitimate criterion actually motivated the adverse . . . decision." Gallagher v. Magner, 619 F.3d 823 (8th Cir. 2010). When a plaintiff provides sufficient direct evidence to support an intentional discrimination claim, the defendant (e.g., the housing provider) generally has the burden of proving, by a preponderance of the evidence, that it would have denied or revoked the housing benefit regardless of the impermissible motivating factor, in order to avoid liability under the FHA. Gallagher, 619 F.3d at 823.

FHA disparate treatment claims, generally based on circumstantial evidence, are assessed under the *McDonnell Douglas* burden-shifting scheme. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under *McDonnell Douglas*, the initial burden rests with the plaintiff to establish a prima facie case of intentional discrimination by a preponderance of the evidence. 411 U.S. at 792, 802. A plaintiff may establish a prima facie case by producing evidence that (1) they are a member of a protected class, (2) they qualified for a covered housing-related service or activity, (3) the defendant denied an application for or revoked use of the plaintiff's housing benefit, and (4) the relevant housing-related service or activity remained available after it was revoked from or denied to the plaintiff. 411 U.S. at 792, 802. If a plaintiff can establish a prima facie case, then the burden shifts to the defendant to provide evidence that the revocation or denial of the housing benefit furthered a legitimate, nondiscriminatory purpose. The Supreme Court has clarified that "[t]he explanation provided must be legally sufficient to justify a judgment for the defendant." Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 255 (1981). The justification requires actual evidence and must be more than "an answer to the complaint or [an] argument by counsel." Burdine, 450 U.S. at 248, 256. If the defendant is able to meet this burden, the plaintiff may still prevail on their disparate treatment claim if they are able to show, by a preponderance of the evidence, that the stated purpose for the denial or revocation was really just a pretext for discrimination.

Disparate Impact

In addition to making intentional discrimination unlawful, the FHA also prohibits certain housing-related decisions that have an inadvertent discriminatory effect on a protected class. In June 2015, the Supreme Court in *Texas Department of Housing Community Affairs v. Inclusive Communities Project*, confirmed the long-held interpretation that "disparate-impact claims are cognizable under the [FHA]," which mirrors previous interpretations by HUD. In its analysis, the Court adopted a three-step burden-shifting test. At step one, the plaintiff has the burden of establishing evidence that a housing decision or policy caused a disparate impact on a protected class. At step two, defendants may counter the plaintiff's prima facie showing by establishing that the challenged policy or decision is "necessary to achieve a valid interest." 450 U.S. at 248, 256. The defendant will not be liable for the disparate impact resulting from a valid interest unless, at step three, the plaintiff proves "that there is an available alternative practice that has less disparate impact and serves the entity's legitimate needs." 450 U.S. at 248, 256. In addition, the Court outlined a number of limiting factors that courts and HUD should apply when assessing disparate impact claims. 450 U.S. at 248, 256.

Most Commonly Cited Violations of the FHA

In recent years, the FHA and associated state law complaints have been largely related to disability matters, including failure to make reasonable accommodations for service and emotional support animals and failure to make reasonable modifications to existing facilities to accommodate an applicant's or resident's disability. Additionally, where source of income is a protected class, numerous complaints against residential landlords for

failure to correctly calculate income (to qualify an applicant for tenancy) or to accept a voucher have been filed. Unfortunately, there are still many complaints filed yearly based on race, religion, and national origin claims as well.

> In 2020, "[t]here were 17,010 cases that involved discrimination against a person with a disability, or 58.90 percent of all cases. Discrimination against persons with disabilities is the easiest to detect, as it most often takes place as an overt denial of a request for a reasonable accommodation or modification to the housing unit. The second most reported type of housing discrimination was on the basis of race, with 4,757 or 16.47 percent of all cases. This was followed by familial status as the third most frequent basis for discrimination, with 2,228 cases or 7.71 percent of all cases of housing discrimination. The fourth most frequent basis of discrimination was sex, with 1,948 complaints or 6.75 percent of all complaints. The fifth most frequent basis was national origin, with 1,730 reported cases or 5.99 percent of all complaints. Color was a basis of discrimination for 646 complaints or 2.24 percent of all complaints, and religion was the basis of 328 complaints or 1.14 percent of all complaints nationwide."

See Fair Housing in Jeopardy (Report issued by the National Fair Housing Association).

Allegations Based on Race, Color, National Origin, and Religion

Collectively, fair housing complaints based on race, color, national origin, or religion make up a sizeable portion of the most common allegations. Although it is probably common knowledge that housing providers cannot treat someone differently based on their skin color, accent, preferred language, or religion, these examples are frequently cited by complainants as the reason(s) why they were treated differently.

