



2025 HADA Seminar

Housing Authority Defense Attorneys

2025 Fair Housing Trends

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Meet Your Speaker



Brian Adkins

- Multifamily focus: Operational Legal Issues
 - Fair Housing
 - Habitability
 - Landlord-Tenant
- Prior experience:
 - In-house for nationwide property/owner manager with significant fair housing issues
 - Outside counsel for property owners and managers nationwide for the past 13+ years
 - Defend property owners and managers in fair housing cases and administrative agency complaints throughout the country

Today's Agenda

- Overview of Fair Housing Law
- Fair Housing Trends
 - Current Administration
 - Criminal Records/Activity
 - Source of Income
 - Artificial Intelligence/Algorithms
 - Credit Screening
- Q&A Session

Fair Housing Law

Fair Housing Law

- Prohibits discrimination in the sale, rental and financing of housing based on protected classes:
 - Race
 - Color
 - National origin
 - Religion
 - Sex (including gender identity and sexual orientation)
 - Familial status
 - Disability
- Disparate Treatment/Disparate Impact
 - Treatment: the more straightforward way to prove
 - Impact: does a rule, policy, etc. disproportionately impact individuals from a protected class?
 - *More on this later*

Fair Housing Law

Federal Fair Housing Act Enforcement vs. State

- HUD investigates complaints brought where they have jurisdiction (Section 8, Rehabilitation Act, etc.)
- HUD can investigate other complaints or refer to state agencies
- State agencies investigate complaints where there is a more particularized complaint related to state law or referred by HUD
- Complaints can be initiated with HUD or State agency
- Investigations: position statements, witness interviews, document productions, subpoenas, etc.



Fair Housing Law:

Race/Color/National Origin

- Property Management examples:
 - **Ex 1:** Tenant asks for and is denied amenities, services, etc. offered to tenants of other races/ethnicities;
 - **Ex 2:** Testers show up to view available units; white tester is shown an available unit that is then not shown to a tester who is a person of color who is otherwise qualified;
 - **Ex 3:** Prospect who is a person of color sends application with picture, application is denied;
 - **Ex 4:** Denying housing to a person on a visa or Permanent Resident card; requiring a Social Security Number.

Fair Housing Law:

Religion



- Property Management examples:
 - **Ex 1:** Not allowing religious materials or decorations to be posted in areas where other materials are (or not allowing other types of religious materials i.e. one religion favored);
 - **Ex 2:** Denying housing, services, amenities to a person because they wear a hijab, headscarf, turban, etc.
 - **Ex 3:** Not investigating or taking action on a complaint from a resident who states that they are being harassed because of their religion (called a “terrorist” etc.)

Fair Housing Law:

Sex

- Property Management examples:
 - **Ex 1:** Refusing to rent to someone because of their gender, gender identity or gender expression;
 - **Ex 2:** Failing to investigate a complaint of sexual harassment by a tenant against another tenant;
 - **Ex 3:** Requiring sexual favors in exchange for preferred services or amenities;
 - **Ex 4:** Requiring a guarantor for an otherwise qualified prospective female tenant when you did not for a similarly qualified prospective male tenant.

Fair Housing Law: Familial Status

- Property Management examples:
 - **Ex 1:** Requiring a couple to move out of a studio unit after they have had a baby due to occupancy standards;
 - **Ex 2:** Not allowing children to play in a courtyard when there is no where else for them to play at the property;
 - **Ex 3:** Imposing age-related community rules: i.e. no children under age 14 playing alone.



Fair Housing Law: Disability

- Property Management examples:
 - **Ex 1:** Not offering a 2nd floor unit to a person with a mobility disability because in your opinion they “can climb the steps”;
 - **Ex 2:** Not allowing a person with a wheelchair to place a ramp outside of their unit to allow them entry;
 - **Ex 3:** Denying an emotional support animal to a person with a disability-related need.

Reasonable Modification

FEHA requires housing providers to allow modifications to a property if necessary and related to a person's disability

- Can require approval of plans (permitting);
- Can require return of property to original condition;
- At tenant's expense (for market rate housing, subsidized housing may require landlord expense);
- **Examples:** ramps, grab bars, flooring, lower counters, etc.



Reasonable Accommodation

FEHA requires housing providers to allow reasonable accommodations in rules, policies, practices or services when necessary to provide a person with a disability equal opportunity to use and enjoy a dwelling.

- Accommodation request required to be made to be actionable;
- Can verify disability (if not readily apparent) and disability-related need;
- ASL: You cannot refuse to speak or engage with a person who communicates using American Sign Language or other auxiliary aid - use TDD or TTY system or other relay service, text or write.



CLE Polling Question

Which agencies are usually charged to investigate claims of fair housing law violations?

