

FAIR HOUSING COACH

Train your staff to avoid costly discrimination complaints

MARCH 2025

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11 Recordkeeping Best Practices for Minimizing Fair Housing Liability

Documentation is a central element of any fair housing compliance program.

Sooner or later, somebody is bound to accuse you of discrimination. If and when that time comes, the mere fact that you comply may not be enough to protect you. You'll also need *proof* of compliance.

In most cases, that proof will come in the form of records documenting that your rental decisions, policies, and practices accord with the principles of equal opportunity. Unfortunately, coming up with these records isn't always as simple as it might sound.

Documentation is almost impossible to create after the fact. Keep in mind that discrimination allegations and investigations are often accompanied by detailed written records describing the specific conduct by the landlord or its agents on which the allegations are based. While this

is especially true for cases grounded on the use of fair housing testers, rental applicants or tenants who file fair housing complaints are also apt to have vivid recollections of the discrimination they allegedly suffered at the hands of a landlord. By contrast, landlords who deal with hundreds of prospects and tenants a year may have only hazy memories of the accuser and events alleged to have happened.

That's why landlords need systems that generate written or digital records documenting their actions. In addition to providing the basis of your legal defense, these records advance compliance by enabling you to proactively monitor your business operations, identify potentially discriminatory practices, and implement measures to correct the prob-

Document the fair housing training you provide to staff, including orientation training.

lems before they lead to discrimination complaints or enforcement action.

Accordingly, this month’s lesson is about how to create the documentation you need to minimize fair housing liability risks. We’ll outline 11 best practices for fair housing compliance documentation. At the end of the lesson, you can take the *Coach’s Quiz* enabling you to measure how well you’ve learned the material and apply it to real-life situations.

WHAT DOES THE LAW SAY?

Fair housing laws make it illegal to discriminate on the basis of race, color, sex, disability, familial status, religion, and other grounds specified under state or local law. Documentation is a discipline that helps landlords make a record showing that they comply with these laws.

The term “documentation” might have certain connotations for landlords who participate in federally assisted housing programs. Thus, for example, the U.S.

Department of Housing and Urban Development (HUD) requires landlords who participate in the Housing Choice Voucher program to maintain records of income and rent determinations, consent forms, and lease agreements to ensure compliance with program rules.

By contrast, documentation is not an express requirement under fair housing laws. In the fair housing context, documentation is actually a best practice. But while it’s not an offense by itself, failure to document compliance with fair housing laws does make you more vulnerable to allegations, as well as more likely to commit offenses.

That’s why documentation is a central element of any fair housing compliance program. It requires a systematic, well-thought-out approach that affects almost every aspect of your multifamily housing operations, including but not limited to leasing, marketing, maintenance, and tenant relations. The good news is that you don’t have to engineer such a sys-

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tem from scratch. You merely have to integrate fair housing compliance into the system you already use for maintaining important business records like rent payment, screening, tax, and insurance documents.

11 FAIR HOUSING DOCUMENTATION BEST PRACTICES

Here are 11 best practices for documenting fair housing compliance that are largely media-agnostic, meaning that you can follow them regardless of whether you maintain paper or electronic records. However, the medium in which you maintain your own records may affect how you actually implement each best practice.

Best Practice #1. Establish a Written Fair Housing Policy

The starting point is to recognize exactly what you're documenting — namely, your community's lack of tolerance for discrimination and its commitment to follow the principles of fair housing and equal opportunity in all aspects of operation.

Compliance Strategy: Express this commitment in a statement that's part of a written nondiscrimination policy on which you train your staff. Strategic pointers for disseminating your nondiscrimination policy:

- Prominently display the policy in a conspicuous location where all rental prospects, testers, tenants, fair housing investigators and other visitors will see it;
- Include the policy in your rental applications and leasing agreements; and
- Post it in your leasing and management office, alongside the fair housing poster required under HUD regulations.

Best Practice #2. Implement Written Procedures for Sensitive Operations

The key to fair housing compliance is translating the principles of your antidis-

crimination policy into concrete action and day-to-day operation. That's precisely what written procedures enable you to do. Explanation: "Leasing agents, managers and other staffers who aren't prepared to handle tricky situations may say or do something that leads to a fair housing complaint, such as telling a prospect that she can't keep an assistance animal," explains Texas fair housing consultant Anne Sadovsky. Creating and training staff to consistently apply written procedures reduces the likelihood of such mistakes. And if you ever do face discrimination complaints, written procedures are evidence of your commitment to consistently follow fair housing principles.

