

FAIR HOUSING COACH

Train your staff to avoid costly discrimination complaints

AUGUST 2025

LESSON AT A GLANCE

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Avoid 7 Fair Housing Liability Risks When Renting—or Not Renting—to Students

As students head back to school, give your staff this fair housing refresher.

Leasing to students can be an excellent source of income. According to the Urban Institute, at least 79 percent of students who attend a two- or four-year college live off-campus; the large public universities provide on-campus housing

to less than 30 percent of their students. As a result, the vast majority of college and university students seek off-campus housing in university-adjacent markets, some of which lack the student rental housing supply necessary to meet the demand.



Several college towns list students as a protected class in their fair housing laws.

Students (and their parents or other financial guarantors) may also be willing to pay a modest premium over pro-rata market rental rates for an individual lease arrangement to avoid being held “jointly and severally liable” for the tenant lease obligations when sharing the apartment with one or more roommates—potentially people they don’t know.

But leasing to students also presents some unique business factors that may be different from traditional multifamily tenants and which can pose special risks:

- Students typically have little to no credit or rental history, precipitating the need for getting a guarantor to co-sign or otherwise back the lease;
- Students typically have a high annual turnover rate;
- Student tenants usually all want to move in and out at around the same time each year based on the academic calendar of their school, which can create stress to operational efficiencies

and significant vacancy risk if spaces aren’t leased in advance of the school year; and

- The perception at least is that students are noisy and apt to mistreat or damage property, a risk that’s more likely to come to fruition in communities not managed by experienced student-housing operators.

For these reasons, some landlords may prefer not to rent to students. Whatever your attitude on the subject, making decisions about rental applicants and tenants based on their status as students can get you into fair housing trouble.

With students heading back to school, the *Coach* is dedicating this month’s lesson to helping you recognize and avoid the liability risks of dealing with students. And we’ve enlisted two of the country’s leading experts on student housing and fair housing to help with the task: Eric Lusk, an independent consultant and industry veteran in these fields, and Eric Bronstein,

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Excluding students may also expose you to liability for indirect discrimination.

General Counsel of The Scion Group, which owns and operates nearly 150 off-campus student housing communities serving 82 college and university markets across 35 U.S. states.

First, we'll explain how fair housing laws apply to students even if this group isn't listed as a protected class. Then, we'll set out seven common pitfalls landlords fall into when dealing with student renters and what you should do to avoid them. The lesson concludes with a quiz enabling you to test your understanding and ability to apply the material to real-life situations.

WHAT THE LAW SAYS

The federal Fair Housing Act (FHA) bans refusing to rent or denying housing because of a person's race, color, national origin, religion, sex, handicap (disability), or familial status (collectively referred to as "protected classes"). The FHA applies to all multifamily housing communities in the U.S., with few exceptions. The fair housing laws of many states and municipalities extend protection to additional protected classes, which commonly include age, sexual orientation, gender identity, military status, domestic violence victim, and source of income.

Risk of liability for discrimination against students. Risk of direct discrimination under local laws. Simply obeying federal and state fair housing laws isn't enough. You must also comply with local requirements. Be aware that many counties and municipalities across the U.S. do list students as a protected class in their fair housing laws. That includes the District of Columbia as well as college towns like Berkeley, CA, Ann Arbor, MI, Eugene, OR, and Iowa City, to name just a few.

Risk of indirect discrimination. So, as long as you operate in a jurisdiction where students aren't a protected class, you should be in the clear. Right?

Wrong.

Even if direct "student discrimination" doesn't exist in your neck of the woods, excluding students *because* they're students may constitute indirect discrimination against the groups that the applicable federal, state, and local fair housing laws do list as protected classes. **Example:** Refusing to lease to a student who can afford the rent because she proposes to pay using funds from a public scholarship would be illegal in jurisdictions that ban source of income discrimination.

Risk of disparate impact discrimination.

Excluding students may also expose you to liability for indirect discrimination.

Explanation: Under the so-called rule of "disparate impact" discrimination, housing policies and practices that appear neutral on their face may still be illegal if they *have the effect of* discriminating against members of a protected class. This is true even if the landlord created and implemented the policy for legitimate purposes with no intent to discriminate. This isn't just a theory. Disparate impact claims against landlords, whether asserted by government authorities, nongovernment advocacy organizations, or individual victims are a staple of fair housing litigation.