The following best practices will help insulate housing providers from these types of claims. First, confirm that the application, lease, and any addenda (in-print and online) do not request demographic information related to race, national origin, or religion. Unless required to do so pursuant to participation in a government program (subsidy or tax credit), housing providers should not ask applicants for this information, collect it, or store it. Also, make certain that any on-site staff are not collecting or storing this information. Unless required by a government program, documents such as a property's rent-roll (an index of the units, rent levels, and occupancies) should not include demographic information about residents. Some housing providers keep copies of tenants' photo identification cards in the tenant's rental file. This is an acceptable practice as long as the information is properly stored and not being used for any purpose other than to identify that the person signing the lease is who they say they are and to issue pool passes and related "access" to amenities. Some housing providers take it a step further, by checking the tenant's photo ID at lease signing but do not retain a copy. There are pros and cons to not possessing a copy of the tenant's photo ID. On the one hand, some housing providers feel they are in a better position to assert that tenants are not treated differently because of their race because the housing provider and its staff do not have access to documentation about a tenant's race. The lack of demographic or photographic documentation for any tenant can demonstrate that the housing provider does not have the ability to take race or national origin into consideration when interacting with tenants. Nonetheless, any personal interaction between management staff and the resident will convey some demographic information to the housing provider. On the other hand, if a discrimination complaint arises, it often benefits the housing provider if it can prove that other residents of similar or different races were offered the same terms and conditions of tenancy as the person filing the racial discrimination complaint. Frequently, housing discrimination investigators will request demographic information of neighboring residents and interview those residents in order to confirm that the housing provider imposed the same conditions on all tenants, regardless of race. The authors of this article have successfully defeated a multitude of racial discrimination complaints by presenting such evidence.

Complaints related to religious discrimination are filed less frequently. Regardless, housing providers should avoid engaging in any action or inaction that may be perceived as a preference for or bias against any religious belief or practice. The housing provider should not sponsor, co-sponsor, or advertise events that show a preference for a certain holiday, even if those events are orchestrated by residents. Though housing providers may want to support a good cause, lending support for any one event or "holiday" may be perceived as a preference for a particular protected class (over another class), which will inevitably lead to a claim of intentional discrimination. For example, if residents want to reserve an amenity space (a clubroom or pool area) to celebrate a holiday (e.g., Easter, Eid al-Fitr, Martin Luther King, Jr. Day, etc.) the housing provider should not advertise, financially support, or otherwise promote the

event. Set uniform rules for all tenants who may wish to reserve the amenity space and enforce those rules. If the event is held on the community's property, the meeting space or room should be made available to all residents—ownership or management should not approve the use if there will be segregation of residents (i.e., separate male/female prayer rooms, for example, for a Muslim or orthodox Jewish group of residents). Stay neutral—do not advertise the event, co-sponsor the event, or seek media attention because you believe it is a good cause to support.

Disability-Related Requests and Reasonable Accommodations

By far, the most commonly cited violations stem from disability-related complaints. The Fair Housing Act defines disability as having a physical or mental impairment that substantially limits one or more major life activities, having a record of such impairment, or being regarded as having such an impairment. 42 U.S.C. § 3607(b). The U.S. Supreme Court has determined that to meet this definition, a person must have an impairment that prevents or severely restricts the person from doing activities that are of central importance in most peoples' daily lives. Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 194 (2002). The impairment could be apparent (in the case of a visible physical disability) or nonapparent (in the case of a cognitive, psychological, or emotional disability). 24 C.F.R. § 100.201. Regulations promulgated by HUD and, in some cases, the U.S. Department of Justice, list conditions that may constitute physical or mental impairments. 24 C.F.R. § 100.201. Major life activities mean "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 24 C.F.R. § 100.201. Examples of physical or mental impairments may include, but are not limited to, diseases and conditions such as orthopedic, visual, speech, or hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus, mental retardation, emotional illness, drug addiction, and alcoholism. 28 C.F.R. § 35.108; see also 28 C.F.R. § 36.105. The definition of "major life activities" is inherently broad and far-reaching. Common examples of major life activities that may be impacted at a housing accommodation relate to communications and interactions with others (seeing, hearing, learning, speaking) and using or accessing various areas of the housing accommodation (breathing, walking, performing tasks, and caring for one's self), among others. See 24 C.F.R. § 100.201(b).

