

New Law Would Expand Definition of Sexual Harassment

The U.S. Department of Housing and Urban Development recently proposed a new rule that would create additional protection for victims of sexual harassment. It is likely this proposal will become law and will hold apartment owners responsible for any such action committed by their employees or contractors. The proposal attempts to define sexual harassment and identifies two actions that would violate provisions of the Fair Housing Act:

- A landlord, manager or member of the on-site staff approves a rental application or provides certain rental benefits an applicant upon conditional submission to unwelcome sexual advances, requests for sexual favors or other virtual or physical conduct of a sexual nature.
- The property creates a "hostile environment" by subjecting residents to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct.

Additionally, the rule would set standards in determining what conduct constitutes sexual harassment. The proposal states that the "totality of the circumstances" of an individual in question would include such things as the conduct, nature, severity, duration and location of the conduct. It also would include the identity, number, ages and relationship of the persons involved.

Consistent with previous court rulings, the rule would hold owners responsible for sexual harassment committed against applicants or residents by on-site employees, contractors or other residents.

The proposal would even hold owners responsible for sexual harassment committed by residents' guests if it is found that the owner: knew or should have known of the harassment; did not take immediate corrective action; and had a duty to take such action based on existing lease or statutory obligations.

Considering the likelihood that this rule will become law, apartment owners and managers should adequately train their employees in the area of sexual harassment. They also should meet with their contractors and agents to review contracts and jointly identify each party's responsibility for such conduct.

By Scott M. Clark, Esq.

3008 N. 44th Street, Phoenix, AZ 85018

602.957.7877

sclark@scottclarklaw.com

<http://www.scottclarklaw.com>

April 2001 / Apartment News