

ANDERSON KILL Co-Op, Condo & Real Estate Advisor

Sexual Harassment in Housing: Co-Op and Condo Boards Can Be Liable

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In recognition of the 50th anniversary of the passage of the federal Fair Housing Act and in light of the momentum following the #MeToo and #TimesUp movements,

the Department of Housing and Urban Development and the Department of Justice have formed an interagency task force to combat sexual harassment in housing across the country.

42 U.S.C. §3604(b) states that it shall be unlawful to “discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.” Courts have long recognized sexual harassment as a form of sexual discrimination. Under the Fair Housing Act, the DOJ has filed or settled nine sexual harassment cases and obtained \$1.6 million in relief since January 2017. And just last month, HUD

reached three settlements with landlords across three states to recover \$125,000 for victims of sexual harassment.

There are two types of sexual harassment in the housing context. The first type is quid pro quo sexual harassment, where a housing provider or its agent conditions retention of housing or housing-related services on a victim’s submission to sexual conduct. For example, in one of the HUD settlement cases, a California landlord made unwanted sexual advances toward a male tenant and ultimately evicted him for refusing his advances. This settlement highlights the fact that the Fair Housing Act protects both men and women, and protects against same-sex sexual harassment as well. That agreement, which involved a \$12,000 payment by the housing provider and an agreement to attend fair housing training, can be read on HUD’s website.¹

The second type of sexual harassment in housing is hostile environment sexual harassment, where a housing provider, its agent, or even another tenant, engages in sexual behav-

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ior of such severity and pervasiveness that it results in an intimidating, hostile, offensive, or otherwise significantly less than desirable tenancy. Another case recently settled by HUD involved a Virginia housing provider that failed to take reasonable steps to prevent the sexual harassment of a female tenant by a male tenant who was making unwelcome advances, whistling at her, and following her around the apartment complex. The housing provider promised to pay the tenant \$37,500 and to take steps to adopt a sexual harassment policy.²

This settlement highlights the fact that a property owner not only has a duty not to engage in sexual harassment, but also to ensure that its employees or agents and even other tenants do not engage in such behavior.

The takeaway for co-op and condo boards is that as housing providers, they too are responsible for ensuring compliance with the Fair Housing Act. Co-op and condo boards can be held liable if they know or should have known that managing agents, superintendents, contractors, brokers and even other tenants are sexually harassing a resident, tenant,

or applicant to the building, and fail to take action to stop it.

There are a number of practices that co-op and condo boards can undertake to avoid such liability. Such practices include:

- Adopting a policy against sexual harassment.
- Developing a process for applicants and tenants to report sexual harassment.
- Establishing sanctions for those who engage in sexual harassment.
- Educating employees, contractors, and residents about your sexual harassment policy and the Fair Housing Act.
- Enforcing your sexual harassment policy.

Should you have any further questions about how to implement such practices, Anderson Kill is here to help. ▲

ENDNOTES

¹ <https://www.hud.gov/sites/dfiles/PA/documents/Redacted%20California.pdf>

² https://www.hud.gov/sites/dfiles/PA/documents/Redacted%20Virginia_.pdf

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