Compliance Strategy: Put procedures in place for certain fair housing-sensitive situations. Example: Many fair housing complaints involve the first phone interaction between prospects and leasing agents. So, Sadovsky advises her clients to create a script for responding to prospects calls that instructs leasing agents to:

- Use a friendly and cordial tone;
- Thank the prospect for expressing interest in the community;
- Tell the prospect that they must fill out an application and whether they can do it online; and
- Let the prospect know if you use a third-party company to process rental applications.

Other fair housing-sensitive functions for which written procedures are recommended:

- Handling requests for assistance animals, accessible parking, and other reasonable accommodations;
- Handling requests for reasonable modifications; and
- Answering problematic questions posed by prospects, such as, "Do I have your assurance that there are

Have clear procedures for responding to service requests and entering units for repairs.

no [fill in the minority] living in this community?”

Best Practice #3. Keep Records of Fair Housing Training

Document the fair housing training you provide to staff, including orientation training for new hires. Written records should list:

- The trainer and trainee’s name;
- The time and dates training was provided; and
- The information the training covered, which should include not only fair housing laws and the company’s nondiscrimination policy but also its documentation protocols.

Compliance Strategy: Documentation should also include verification that employees actually understand and are competent to apply the training they receive. Mere training attendance records and a signature acknowledging that the employee received and understood the training won’t do, attorneys caution. Verification must be meaningful. Examples:

- Requiring employees to demonstrate the things they learned, such as by having them role play actual fair housing situations;
- Requiring employees to pass a written test asking challenging questions about the lesson material; and
- Observing employees perform their duties to ensure they’re practicing what they learned in training.

Best Practice #4. Keep Records Tracking Available Units

The leasing process is a primary breeding ground for fair housing complaints. So, you need records documenting that all prospects received complete, accurate, and consistent information about the units that were available. This is especially true if your community is the subject of fair housing testing, which usually involves

inquiries by matched pairs of equally qualified testers only one of whom is a member of a protected class. Complaints may result when testers are allegedly told different things about whether units are available or rental terms, such as the monthly rent or security deposit. You need records that either disprove this charge of unequal treatment or demonstrate a legitimate, nondiscriminatory reason for its occurrence.

Example: At noon, a white tester seeking a two-bedroom apartment is told of an available unit on the fifth floor. An hour later, another prospect agrees to lease the unit. Having precise availability records will enable you to refute the racial discrimination charges of the Black tester who arrives at 2 p.m. seeking the same kind of unit and isn’t told of the vacancy on the fifth floor.

Compliance Strategy: Whether paper or electronic, keep a master list of available units, with specifics about the unit number, monthly rent, security deposit, and when it became available. Monitor and revise the list frequently to ensure that all leasing agents have the same, updated information about whether and what units are available.

COACH’S TIP: The same analysis applies to waiting lists. Thus, communities that maintain a waiting list for available units should have written uniform standards for selecting prospects from the list based on legitimate, nondiscriminatory criteria along with constantly updated records that document each selection and the date, time, and reason it was made.

Best Practice #5: Keep Records of Interactions with Rental Prospects

Create records to document that you treat all rental prospects the same way regard-

Documentation won't do you much good if you get rid of your records prematurely.

less of race, disability, or other protected characteristics.

Compliance Strategy: Sadosky recommends keeping guest cards, logs, or electronic records for every prospect who contacts you to ask about available units at your community, whether by phone, email, online, or in person, listing key information including:

- The prospect's name and contact information;
- The date and time of the inquiry;
- The type of unit the prospect is seeking;
- The desired move-in date;
- Whether the prospect toured or made an appointment to tour the unit;
- The date, time, and units shown to the prospect during each visit; and
- Whether the prospect filled out an application.

Interaction records should also document that leasing agents followed standard, nondiscriminatory procedures during the application process, including documentation that for each prospect they:

- Explained your procedures for submitting applications and accompanying documentation;
- Reviewed your selection criteria and

the standards used to evaluate applications; and

- Provided either a hardcopy or link to your rental application and community's policies and procedures.

In the event it becomes necessary to deviate from standard procedures or policies, such as by requiring prospects to provide additional qualifying interest, the leasing agent should record the details explaining what deviations were made and why.

Best Practice #6. Keep Records of Lease Applications & Decisions

You should have written procedures for submitting and processing lease applications, including a description of:

- The accompanying documentation applicants must provide;
- How you use the information; and
- What might cause you to reject an application.

Compliance Strategy: Application procedures and forms should also list the financial and other criteria you use to screen applications. Such criteria must be objective, not based in any way on protected characteristics and compliant with credit reporting and other federal and state laws that apply. Keep copies of all rental applications, even if they're only partially completed, along with accompanying documentation. Document the date and time the application was received, especially if you consider applications on a first-come, first-served basis. Maintain records of all acceptance and rejections, including documentation of your legitimate, nondiscriminatory reasons for rejecting an applicant or choosing one qualified applicant over another.