Example: After getting repeatedly burned by students who default on their rent, an apartment community resolves that it will no longer lease to students. On its face, the no-students policy is neutral and nondiscriminatory since it would impact all students seeking rental housing in that market (assuming, of course, that students aren't a protected class under the particular city's or county's fair housing laws). However, it could be deemed a form of disparate impact or indirect racial discrimination if the community is located near an HBCU (Historically Black Colleges and Universities) institution that enrolls primarily Black students.

7 STUDENT DISCRIMINATION PITFALLS TO AVOID

Being aware that students bring fair housing laws into play is the first step in ensuring compliance. Let's focus now on actual operations and the seven common discrimination pitfalls to avoid when dealing with student applicants and tenants.

Pitfall #1: Adopting a "No-Student" Rental Policy

As we noted above, excluding renters because they're students may be illegal even if students aren't a protected class. Thus, a no-students policy that appears neutral and nondiscriminatory on its face may have a disparate impact on members of certain races or other groups that federal, state, or local fair housing laws list as protected classes, including:

- **Religion**, e.g., if the apartment community is located in a town with a large religious university like South Bend, IN, site of Notre Dame University;
- **Sex**, especially if your community is home to a single-sex college or university like in Wellesley, MA;
- **Age**, which could be problematic in jurisdictions where the ban on age discrimination is designed to protect younger renters given that students tend to be younger—of course, this wouldn't be an issue where the protection covers older renters, e.g., those age 55 or older;
- **Source of income**, e.g., where a landlord won't lease to students whose chief source of rental funds are student loans or parents; and
- **Marital status**. The fact that students are typically unmarried would be problematic where marital protection applies to single and not just married couples.

Pitfall #2: Charging Students Special Fees, Security Deposits, or Rent Rates

Another potential pitfall is charging students more to compensate for the risks they present, such as special fees to review their student loan records or personal references, higher security deposits covering the increased risk of nonpayment and damage, or a premium rent. Such a practice would constitute direct discrimination in Ann Arbor, Berkeley, and many other cities where students are a protected class and potential indirect discrimination everywhere else.

Compliance strategy: If you have special fees and other additional charges to cover the financial risks posed by students, impose them on all applicants and tenants with similar financial profiles and not just students. The wider moral is that you need to speak to your attorney or do your own research to ensure you know all of the protected classes in your jurisdiction before adopting a policy that excludes or treats people differently because they're students.

Pitfall #3: Favoring Students Too Much

The dangers of differential treatment may arise when you offer students favorable terms and arrangements that you don't offer to anyone else. One notable example is a separate lease arrangement.

Explanation: One attraction of leasing to students is the potential to generate additional revenue by renting the bedrooms in a unit separately. This model typically involves having each person who leases a bedroom assume individual responsibility for complying with the lease terms and conditions, rather than having all of the residents of the apartment assume joint and several liability. Of course, this arrangement may also be appealing when leasing to roommates who aren't students.

Promos like nine-month leases should be available to any qualified renters, not just students.

Separating students from other tenants could be seen as illegal steering.

The problem is that giving students favorable treatment because they're students can get you into fair housing trouble in two ways:

Discriminatory preference of protected classes:

Basing housing decisions on a person's race, religion, or other protected characteristics is illegal discrimination even if it actually results in more favorable treatment. Thus, making special deals for students that you don't offer other groups may constitute direct discrimination when students are a protected class and indirect discrimination when those students attend religious universities, historically Black colleges, single-sex schools, and similar institutions, especially if those are the lone or even a primary college or university in your rental market.

Indirect exclusion of other protected classes:

Favoring students may also raise red flags if it has the effect of excluding protected groups, cautions Luskin, a student housing consultant and fair housing advisor with over 30 years of experience in the field. "Because students tend to be young and single, student deals or exclusively offering certain lease terms, such as renting a bedroom with no joint and several liability, may be seen as a way of avoiding renting to older persons or families with children."

Compliance strategy: Offering student specials may be justifiable and permissible under certain conditions, especially for landlords of housing designed for students or who are located in college towns. But they must be implemented fairly. Luskin recommends avoiding the following practices without first speaking to and getting the green light from your attorney:

- Implementing a "students-only" rental policy;
- Refusing to rent to specific applicants because they're not students; and

- Offering special deals or terms just for students—thus, for example, nine-month leases or other promotions should be available to any qualified renters, not just students.