Accordingly, the FHA requires housing providers to make reasonable accommodations to their rules, policies, practices, or services, when such accommodations are necessary to afford persons with disabilities an equal opportunity to use and enjoy their housing. It also requires housing providers to make reasonable modifications to physical structures, if necessary, to afford a disabled person with an equal opportunity to use and enjoy their housing. A reasonable accommodation is a change or an exception to the housing provider's existing rules, policies, or practices; and a reasonable modification typically involves an alteration to the housing provider's existing physical structures at the housing facility. The housing provider cannot charge a fee to someone seeking to submit a reasonable accommodation or modification request.

Parking

What is commonly referred to as "handicap parking" is one of the oldest concerns multifamily owners and managers have had to deal with under the FHA. With very narrow exceptions, the correct number of handicap accessible spaces is not set in stone or generally or easily determined by a certain percentage of available vehicle spaces. Rather, essentially each and every resident with a qualifying disability is entitled to use a designated handicap space. A further complication is the potential need for a designated handicap space permitting side loading of wheelchairs or personal scooters, which may necessitate the reduction of the number parking spaces to create the handicap space with side load capabilities. Additionally, the curb may need to be modified (curb cut with ramp) to provide a direct path of access from the parking space to the path of access to the housing building or home. Because of the incredible number of varying designs and potential needs, a precise yes or no on whether to approve or disapprove of a handicap parking space (including its location, signage, designation for use by a particular resident, requirements for free parking versus paid reserved parking) cannot be addressed in this practice note. Finally, for multifamily purposes, the housing provider should ensure at least one handicap space is present (or more, if possible), near the rental office to facilitate applicants with disabilities to consider the community as a potential residence.

The ADA also requires many multifamily communities to have an accessible path of travel from the nearest public access point (think of a bus or train stop near the property), as well as ADA-compliant access to and from the rental office while the applicant is on the property and in the building where the rental office is located, and ADA-compliant restrooms and door accessibility. Check with your FHA lawyer on whether these requirements pertain to your property.

Medical Marijuana

As of the publishing of this practice note, marijuana, including so called medicinal or medically proscribed marijuana, is illegal under federal law (herein referred to as "cannabis"). Cannabis is listed as a Schedule 1 drug under federal law, specifically, the Controlled Substances Act of 1970. While 18 states (as of 2021) have legalized recreational use of cannabis, and 36 states have legalized medical use, possession, and use remains illegal under federal law. Therefore, as a practical matter, a housing provider does not need to approve a request for reasonable accommodation to an applicant or resident to use cannabis (even medically proscribed cannabis) —as use of an illegal substance cannot be a reasonable accommodation contemplated by the FHA.

Moreover, the authors of this practice note have advised clients that the only effective way to minimize the ever-increasing complaints of the smell of smoked cannabis in the multifamily environment is to maintain smoke-free properties. Generally speaking, a smoke-free building makes enforcement of violations for smoking cannabis in apartments or on the property more practical. Offering evidence of a lease violation for smoking in a smoke-free building (cigarettes, pipes, cigars, or cannabis) to a court on a lease violation eviction action can be more easily proven, as opposed to having to prove the odor was from cannabis (which may require lab testing) rather than from any other smoked tobacco products (cigarettes, vapes, hookahs, cigars, etc.).

Finally, as society has become ever more accommodating of cannabis and cannabis use becomes more pervasive in society generally, housing providers will need to weigh the desire to avoid making users of cannabis feel unwelcome by focusing on the federal criminal applications in marketing materials or the application itself. After all, use by some residents of cannabis consumables are unlikely to be known to other residents of the housing community (if multifamily) or to the landlord. It is only the smell of smoked cannabis that is likely to be problematic for the housing provider in multifamily settings.

For general guidance on legalized marijuana and real estate transactions, see State-Legalized Marijuana and Real Estate.

Live-In Aides

As with other reasonable accommodations mentioned in this article, the question of whether the landlord is required to permit a resident to have a live-in aide turns on the reasonable accommodation analysis. Specifically, a live-in aide is a person who will live in the home with the resident but will not be a leaseholder. Upon the request of an applicant or resident (who is elderly and/or a person with a disability, for example), the approval process for the live-in aide should establish that (1) the live-in aide is essential to the care and well-being of the resident, (2) the resident is NOT obligated for the support of the live-in aide, and (3) the live-in aide would not otherwise be living in the housing unit, but for providing needed care to the resident. Despite the presence of (2) and (3) in our recommended analysis, the live-in aide may be a family member under certain circumstances.

The verification for the reasonable accommodation for a live-in aide follows the same regime as discussed elsewhere, namely, when the disability is not obvious, the landlord may require the medical professional's concurrence that the person is disabled (as defined by the federal and local fair housing laws) and the claim or assertion that the resident will benefit from having the aide reside with them. The resident need not specifically describe or itemize the tasks or services to be performed by the live-in aide. Be mindful that the presence of the aide counts toward a maximum occupancy standard for the home, but the aide's income should not be considered when evaluating any landlord created income minimums. Similarly, the aide's income should not be included for any HUD or other government sponsored program where a maximum household income level is implicated (i.e., HCVP or tax credit qualifications).

