

True or False?

The Fair Housing Act does not cover allegations of discrimination based on sexual orientation, gender identity and gender expression.

While the technical answer to this question is True, HUD has decided to take a much closer look at allegations of discrimination on these bases and to shoe horn them, if possible, into its other protected categories prohibiting discrimination on the basis of race, color, religion, sex, national origin, familial status and physical and mental disability.

For example a recent HUD guidance advises its regional directors that if a landlord evicts someone who is gay and the landlord believes the tenant will infect other residents with AIDS, then HUD will consider the complaint to be one based on a perceived disability, rather than sexual orientation. Similarly if a prospective tenant alleges in her complaint that she was denied an apartment because she wears masculine clothes and does not conform to stereotypical notions of how a woman should behave, the agency will accept that as a complaint of sex discrimination – even if her complaint, on its face, alleges that she was discriminated against because of her gender identity.

HUD is also advising its field offices to enter all complaints of discrimination because of sexual orientation, gender identity and gender expression into its databases so that they can be tracked to determine the extent of the problem. Look for HUD to propose amendments to the Fair Housing Act in the next couple years based on the results of this tracking system.

As always, the best way to protect yourself and your property from these discrimination complains is to ensure that all decisions about a tenancy are based solely on whether the resident meets your business-related standards such as ability to pay the rent and be a good member of the apartment community.