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DEFH - FAIR EMPLOYMENT AND HOUSING COUNCIL

HOUSING DISCRIMINATION: VIEW FROM THE DEFENSE BAR

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1. The “defense” perspective - compliance
2. Compliance resources are extremely limited:
 - a) Appellate authority rare.
 - b) DOJ/HUD Joint interpretive guidelines - 2004 and 2008.
 - c) HUD case reports - anecdotal
 - d) DFEH press releases
3. Issues of concern to owners:
 - a) Being fair but not being abused
 - b) Continuing confusion with ADA
 - c) Risk - Enforcement sources - DOJ/HUD, DFEH, Fair Housing Councils, private action
4. Regulations would be extremely helpful to inform property owners - where are the boundaries?
 - a) Occupancy limits
 - b) What rules regarding children are OK? pool restrictions, health club or rec room rules on unattended children?
 - c) Segregation of “adult” and “family” facilities.
 - d) Protection of children from Megan’s Law offenders...
5. HUD Disparate Impact rule
 - a) Mt. Holly NJ case
 - b) Could failure to seek FHA certification violate disparate impact test?

6. Disability accommodations -
 - a) The disability:
 - i. What is acceptable documentation of a non-obvious disability
 - ii. Must the health care provider practice in the area of the claimed disability
 - iii. How far will regulations go in defining a health care provider...
acupuncturist, herbalist, Asian medicine, spiritualist, counselor
(unlicensed), social worker
 - iv. Can a landlord/HOA ask for periodic updates if disability not permanent
 - b) The accommodation:
 - i. Who pays for what? Interior modifications, common area, structural, non-structural.
 - ii. What must resident restore or not restore?
 - iii. Can HOA/landlord require deposit to secure restoration?
 - c) Nuisances, and protecting other residents from the accommodation
 - i. Noise vs. allergies - hard floors
 - ii. Companion animals - limitation or clarification needed. "Client would benefit from a companion (ferret, dog, pig, ?)" or "Client needs SOME pet..."
 - iii. Clarification of emotional disabilities?
 - iv. Medical marijuana in no-smoking building?
 - v. Caregivers - esp. senior communities - how much can community protect residents without refusing the accommodation of caregiver?
 - d) Requests for reassigned parking where parking is deeded or included/specified in leases.
7. Regulations - safe harbor?
8. Advisory input from DFEH
9. Thanks.