Finally, no income or credit verification would be required to approve the aide to live in the home (the aide is not liable for payment of rent). However, other tenant qualification criteria the landlord may require from prospective residents may be required from the live-in aide before approving occupancy (e.g., lack of criminal background where permitted). Because the live-in aide is not a tenant, if the tenant dies or moves, the live-in aide has no continuing legal claim to occupy or possess the home after departure or death of the tenant. We therefore recommend that the live-in aide be copied on any notices to the resident if the tenancy is being terminated by the landlord (where permitted by law) to minimize the risk of a judge finding that the live-in aide enjoyed any rights of a tenant.

Assistance Animals

Many common reasonable accommodation requests relate to the presence of an assistance animal. An assistance animal is not a pet. You should think of these—typically, furry, four-legged companions—as more akin to a wheelchair than anything else. Instead of thinking four-legged, think four-wheeled. The animal is a tool that works, provides assistance, or performs tasks for the benefit of

a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Because an assistance animal is not a pet, the housing provider's restrictions on pets in the housing accommodation do not apply, including restrictions on specific breeds of dogs, no pet policies, and mandatory pet rent or pet deposits. Although most readers will have heard stereotypes about the aggressive behaviors of American pit-terrier breeds, no one can truly predict any animal's behavior—especially if based solely on the animal's breed. Accordingly, when presented with a reasonable accommodation request for an assistance animal, the request should never be outright denied simply based on the breed or size of the animal or because the housing provider does not allow pets. Again, a service animal is not a pet. A housing provider cannot charge any pet deposit, pet rent, or other fee for the presence of the animal. See FHEO-2020-01. However, the resident with a service animal still remains responsible for (1) damages caused by the animal in excess of normal wear and tear and (2) for the animal's behavior (barking at night or when the resident is away, aggressive behavior in common areas, and cleaning up after the animal).

In evaluating a reasonable accommodation request for an assistance animal, the relevant inquiries are (1) does the person seeking to use and live with the animal have a disability and (2) does the person have a disability-related need for an assistance animal? If the answer to both of those questions is yes, then the assistance animal should likely be approved. If the answer to either of those questions is no, then the reasonable accommodation request should be denied. Approving reasonable accommodation requests for persons who are either not disabled or do not have a disability-related need for the animal will set an unnecessary and imprudent precedent, which may obligate the housing provider to approve similar requests in the future. Alternatively, if relevant factors indicate that presence of the animal will create an unreasonable burden on the housing provider (demonstrated violent acts, number of animals in the requestor's home, size of the requestor's home, care requirements for the animal, etc.), then an interactive dialogue may be needed to evaluate reasonable alternatives. See FHEO-2020-01.

A disabled person with an assistance animal always remains responsible for maintaining care and control over the animal. If the animal's behavior unreasonably interferes with the rights of other persons in the housing provider's community (neighboring residents, staff, contractors), then the housing provider can request that the owner appropriately restrain the animal (e.g., leash, muzzle, crate, etc.). If the animal causes damage to the housing provider's property (e.g., by urinating, defecating, or vomiting), then the disabled resident is financially responsible for the cost of the damages incurred by the animal. If the animal demonstrates that it is a direct threat to the health and safety of others (residents, staff, visitors, etc.), then the housing provider can require the disabled owner to remove the animal and/or revoke this specific animal's status as a reasonable accommodation. Those instances, hopefully, are rare but would require documented incidents of violence exhibited by the animal such that the animal's presence at the community is no longer reasonable. For HUD guidance on these issues, see FHEO-2020-01.

Related to reasonable accommodation requests for assistance animals are requests for animal-free environments by persons citing conditions such as allergies or asthma. If the requesting party demonstrates the existence of a disability, the relevant inquiry would be the reasonableness of a request to live in a no-animal housing accommodation. This analysis would likely depend on the size of the housing accommodation, the number of neighboring residents at the facility, and a variety of other factors. A housing provider renting a single-family home may be able to accommodate this request more easily than a landlord with a multifamily apartment community. However, the difficulty in "accommodating" this resident is complicated by the fact that an applicant with an assistance animal has a right to rent any available apartment, even the vacant one next to the resident requiring the animal-free accommodation. This is a great example of the need to engage in an interactive dialogue and discuss reasonable alternative solutions with the requesting party. Relevant considerations in this scenario might include—housing the requesting party in a unit farther away from the on-site dog park, implementing routine cleaning of the common areas near the requesting party's unit to mitigate the presence of animal dander, installing an air purifier in the requesting party's unit to mitigate the presence of animal dander in the unit, or allowing the resident to terminate the lease early without the required notice or termination fee, etc. Choosing a reasonable alternative solution may require a fact specific discussion, but the creative solutions are endless.

