

Handling HUD's New Harassment Rules: What To Know and What To Do



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On October 14, 2016 a new rule on workplace harassment takes effect. The rule being implemented by the U. S. Department of Housing and Urban Development ("HUD") prohibits Communities and Park owners from "quid pro quo harassment" and "hostile environment harassment" within the housing context. HUD's new rule also expands a Community's potential liability exposure because it provides for both "direct liability" and "vicarious liability" for all violations under the Fair Housing Act. The following is a brief overview of HUD's new harassment standards, with some recommendations so Communities and Park owners can protect themselves against potential claims.

HUD's final rule is entitled *Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act*. HUD provides the actual standards that HUD says should be used for assessing potential harassment claims under the Fair Housing Act. One of HUD's stated goals is for these standards to apply to Fair Housing harassment claims brought both in administrative adjudications and in federal and state courts to ensure uniform treatment.

The Fair Housing Act (42 U. S. C. §§ 3601 *et. seq.*) ("Act") already prohibits harassment and discrimination in the availability and enjoyment of housing and housing-related services, facilities, and transactions because of race, color, national origin, religion, sex, disability and familial status. However, no actual standards have ever been implemented regarding harassment claims under the Act. As a result, Courts were left to analyze fair housing harassment claims using the same standard as employment harassment claims.

HUD's final rule aims to fix that problem and includes a few notable provisions. First, HUD now defines "quid pro quo harassment" and "hostile environment harassment" under the Fair Housing Act. Second, HUD provides standards for assessing claims under each type of. Third, and perhaps most significantly, HUD's new rule seeks to create both direct and vicarious liability for housing providers who violate the Act.

What Is "Quid Pro Quo" and "Hostile Environment" Harassment?

"Quid pro quo harassment" is "an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to" the availability and enjoyment of housing and housing-related services, facilities, and transaction. Conduct amounting to harassment need not include physical contact, but may be verbal or written. The focus is on "unwelcome" since a person can file a claim for harassment even if they complied with the unwelcome demand or request.

"Hostile environment harassment" is unwelcome conduct that is sufficiently "severe or pervasive as to interfere with the availability and enjoyment of housing and housing-related services, facilities, and transactions." According to HUD, a hostile environment harassment violation requires proof of the following: (1) A person was subjected to unwelcome spoken, written, or physical conduct; (2) the conduct was because of a protected characteristic; (3) and the conduct was, considering the totality of the circumstances, sufficiently severe or pervasive as to interfere with or deprive the victim of his or her right to use and enjoy the housing or to exercise other rights protected by the Act.

Courts will examine multiple factors, including the nature of the conduct, the context of any alleged incident, the severity, scope, frequency, duration, and location of the conduct, as well as the relationships of the persons involved.

Communities Beware - Liability Is Broad!

HUD's rule makes clear that even **a single incident** of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidences a quid pro quo. Something as simple as a resident complaint in a letter or telephone call would be enough to satisfy the "should have known" standard, so Communities need to remain attentive to potential issues and handle complaints in a timely manner.

A Community or Park Owner's potential liability for a violation under HUD's new rule is significant. A Community or Park Owner faces direct liability for "failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct."

A housing provider could even face direct liability for a discriminatory housing practice by a third-party (a non-employee and non-agent) where the Community or Park Owner knew or should have known of the discriminatory conduct and had the power to correct it. Liability for such third-party conduct could arise when, for example, a person, including a management company, homeowner's association, condominium association, or cooperative, knew or should have known that a resident was harassing another resident, and yet did not take prompt action to correct and end it, while having a duty to do so.

A Community or Park owner also faces vicarious liability for a discriminatory housing practice by an agent or employee, regardless of whether the Community or Park Owner even knows of the conduct that resulted in a discriminatory housing practice, consistent with agency law. Such a broad liability scheme means that all Communities and Park owners need to review and ensure that employment policies are up to date and compliant with HUD's new standards.

So What Should Communities and Parks Do?

First, Communities and Park owners should draft and implement anti-harassment and anti-discrimination policies and procedures for the workplace in accordance with HUD standards. A Community or Park owner should work with their legal counsel to do so.

Second, Communities and Park owners need to properly train all employees and agents to ensure they understand the company's anti-harassment and anti-discrimination policies and how to report potential violations to a supervisor.

Third, Communities should implement procedures to properly document and quickly respond to resident complaints of harassment or discrimination. Even a single instance of harassment or discrimination is enough for exposure under HUD's final rule, so Communities and Park owners should seek to provide prompt and effective responses to possible claims in the first instance.

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