Pitfall #4: Steering

Steering, or seeking to limit or influence a person's housing choices on the basis of one or more protected characteristics, can come into play when renting to students. One problem is the common misperception that most students are "party animals" that play loud music late into the night, which may make it tempting to direct them to particular areas, floors, or parts of the community where they'd be less likely to disturb the neighbors. Separating students from other tenants could be seen as illegal steering, even if your sole intent is to make both sides more comfortable.

Compliance strategy: Ensure that leasing agents understand what steering is and why it's illegal. Emphasize the importance of allowing individuals to decide for themselves where they want to live and refraining from seeking to influence or reverse those decisions by suggesting where the leasing agent believes the applicant would or wouldn't be comfortable, especially when "comfortable" is based on protected classes.

Pitfall #5: Roommate Segregation Practices

Segregating tenants by race, religion, and other protected characteristics is among the most common forms of steering. It comes into play when a landlord rents by the bed, particularly when applicants don't fill the entire apartment. To fill vacancies within a unit, landlords may be tempted to intentionally match roommates that share the same protected classes, such as filling units with all Black or all Muslim renters. This would likely be deemed illegal steering even when tenants expressly ask you to match them this

way, such as where a white tenant asks you to put her in a unit with only white roommates.

Compliance strategy: Adopt a written policy stating that your community won't make room assignments on the basis of any protected class when leasing units by the bedroom. Specify criteria for making actual pairings and assignments that are based on objective, legitimate, and nondiscriminatory characteristics, e.g., smoker/non-smoker or personal likes and dislikes, that are in no way tied to the residents' race, national origin, or other protected class.

DEEP DIVE:

Roommate-Matching Services Don't Violate FHA, Says Ninth Circuit

The leading case on FHA liability of a roommate selection service began when fair housing groups in southern California sued the online roommate-matching service, Roommate.com, for discrimination by enabling users to screen potential roommates based on their sex, sexual orientation, or whether children would be living with them. The U.S. Ninth Circuit Court of Appeals found Roommate.com not liable because the FHA doesn't apply to individuals making decisions about the sharing of living spaces. "There's no indication that Congress intended to interfere with personal relationships inside the home," the Court concluded [*Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216 (9th Cir. 2012)].

Caveat: The Ninth Circuit ruling is narrow and based on the fact that Roommate.com isn't actually a housing provider. "A business transaction between a tenant and landlord is quite different from an arrangement between two people sharing the same living space," the Court reasoned.

Takeaway: Landlords can certainly allow tenants to pick their own roommates, but the defense that got Roommate.com off the hook probably wouldn't work if the landlord was the one enabling roommate selection based on protected characteristics.

Exception: The U.S. Department of Housing and Urban Development (HUD) has carved out an exception regarding sex (gender) discrimination that applies when communities lease by the bed, which we've seen is a common scenario when leasing to students. Once a bedroom is assigned to a resident, landlords may, although they aren't required to, assign occupancy in the other bedrooms only to applicants of the same gender. While the rule seems straightforward, it may be complicated to apply when tenants identify as non-binary or transgender. Speak to your attorney if you find yourself in this situation.

Finally, stand your ground if a student or any other applicant objects to a roommate on the basis of a protected class such as race and demands that someone be transferred. Giving in to the demand makes you an accomplice in discrimination. Moreover, once tenants sign the lease, you can insist that they follow community rules, including not engaging in discriminatory conduct toward roommates and neighbors. If necessary, be prepared to take legal actions against violators, which may include eviction, if they refuse to comply.

Pitfall #6: Deviating from Your Standard Rental Screening Processes

Most students have little or no independent income or rental or credit history. That may be a perfectly legitimate reason not to rent to them, as long as you consistently reject other applicants found to have such deficiencies. What you can't do is assume that applicants won't be responsible and reliable tenants simply because they're students without even engaging your normal screening protocols.

Compliance strategy: Screen students the same way you would screen any other prospective tenant. That should include checks of:

You must accommodate disabled students' reasonable requests for assistance animals.