Service Animals

There are two types of assistance animals: (1) service animals and (2) emotional support animals. The FHA defines a service animal as one trained to perform a specific task (or series of tasks) to aid the person with a disability, typically a physical disability. The ADA has a narrower interpretation, specifically, the ADA restricts

service animals to dogs that are individually trained to do work or perform tasks for people with disabilities or miniature horses providing assistance to certain disabled individuals. 28 C.F.R. § 35.104. Most often, the service animal is a dog trained to do work or perform a task on behalf of a disabled person, which may include guide dogs (seeing-eye dog), a seizure alert dog, or a diabetic alert dog. However, if an animal is trained to perform work or a task on behalf of disabled person that a dog is not trained to do, then the housing provider may need to accommodate the exception. An example of this might be a monkey that is trained to perform skills on behalf of a disabled person that require the monkey to use finger dexterity, something a dog could not do. Typically, service animals are approved as reasonable accommodations without necessitating third-party verification of the existence of the disability or disability-related need because both are readily apparent (e.g., a guide dog for a blind person). See FHEO-2020-01.

The ADA requires that state and local governments, businesses, and nonprofit organizations serving the public allow service animals to accompany people with disabilities in all publicly accessible areas of the facility (28 C.F.R. § 35.136), but the ADA does not mandate those requirements for emotional support animals (ESAs). Service animals must be harnessed, leashed, or tethered, unless the individual's disability prevents using these devices or these devices interfere with the service animal's safe, effective performance of tasks. 28 C.F.R. § 35.136. People with disabilities who use service animals cannot be isolated from others, treated less favorably, or charged fees that are not charged to others without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals. Remember, a service animal is not a pet. Accordingly, a housing provider cannot charge a pet fee for service animal. When it is not obvious what service an animal provides, only limited inquiries are permissible; and allergies or fear of dogs are not valid reasons for denying access or refusing service to people using service animals. Moreover, while landlords and housing boards (homeowners and condominium associations) may generally proscribe rules on pets (such as, the number, size, breed, weight, etc.), those rules may not be applied to assistance animals. Requests for assistance animals must be evaluated based on the disability-related need, not based on "reputational" behaviors of certain breeds or dogs (i.e., bully breeds or rottweilers). For HUD guidance on these issues, see FHEO-2020-01.

Emotional Support Animals (ESAs)

Conversely, an emotional support animal is not required to possess specialized training to assist the disabled person. Rather, it need only provide assistance or emotional support in order to alleviate the effect(s) of a person's disability. HUD does not list all the possible disabilities for which an emotional support animal could be used. Instead, HUD lists the functions of the animal, which include "providing emotional support to persons with disabilities who have a disability-related need for such support." 24 C.F.R. § 5.303(a). If a person with a disability needs to use an emotional support animal, they must first make the request to their housing provider or housing board. Accordingly, each emotional support animal request should be evaluated on an individual basis. See FHEO-2020-01.

The authors of this note have evaluated and advised on any number of ESA requests. We have approved as many as four ESAs for one resident with a demonstrated and individualized need for each ESA and rejected requests for two ESAs when the request did not sufficiently identify the individualized need for each animal. There is no defined limit on the number of ESAs that any one person may have. Likewise, there is no defined species of animal that is eligible or ineligible to be an emotional support animal. Because the disability and disability-related need for an emotional support animal are often not apparent (not readily discernable upon visual inspection), a housing provider may ask the requesting party to submit reliable evidence of the existence of the disability and of the disability-related need. The housing provider cannot ask nor require the requesting party to disclose specific information about the nature or severity of the disability. However, the housing provider may require confirmation from a third-party verifier in a position to know of the requestor's disability status and disability-related need. See FHEO-2020-01.

The presence of a service animal or an ESA may elicit questions from other residents, especially in a no pet community. Responses to any inquiry should not discuss the disability or need of the approved resident and instead, should be limited to something like "the animal is an accommodation under the Fair Housing law."

Source of Income

Although not historically one of the more commonly cited violations, source of income is rapidly becoming a newly protected class in multiple jurisdictions across the United States. If source of income is not a protected class in your jurisdiction, be on the lookout for legislative proposals prompting its inclusion in your jurisdiction's list of protected classes. Although legislative adoption may be swift, it will take substantial time to teach and train those persons who are responsible for reviewing applications for tenancy on the nuances of various sources of income, especially vouchers.