- A. IMF (Impossible Missions Force)
- B. HUD/State Agencies
- C. CIA/MI6
- D. DOGE

Fair Housing Trends

Current Administration

The Trump Administration and HUD have taken several actions since January 20, 2025:

- *EXECUTIVE ORDERS*
- *FUNDING CUTS*
- *REORGANIZATION OF THE DOJ*

Current Administration

What can we expect in 2025-2028?

- Administration Priorities
- HUD
- State Agencies
- Private Agencies/Organizations

CLE Polling Question

Which theory of liability did the Trump Administration recently target via Executive Order?

- A. Pythagorean theory
- B. Theory of Relativity
- C. Game Theory
- D. Disparate Impact theory

Criminal Records/Activity

- “Second Chance” Laws
- Lease Language re: Criminal Activity
 - On Property?
 - Statistically, POC arrested at higher rates
 - Lease terms that are facially neutral may have a disparate impact
 - Arrest v. Conviction
 - VAWA issues – Sex/Gender discrimination

Source of Income Discrimination



California Fair Employment & Housing Act

- January 1, 2020: added people utilizing federal, state, or local housing vouchers as a protected class
- Cannot refuse to rent or otherwise discriminate against someone based upon use of voucher
- Security Deposit assistance programs included
- All legal verifiable sources of income must be considered/included in affordability calculation

“Junk Fees” *aka* “Necessary Fees”

- Prior Administration: “eliminate ‘junk fees’ that increase costs for consumers”
- Prior HUD Secretary “Open Letter” to Rental Housing Industry:
 - Nonbinding best practices for the industry
 - Call-to-action to states to enact laws
 - Questions legitimacy of many fees charged, especially application fees
- Promotion of state actions addressing “hidden & unfair fees” - CO, RI, MN, CT, & ME laws, MT & CA bills as examples.

“Junk Fees” *aka* “Necessary Fees”

- Allow residents to provide their own screening reports
- Make clear in leases what tenants will pay (and in advertisements)
- Eliminate duplicative, excessive, and undisclosed fees at all stages of leasing
 - Admin fees; processing fees; convenience fees
 - Limit allowable fees and deposits at move-in

Artificial Intelligence/Algorithms

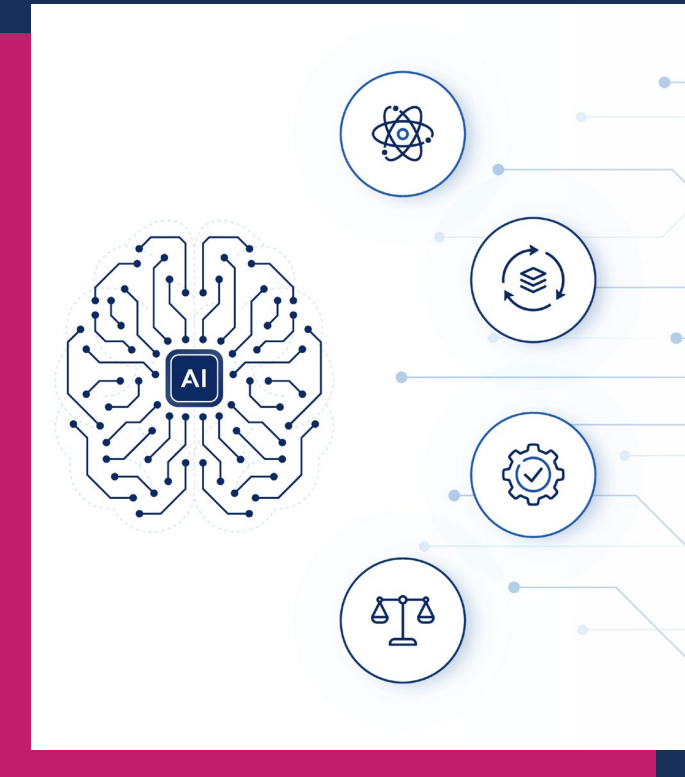
AI: “Teaching computers to think and act like humans”

- All humans have biases
- “Garbage in/garbage out”
 - Discrimination in/discrimination out



Artificial Intelligence/Algorithms

- Applications:
 - Credit Reports and Screening:
 - Discriminatory screening?
 - Use of Credit Scores
- Advertising:
 - Use of Generative AI
 - Pictures generated discriminatory?
 - Comparative Claims
 - **Ex:** “Our residents are 95% happier”
- Hiring:
 - Who is getting screened out?
- Privacy issues



Artificial Intelligence/Algorithms

What to do?

- Read/Update your Terms of Service
- Acceptable Use Policy
 - 11% of employees using ChatGPT
 - 4% have copied private information into ChatGPT
- Read your contracts
 - Indemnification language
 - Commercial use of outputs
 - IP Ownership
- Ensure 3rd Party Contractors do not own your data
- Disclose to Tenants
 - Many states have mandatory disclosure requirement

CLE Polling Question

Which type of discrimination will have the most claims in 2025?

- A. Disability
- B. Race
- C. Sex
- D. Source of Income

Questions?

To contact Brian Adkins:
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Thank You For Joining



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