Example: A Black applicant who got rejected sued a Michigan landlord for racial discrimination. The landlord denied the allegation and furnished records showing that it rejected the applicant

DEEP DIVE:

The NAR Equal Service Report Form

The National Association of Realtors (NAR) has created a comprehensive form called an Equal Service Report for real estate brokers to fill out during or after each contact with a prospect to document client interactions and demonstrate that they provide consistent and nondiscriminatory treatment to all prospects. "Properly used, the Equal Service Report, or its equivalent, may provide a strong defense against a charge of steering or disparate treatment," according to the NAR. You can find the form on pp. 14-19 of this document: <https://www.nar.realtor/sites/default/files/documents/Fair-Housing-RE-Brokerage-Essentials-Chapter-06-2016.pdf>

Don't dump records when legal action looms.

because of his poor credit and recent conviction for armed robbery. The landlord's records also showed that it leased 20 of its 45 units to African Americans. Based on this evidence, the federal district court ruled and the Sixth Circuit affirmed that the landlord had legitimate, nondiscriminatory reasons to deny the application [Clark v. Lafayette Place Lofts, 6th Circuit, August 2017].

Best Practice #7. Keep Active Lease Files for Every Tenant

Remember that fair housing laws protect not only rental prospects but also tenants. That's why you need records documenting that you provide fair, reasonable, and nondiscriminatory treatment and services to all your tenants.

Compliance Strategy: Maintain an active file for each tenant that documents all phases of the relationship from start to finish. Such records should include:

- The tenant's rent application, accompanying documents, and screening reports;
- Correspondence regarding approval or denial of the application;
- The signed lease agreement and any amendments or additions that were made to it during the tenancy;
- Records of security deposits and security deposit refunds, including an itemized list for any deductions;
- Inspection and inventory checklists or forms completed by you and the tenant documenting the apartment's condition at move-in and move-out, especially as it relates to the security deposit;
- Rent payment records;
- Records of late fees, cleaning fees, pet deposits, and other rental fees or payments;
- The pet policy agreement;
- Notice of rent increases;
- Records of maintenance work, requests, and notices (see Best Practice #9 for more details);

- Records of complaints by the tenant, when they were made and how they were handled (see Best Practice #8 below for more details);
- Eviction records and other legal notices and corresponding actions; and
- Records of all correspondence with the tenant.

Best Practice #8. Keep Records of Discrimination Incidents

Prospects and tenants who think they've suffered discrimination at the hands of staff, vendors, or other tenants commonly go to the landlord first. It's when those complaints go unheeded that they typically take their concerns to a court or government agency. You can keep litigation and enforcement action out of the picture by taking discrimination complaints seriously by immediately investigating the allegations and, upon determining that they have merit, initiating measures to resolve the problem.

Compliance Strategy: Keep records documenting your response, starting with an incident report form that requires the complainant or employee receiving the complaint to list all of the relevant and essential information, including a description of the incident, where and when it took place, and the names of any witnesses. "If you simply have the person provide a narrative account on a blank piece of paper, you may not get all the information you need to investigate what happened," cautions a California attorney.

Best Practice #9. Keep Good Maintenance & Repair Records

Tenants may sue their landlords for discriminatory treatment in furnishing maintenance and repair services. Having the right records can help you prevent and, if necessary, defend against such claims.

Compliance Strategy: The starting point is to have clear and reasonable procedures for performing maintenance, enter-

Keep an active file for each tenant that documents the relationship from start to finish.

ing tenants' units to perform work, and responding to service requests. You also need documentation showing that you consistently follow these policies and procedures, including:

- Records of each tenant request for maintenance and service listing time and date, contact information, when and to whom the work was assigned, when and how it was completed and the reasons for any delays, e.g., the need to order replacement parts;
- Notices of entry into the tenant's apartment to perform maintenance work and details about how and when the work was performed; and
- Records of any tenant complaints about maintenance services and what you did to address them.

Best Practice #10. Regularly Audit Your Records to Identify Potential Compliance Problems

Documentation of fair housing compliance isn't just a paper trail to draw on when somebody accuses you of discrimination. It's a navigation aid that you can use to identify and correct potential problems proactively before they fester into

complaints, litigation, and enforcement action. That's because the records you generate are the footprint of your compliance program and the window into its effectiveness. If you're doing something wrong, the records will reveal it.