In jurisdictions where source of income is not a protected class, housing providers are permitted to restrict tenancy based on the source of the applicant's income or proof income. This issue frequently arises when an applicant presents a third-party subsidy or a voucher as the sole or partial source of income to pay the rent. In jurisdictions where source of income is a protected class, the housing provider cannot offer different terms or conditions of tenancy nor take any action or inaction to discriminate against an applicant who presents a voucher, a third-party subsidy, government benefits, or another source of income as the basis to qualify for tenancy. Housing providers are strongly cautioned to educate themselves about how to evaluate an application submitted by a voucher holder and, particularly, how to evaluate whether the applicant "income qualifies" for the unit. For example, if the applicant presents a voucher covering the entire monthly rent, then the applicant need not submit any other proof or income (i.e., proof of employment). In that case, the screening criteria related to income qualification (e.g., requiring proof of income three times the monthly rent) is not applicable. If, the tenant presents a voucher covering only a portion of the monthly rent, then the housing provider's evaluation of the applicant's income is a bit more nuanced. For example, if the monthly rent is $1,000 and the applicant presents a voucher that covers $800 per month, then the applicant will be responsible for $200 of the monthly rent. Accordingly, the applicant must only present proof of income for the remaining portion of the rent ($200/month). If the screening criteria require that an applicant show proof of income three times the monthly rent, then this applicant must only show proof of additional income (in addition to the voucher) of $600 per month. If the applicant can do so, then the applicant should pass the income qualification criteria.

To go a step further, housing providers are advised to evaluate the applicant's source of income on a monthly basis and not require strict proof of annual income. This situation often arises when the applicant's proof of income is unemployment benefits, which are typically temporary. If, for example, you happen to know when in the future these unemployment benefits will expire, you should not take that information into account when evaluating whether the applicant income qualifies. You should look at the present month and determine if the applicant has sufficient income, right now, to qualify for the unit. If so, then the applicant income qualifies for the unit. Remember that no source of income is guaranteed or permanent. Anyone could lose their job or their inheritance or any other source of income at any time. Therefore, in jurisdictions where source of income is a protected class, you should evaluate the applicant's income (regardless of its source) in the current month and not add inferences or suspicions about whether the income will last for the entire lease term. If the applicant presents proof of income that meets the minimum thresholds for the applicant's portion of the rent at the time of application, then the applicant income qualifies for the unit.

In addition, housing providers cannot guide an applicant with a specific source of income (e.g., a voucher) toward or away from any particular unit. Housing providers cannot designate or steer voucher holders to one side of the apartment building or property and non-voucher holders to the opposite side of the building or property. Furthermore, if the housing provider happens to know that the tenant's voucher will cover the entire amount of the market rent, they cannot guide that applicant to the most expensive unit, nor make less expensive units unavailable. Housing providers should offer all available units to the voucher holder—the same as they would do with any other applicant. Taking this example a step further, the housing provider cannot increase the rent for the unit because the applicant's maximum monthly voucher payment is greater than the advertised rent for the unit. Treat every applicant exactly the same regardless of their source of income—present all available units at their advertised price(s) and let the applicant choose.

Reasonable Accommodations and Reasonable Modifications – Exceptions to a Housing Provider's Existing Rules and Policies

How to Implement a Reasonable Accommodation Policy

Housing providers are strongly encouraged to develop and implement a written reasonable accommodation and modification policy at their properties. Such a policy, first and foremost, should note that the provider makes reasonable accommodation/modifications for persons with disabilities as necessary to allow them equal opportunity to use and enjoy their housing. Next, the provider should develop a method by which a disabled person can submit a reasonable accommodation request—will a written letter, an email, or a telephone call suffice, or does the requestor need to complete the provider's template form? The importance of maintaining consistency and reliable recordkeeping cannot be stressed enough.

Developing a template reasonable accommodation form will provide for transparency and consistency in the housing provider's review and processing of requests. On the form, the housing provider can and should ask that the requesting party first to disclose the existence of a disability. To be clear, the housing provider cannot ask for specific information about the disability nor require the requestor to disclose the precise nature or severity of the disability. However, the housing provider can ask that the requestor check a box (yes or no) as to the existence of a disability. Also, it should be noted that a housing provider cannot inquire about the existence of a disability from any applicant or resident (or person associated with any applicant or resident), unless the person has submitted a reasonable accommodation request. Secondly, the provider can request information on the nexus between the disability-related need and the proposed reasonable accommodation. If this connection is attenuated or unclear, the provider can ask the requestor to provide additional information.

