DEFH - FAIR EMPLOYMENT AND HOUSING COUNCIL

HOUSING DISCRIMINATION: VIEW FROM THE DEFENSE BAR

FEBRUARY 6, 2014

1. The “defense” perspective - compliance

2. Compliance resources are extremely limited:
   a) Appellate authority rare.
   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.