Compliance Strategy: The key to compliance is finding and fixing the problems you couldn't prevent before plaintiffs, fair housing organizations, government agencies, and other potential legal adversaries find them for you. And that's why it's crucial to not just generate but also regularly review the records we've been talking about in this lesson.

Example: Sadovsky relates the story of how while combing through the leasing records of a client she came across a guest card onto which a leasing agent had scribbled the following notation: "OMG. He's such a hunk! Blonde hair, blue eyes! We gotta rent to this guy!!!!" Luckily, the landlord found the incriminating guest card before it became Exhibit A in a lawsuit against the property for racial, sex, and/or disability discrimination. Thus, auditing the records enabled the landlord to turn what could have been a smoking

DEEP DIVE: Auditing Electronic Records

Dorothy Smith, the VP of Operational Support for Univesco, Inc., which has 17 properties in Florida and Texas, explains how they perform electronic auditing: "We have transitioned to a fully electronic filing system, which has streamlined the auditing process. Our written policy outlines the specific naming and uploading procedures for each document, facilitating easy access for auditors, supervisors, and other personnel. Our auditor conducts biannual audits, meticulously reviewing documents for consistency and adherence to fair housing policies. During the on-site portion of the audit, she inspects desks and computers to ensure no unauthorized documents are being stored.

"Properties are graded based on audit results, impacting end-of-year bonuses. As a result, managers are highly competitive and strive for the highest possible scores. They diligently audit their own files regularly to maintain compliance and achieve excellence."

gun into a vital indication that at least one leasing agent needed additional fair housing training.

Best Practice #11. Retain Your Records for as Long as Necessary

Documentation won't do you much good if you get rid of your records prematurely. So, how long should you hang onto your records? The short answer, according to attorneys, is for as long as you need them. The statute of limitations for filing an FHA complaint with HUD is within one year of the last date of the alleged discrimination; two years is the deadline for filing a lawsuit in court. However, these limits aren't hard and fast because courts and civil rights agencies generally allow for allegations to be filed later when there's "good cause" for the delay. The clock might also stop ticking under certain conditions.

Example: An applicant files a discrimination complaint with HUD in January 2025. HUD doesn't investigate the complaint until January 2028, after the two-year statute of limitation for filing a lawsuit has expired. But the clock stopped while the HUD investigation was pending and the applicant still has six months to take the claim to court.

In addition, state and local fair housing laws may provide for a longer statute of limitations.

Compliance Strategy: Check with your attorney before disposing of old records. In some cases, the time limit might be longer for claims filed under other federal or state laws, so it's a good idea to find out about laws applicable to your community so you don't inadvertently dispose of documents that you may need.

COACH'S TIP: Don't dump records when legal action looms. In other words, don't even think about disposing of records related to a fair housing complaint that's imminent or pending. If those records exonerate you, disposing of them will compromise your legal defense; and if those records incriminate you, disposing of them could make you liable for evidence tampering and obstruction of justice. In either case, courts and enforcement officials will assume the worst and come down harshly against you in assessing damages and penalties for fair housing violations.



Now that we've outlined the 11 fair housing compliance documentation best practices, here's a *Coach's Quiz* you can use to evaluate how well you learned the material.

Instructions: Each question has one and only one correct answer. The correct answers (with explanations) are published in a separate PDF available in the Archive with the lesson PDF and follow the quiz online. Good luck!

Submitting this quiz to your supervisor?

Put your name here:

QUESTION #1

Keeping records that document your nondiscriminatory leasing and maintenance practices:

- a. Is an express requirement under the FHA
- b. Is a best practice that's essential to demonstrate compliance with fair housing laws
- c. Is required if you keep paper records but not if you keep electronic records
- d. All of the above

QUESTION #2

Documentation and recordkeeping further fair housing compliance by enabling you to:

- a. Ensure effective implementation of your nondiscrimination policy
- b. Justify particular policies, practices, and actions in case you're charged with discrimination
- c. Audit your records to identify potential problems and initiate corrective action
- d. All of the above

QUESTION #3

You reject an applicant who happens to be Muslim because of his poor credit history. The applicant sues you for religious discrimination. Which of the following records will NOT help you document that you had a legitimate, nondiscriminatory reason for rejecting his application?

- a. A rental policy setting clearly setting out the minimum credit score for applicants to be accepted into your community
- b. Records demonstrating that you explained your credit and other criteria to the applicant and all applicants
- c. Copies of the report indicating that the applicant's credit score was below your minimum
- d. Records showing that you consistently reject applicants whose credit scores are below your required minimum
- e. Notes from the leasing agent indicating that the applicant was rude and had body odor