If the disability is apparent or readily discernable, as in the case of many physical impairments (e.g., the requestor uses ambulatory equipment), then the housing provider should not ask for specific information related to the disability or an obvious disability-related need. If the disability is not readily apparent, in the case of internal impairments (e.g., deafness, susceptibility to seizures, cognitive impairments, etc.), then the housing provider may ask the requestor to explain how the request will accommodate a major life activity and assist in the requestor's use and enjoyment of the property. With non-readily apparent impairments, the housing provider may ask the requestor to provide verification from a reliable third party, to attest to the existence of the requestor's disability and disability-related need for an accommodation. The need and type of qualifications of this third-party verifier may vary by jurisdiction. In some states, the third-party verifier must be a licensed medical professional and must have provided medical care or evaluation to the disabled person in the state in which the disabled person lived at the time the care was provided. In other jurisdictions, the third-party verifier can be anyone in a position to know about the existence of the requestor's disability and their need for an accommodation (this could be a friend, a family member, a therapist, a social worker, a doctor, etc.). It is imperative to know the local rules in your jurisdiction before advising anyone on what documentation must be submitted in conjunction with a reasonable accommodation request.

How to Analyze Reasonable Modification Requests

In certain cases, the cost of structural changes associated with a reasonable modification may be incurred at the expense of the requestor (the disabled person) or may be at the expense of the housing provider. (Find more information here.) It is vital to know who is responsible for the cost of the modification and clearly communicate that information prior to undertaking any alterations to the premises. If the housing facility receives federal funding (e.g., federally subsidized housing), the cost of the reasonable modification may be at the housing provider's expense (there is an analysis of affordability that may need to be performed to determine if the costs of the accommodation should be paid by the housing provider). If the property does not receive federal funding, then the disabled person requesting the modification is responsible for bearing the cost of the alterations. Again, this is a discussion that housing providers should have with the disabled person making the request at the outset, immediately upon review and tentative approval of the reasonable modification request.

If the requestor is responsible for bearing the cost of the alterations, then they may elect to have the housing provider select the contractor to perform the alterations or the disabled person may elect to have their own, independent third party perform the alteration work (in either event at the requestor's expense). If the requesting party chooses to have their independent contractor perform the work, the housing provider can require that the contractor be licensed, bonded, insured, and meet the liability requirements in place for vendors performing work at the property. If the parties agree that the housing provider will contract with the vendor to perform the work, the parties should consider setting up a payment arrangement in advance of the vendor performing the work (either through a lump-sum payment or a series of installments). The housing provider should also notify the requestor that they will be responsible for the cost of returning the reasonable modification (physical alteration) back to its original condition upon move out, if appropriate (not all modifications should require removal at the end of the lease). Upon tentatively approving the requested modification, the housing provider should clearly explain the cost of the alteration as well as the cost to revert the modification back to its original condition upon the requesting party vacating the premises. Housing providers should be aware that substantial delays (while ascertaining

cost estimates) in responding to requested modifications may be interpreted as a rejection of the request. Therefore, due diligence is required in responding to accommodation requests and the process by which a modification to the premises is completed. Positive and accurate communication during the process will generally eliminate complaints for implementation of modification requests.

Considering the foregoing, housing providers should know in advance whether they will be responsible for the cost of reasonable modifications or whether their residents will bear the cost. In addition, housing providers are advised to consider equipping some units at the property with features commonly sought by persons submitting reasonable modification requests—which might eliminate the time, burden, and expense of modifying individual units on a case-by-case basis. However, unless agreed to as part of a development plan, or where required by local law, the housing provider need not keep the accessible unit(s) off the market waiting for a disabled resident to come along. The accessible unit may be rented to a nondisabled applicant. Examples of common reasonable modification requests include:

- Removing carpet for hardwood floor (or vinyl, laminate, tile, or the like)
- Increasing the width of doorways to allow for the use of ambulatory equipment
- Removing a shower and installing a bathtub (or vice versa)
- Installing grab bars in the shower and bathroom
- Adjusting the height of toilets, sinks, showerheads, cabinets, door handles, light switches, countertops, or shelving
- Installing incline/decline slopes in doorways, showers, and balconies
- Obtaining a handicap or reserved parking space

How to Analyze Reasonable Accommodation Requests

When reviewing a reasonable accommodation or modification request, the focus of the analysis should be around the term "reasonable." What is or is not reasonable is often very subjective and fact specific. What is reasonable for one housing provider (a large property management company) may not be reasonable for another (an individual homeowner). The reasonableness of the request can be influenced by a number of factors, all of which housing providers should consider—for example, the financial and administrative burden to the housing provider (if any), if the request would fundamentally alter the nature of the housing provider's operations, if the requested accommodation would pose a direct threat to the health and safety of others, if the request would result in significant physical damage to the property. Bryant Woods Inn, Inc. v. Howard County, Maryland, 124 F.3d 597 (4th Cir. 1997).

