Why are you telling me this?

• Many recent requests for information by attorneys and housing providers.

• Housing providers, etc, experiencing aggressive testing calls.

• Many new complaints being filed based on testing.
What is testing?

- Testing is when an organization or person uses scenarios to measure a housing provider’s compliance with Fair Housing laws in a controlled way.

- Testing is an important tool for fair housing organizations to use to identify non compliance with the law.
Fair Housing Org (FHO) decides to test Malibu Apartments (MA) because FHO hears MA has less than 5% African American tenants despite being in a part of town with 40% African American population. FHO sends three testers to inquire about apartments at MA, two black, and one white. Each tester is equipped with a similar but slightly different background stories and nearly identical financial and rental history, so that really the only relevant difference between them is race. After the test each of the three individuals records their experiences. After, a professional compares the objective reports, looking specifically to see if the two black testers were treated differently than the white tester.
What is a testing organization?

• Many types of organizations use testing in different ways.
• The NEOC used to do testing: post-filing testing.
• The Fair Housing Center of NE-IA has the only testing program headquartered in the two state area. They contract to do testing - 20 years experience, contracts with HUD, other agencies, and several cities in Nebraska and Iowa.
How can testers file a housing complaint?

• To file a fair housing complaint the NEOC (or HUD) must have Jurisdiction.

• Jurisdiction:
  • Timely
  • Standing
  • Respondent covered by Act
  • Issue must be illegal under the Act
Who has Standing?

• Typically somebody has standing to file a fair housing complaint if they are a “person” who is entitled to seek a remedy for an illegal act because they were harmed, or about to be harmed, as a result of that act.

• The fair housing laws refer to this type of person as an “aggrieved person.”
Aggrieved Person

• Section 20-314: Person shall include one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

• So an Aggrieved Person is any of those things (sorry, I mean “people”) above who has or is about to experience harm or injury as the result of an illegal act under the Fair Housing laws.
How is a tester harmed/injured?

- Havens v. Coleman, 455 U.S. 363 (1982) - a fair housing tester who is discriminated against can sue under the federal Fair Housing Act.

  - Even if the tester had no intention of going through with the rental/purchase.

  - “A tester who has been the object of a misrepresentation made unlawful has suffered injury in precisely the form the statute was intended to guard against. . .”
How is a testing organization harmed/injured?

• Diversion of Resources

  • Havens: Diversion of resources represents the harm that is caused when resources are diverted away from other programs to address the housing provider’s discriminatory housing practices.

  • This can include time diverted to counseling, investigation, legal efforts, education and outreach related to the discriminatory act, or other acts meant to counteract the discrimination.
How is a testing organization harmed/injured?

• Frustration of Mission

  • *Havens*: Injury to “non-economic interest in encouraging open housing.” Costs of programs necessary to counteract the effects of discrimination.

  • Havens and subsequent cases have established that an organization must show BOTH a Diversion of Resources and a Frustration of Mission to have standing to file a complaint or lawsuit. Arguments against standing would have to kill just one of these two, not both.
How to thwart testing!

• Don’t discriminate.

• No, seriously, just don’t do the stuff you aren’t supposed to do and you won’t fail testing AND (bonus) you won’t discriminate against actual people interested in your property.

• Tricky Testers: Be wary of saying “no” over the phone. (HINT: You shouldn’t be doing this anyway. See the first two bullets.)
  • “interactive process” “reasonable alternatives” - things you are obligated to do make “no” answers problematic re: reasonable accommodation requests, for instance
Thank you!

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