

# VERMONT APARTMENT OWNERS ASSOCIATION, LLC

A Statewide Trade Association

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## NEWSLETTER

March 2003

### BURLINGTON PASSES CHARTER CHANGE

Burlington narrowly passed charter changes which would permit Burlington to create different rules for certain aspects of landlord/tenant law. The vote was 4,070 yes - 3264 no.

The charter would extend notice of no cause evictions for tenants without a lease from 60 days to 90 days if the tenancy is less than two years, and from 90 days to 120 days if the tenancy is more than two years.

The charter was also amended to prohibit increases in rent without advance written notice of at least 90 days.

**These changes do not go into effect until they are approved by the legislature.**

There has been no legislative approval at this time. Vermont Apartment Owners will oppose the legislative approval of the charter change.

### LEGISLATIVE AGENDA

Vermont Apartment Owners is pressing ahead with its legislative agenda. We have prioritized three legislative initiatives. First, defeat the Burlington charter change. This is critical to avoid similar charter changes in other towns. Second, clarify the definition of actual notice so that the landlords do not have to prove that the tenant receive the notice. Third, amend Vermont Fair Housing laws to provide that landlords participation in section 8 will remain voluntary.

The initiative on the voluntary nature of section 8 is new. It is triggered by the Human Rights Commission's support for a suit against a landlord who did not want to participate in the program. Notwithstanding the position of the Human Rights Commission, a number of section 8 housing providers want the program to remain voluntary. This is because they have excellent landlord participation. They are concerned that the programs user friendly reputation will suffer if landlords are forced to participate in the program if requested to do so by a tenant.

We anticipate that there will be significant support for this proposal from the various section 8 housing providers. We are currently discussing the details with various legislators. The introduction to this legislation will no doubt cause quite a stir. We will advise you if public testimony is necessary.

### **BILL PROVIDES FOR RENT ESCROW IN BOTH COMMERCIAL AND RESIDENTIAL LEASES**

H. 403 would make available to residential **and** commercial landlords the rent escrow procedure which is currently only available to residential landlords.

We support this legislation. There is no logical reason why the rent escrow provisions should only apply to residential rentals.

### **DISCRIMINATION ISSUES REVISITED IN LIGHT OF SEPTEMBER 11 ATTACKS**

In response to the widespread concern of future terrorist attacks, landlords and property managers throughout the country have been developing new security procedures to protect their buildings and residents. Many have educated their residents on the signs of possible terrorist activity and how to communicate security concerns to management or law enforcement. Landlords and property managers are working to keep their buildings safe, but at the same time they are responsible for making sure their efforts do not infringe on the fair housing rights of current or potential residents. Since the attacks of September 11, 2001, persons who are, or are perceived to be, Muslim or of Middle Eastern or South Asian descent have reported increased discrimination and harassment, sometimes in connection with their housing. To help address this growing concern, the following is a review of federal fair housing laws and answers to some questions regarding housing discrimination that have been raised since the events of September 11, 2001.

#### **The Fair Housing Act**

The Fair Housing Act prohibits discrimination because of race, color, religion, sex, national origin, disability, and familial status in most housing related transactions. Further, the Act makes it unlawful to indicate any preference or limitation on these bases when advertising

the sale or rental of a dwelling. The Act also prohibits harassment of anyone exercising a fair housing right and retaliation against an individual because s/he has assisted, or participated in any manner, in a fair housing investigation.

### **Screening and Rental Procedures**

It is unlawful to screen housing applicants on the basis of race, color, religion, sex, national origin, disability, or familial status. In the wake of the attacks of September 11, 2001, landlords and property managers have inquired about the legality of screening housing applicants on the basis of their citizenship status. The Act does not prohibit discrimination based solely on a person's citizenship status. Accordingly, asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the Fair Housing Act. In fact, such measures have been in place for a number of years in screening applicants for federally-assisted housing. For these properties, HUD regulations define what kind of documents are considered acceptable evidence of citizenship or eligible immigration status and outline the process for collecting and verifying such documents.\* These procedures are uniformly applied to every applicant. Landlords who are considering implementing similar measures must make sure they are carried out in a nondiscriminatory fashion.