The FHA does not protect a disabled person whose tenancy would constitute a direct threat to the health or safety of others or result in substantial physical damage to the property, unless the threat can be eliminated or significantly mitigated by a reasonable accommodation. 42 U.S.C. § 3604(f)(9). If the request is unclear or if the housing provider needs additional information in order to properly evaluate the request, it should notify the requestor in writing and explain the need for such additional information. See Joint HUD and U.S. Justice Department guidance. It is of the utmost importance to engage in an interactive, ongoing dialogue with the requestor. If the requestor has established the existence of a disability, the reasonable accommodation or modification request should not be outright denied. Rather, the housing provider should offer reasonable alternatives to the requestor's inquiry in order to accommodate the disability-related need in a way that is not unduly burdensome to the landlord. The parties are encouraged to develop creative alternatives if the requestor's initial ask is not feasible for the housing provider. A quick way to prompt the filing of a discrimination complaint is to either outright deny a disabled person's reasonable accommodation request (offering no alternatives or no explanation) or to ignore the request and/or fail to timely engage in an interactive dialogue.

HUD Enforcement

As noted above, HUD, through FHEO, receives and investigates complaints under the FHA and determines if there is reasonable cause to believe that an act of discrimination occurred or is likely to occur. This process is often time-consuming and can be expensive for housing providers. For detailed guidance on navigating the HUD enforcement process and best practices for avoiding a discrimination complaint under the FHA, see The Fair Housing Act: Enforcement Actions.

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Gwendolyn's practice in real estate law focuses on litigating landlord-tenant disputes, particularly, representing residential and commercial landlords of all sizes. She spends the majority of her time in court prosecuting and defending cases on behalf of large property management companies, medium to small business owners, and individual home owners. She competently and aggressively leads clients through the entire litigation process. Gwendolyn has also honed a specialty in resolving housing disputes for condominium and cooperative housing associations. Outside of the courtroom, she dedicates considerable time to the transactional sphere, which includes lease drafting, non-disclosure agreements, and confidential settlements outside of court.

Gwendolyn frequently conducts presentations on the nuances in landlord-tenant law across the three local jurisdictions (VA, MD, DC) and best practices for landlords to avoid a Fair Housing complaint.

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John Raftery is currently the Managing Principal of Legal Operations and a member of the Office of Managing Principal – which is responsible for the legal operations of the firm and is directly responsible for attorney retention, management as well as management of the firm's practice groups. John is also a member of the firm's management committee.

Leveraging years of counseling clients in real estate litigation, fair housing matters and business law, John serves as a trusted advisor to businesses, real estate owners and management companies. John provides strategic, practical and industry-based advice to clients negotiating or litigating through legal obstacles and difficulties– always with keen focus on cost benefit parameters. John's clients include large and small property management industry partners, managers and owners of residential and commercial real estate, C-level officers of small and midsize corporations, directors of not-for-profit organizations and entrepreneurial individuals seeking cost-conscious and practical representation.

John is sought by business leaders for representation and guidance on all matters involving real estate, leases, construction, landlord-tenant disputes, fair housing training, investigations and litigation, mold and pest-infestation claims, business torts, discrimination claims, and business transactions. He focuses on establishing industry-focused partnerships with individuals and organizations, advocating for his clients through cost-effective representation - including offensive litigation when necessary. His experience as a litigator spans most trial courts in New York, Virginia, Maryland, and the District of Columbia. Earlier in his career, John served as a special trial attorney for the U.S. Department of Justice.

A recognized authority on fair housing and landlord-tenant matters (commercial and residential), John lectures to local and national industry associations. The thrust of John's programs are squarely focused on education and avoidance of claims through a practical analysis of applicable law and regulations coupled with real life examples to illustrate the applicable issues.

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Ryan Patino is a Landlord Representation attorney. His focus is on counseling corporations and small businesses in matters involving complex real estate transactions, litigation, and compliance with federal and D.C. housing laws. Mr. Patino handles all aspects of litigation on behalf of real estate development and property management companies, which includes landlord and tenant matters, contract disputes, defending against allegations of discrimination, and administrative cases. He is a decisive and aggressive litigator who is adept at determining the financial value of a given case and designing a strategy that leads to the best possible outcome for his clients. Aside from litigation, Mr. Patino also assists clients with negotiating and drafting residential and commercial leases, secondary lease documents, purchase and sale agreements, bylaws, and contractor agreements.