*Example 1: A person from the Middle East who is in the United States applies for an apartment. Because the person is from the Middle East, the landlord requires the person to provide additional information and forms of identification, and refuses to rent the apartment to him. Later, a person from Europe who is in the United States applies for an apartment at the same complex. Because the person is from Europe, the landlord does not have him complete additional paperwork, does not verify the information on the application, and rents the apartment. This is disparate treatment on the basis of national origin.*

*Example 2: A person who is applying for an apartment mentions in the interview that he left his native country to come study in the United States. The landlord, concerned that the student's visa may expire during tenancy, asks the student for documentation to determine how long he is legally allowed to be in the United States. If the landlord requests this information, regardless of the applicant's race or specific national origin, the landlord has not violated the Fair Housing Act.*

\*See HUD Regulations at 24 CFR 5.506-5.512

### **Rules and Privileges of Tenancy**

A landlord must make sure s/he enforces the rules of tenancy in a nondiscriminatory manner. A landlord's response to a violation of the rules must not differ based on the person's race, religion, or national origin. A landlord may not impose more severe penalties because the person is Muslim, of Middle Eastern or South Asian descent.

While landlords must be responsive to complaints from tenants, they should be careful to take action against residents only on the basis of legitimate property management concerns. Landlords should consider whether a complaint may actually be motivated by race, religion, or national origin.

*Example: A landlord receives a complaint from a tenant who claims a Muslim tenant is "having a group of about five or six other Muslim men over to his apartment every Monday night." The tenant claims "the men appear unfriendly" and thinks they may be "up to something." However, the tenant's visitors do not disturb the other residents in their peaceful enjoyment of the premises. A landlord could be accused of religious discrimination if s/he asks the tenant to refrain from having Muslim guests when there is no evidence of any violation of established property management rules.*

Landlords must also give all tenants the same privileges. A landlord cannot limit the use of building amenities such as community rooms, gyms, etc. based on person's race, religion, or national origin.

*Example: A landlord typically allows building residents to reserve the community room for activities such as birthday parties. When a tenant who is Arab American asks to reserve the building's community room for a birthday party for his son, his request is denied even though the room was available. Later, the landlord grants the reservation to a tenant who is white. By failing to give persons of different national origins the same privileges, this landlord could be accused of national origin discrimination.*

## **Responding to Problem Tenants**

The Fair Housing Act does not protect tenants who are unruly or who pose a danger to other residents. Landlords are allowed to take action against persons whose behavior is disruptive to the neighborhood, including evicting such persons from the property. Of course, landlords must have the same eviction procedures for all tenants. Any disciplinary action taken must be on the basis of a person's behavior or other violations of property management rules, and not on race, national origin, religion, sex, color, disability, or familial status.

Landlords also do not have to rent to persons who do not financially qualify for the housing and may evict tenants who are delinquent in their payments. As long as the landlord uses the same standards to determine if an applicant is financially suitable and takes the same action against all persons who fall behind in payments, the landlord's actions would not violate the Fair Housing Act.

## LANDLORDS DEVELOP COURT WEBSITE

Vermont Apartment Owners President Stuart Bennett has developed a website through which you can check to see if an individual has cases pending in any Vermont court (criminal, civil, family or federal bankruptcy). The site was initially developed as a tool to help landlords screen their tenants and manage their property. However, it has much broader applications for employers and other people who find it helpful to know whether an individual is currently involved in a court action.

The site is **[www.vtcourtsearch.com](http://www.vtcourtsearch.com)**. It is in the final stages of development. Apartment Owners can currently access the site for free by following the following format.

1. Sign in with the user name Aapartmentowner#1";
2. Password is Avermont@ (please note that this password **is** case sensitive).

## SEND US YOUR E-MAIL ADDRESS

It will enhance Vermont Apartment Owners= ability to communicate quickly with members if we have your e-mail address. Please e-mail it to Stuart Bennett at [sbennett@vermontapartmentowners.org](mailto:sbennett@vermontapartmentowners.org) . This way we can keep you abreast of fast breaking developments. We can also e-mail you newsletters.

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