- Job history;
- Income;
- Credit reports;
- Rental and eviction history;
- Criminal background; and
- Sex offender status.

If students don't pass these checks or meet the other eligibility criteria that you apply to all applicants, you can reject them. But you may also have other options. One possibility to consider before rejecting students (or other applicants) who don't meet your standard financial criteria is taking special measures to minimize your risks, such as having them get a parent, guardian, or other financially responsible party guarantee the lease. This affords you financial recourse for any rent or other defaults a student commits. It may even prevent such defaults to begin with, given that students are more likely to pay rent and leave the apartment undamaged when they know their parents have signed the lease.

Another way to protect yourself is to encourage—or require—all tenants (not just students) to get both renters' liability insurance and personal property insurance. In addition to reducing your risk of collection if a tenant accidentally damages your property, renters' property insurance helps financially if personal property gets lost, stolen, or damaged, allowing tenants to more easily continue paying rent and meeting their other financial obligations under the lease.

Pitfall #7: Not Making Reasonable Accommodations for Disabled Students' Assistance Animals

The fair housing duty of landlords to make reasonable accommodations for applicants and tenants with disabilities applies to student housing, including both on- and off-campus. Courts have ruled repeatedly in both on- and off-campus housing cases that exempting the legitimate assistance animals of disabled tenants from a community no-pets policy is a

legal, reasonable request that the landlord must accommodate.

Example: A federal court ruled that the University of Nebraska could be liable for denying a request by an incoming freshman student with an anxiety disorder to keep a specially trained therapy dog in her dorm room. The university claimed the FHA doesn't apply to campus housing, but the court disagreed and allowed the claim to go to trial [U.S. v. University of Nebraska at Kearney, April 2013].

Example: Three years after the Kearney case, Kent State University paid \$145,000 to settle a lawsuit alleging that banning students with psychological disabilities from keeping emotional support animals in university-operated student housing was discrimination [U.S. v. Kent State University, Case: 5:14-cv-01992-JRA].

Compliance strategy: Whether your community is traditional or on-campus, you must accommodate disabled students' reasonable requests for assistance animals. To do this, ask yourself two questions:

- **Does the student have a disability**—that is, a physical or mental impairment that substantially limits one or more major life activities?
- **Does the student have a disability-related need for that assistance animal**—that is, does the animal work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability?

If you or a qualified person with personal knowledge of the student answer both of these questions affirmatively, in any format, you must make an exception to your no-pet policy so the student can live with and use an assistance animal in

all areas of the premises where tenants are normally allowed to go, unless doing so would impose an undue financial or administrative burden on you.

You're also allowed to ask for more information if your answer to either question is unclear. But there are strict guidelines on what you can and can't request. For example, you're never allowed to ask for a medical diagnosis or medical records. So, you should check with your attorney before making inquiries about the tenant's disability and assistance animal needs.

Furthermore, requiring a disabled tenant to meet special lease adden-

da or rules and/or pay additional rent, fees, or security deposits for having an approved assistance animal is just as illegal as imposing the same demands on a mobility-challenged tenant for using a wheelchair.

COACH SOURCES

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Eric Bronstein assisted in the preparation of this article. He serves as Chief Administrative Officer and General Counsel for The Scion Group (www.thesciongroup.com).

DEEP DIVE:

FHA vs. ADA: Assistance Animals

The duty to make certain accommodations for disabilities, including allowing people to be accompanied by assistance or service animals, is also contained in the Americans with Disabilities Act (ADA). Although the two laws overlap in on-campus housing and to a lesser degree in off-campus housing, neither the ADA nor FHA require any type of certification or registry of animals. Beyond that, application of the two laws varies widely.

First, the ADA covers places of "public accommodation," which in a private off-campus apartment community generally includes only the leasing office.

Second, ADA rules cover "service animals," defined very narrowly as dogs that have been individually trained to do work or perform tasks for a person with a disability, excluding animals providing only emotional support. (The only other animal deemed a "service animal" under the ADA is a trained miniature horse.)

By contrast, the FHA covers "assistance animals," defined very broadly as one that works, provides assistance, or performs tasks for the benefit of a person with a disability, including emotional support that alleviates one or more identified symptoms or effects of a disability. Assistance animals, which could include not only service animals but also therapy, emotional support, and comfort animals, don't require any special training, and aren't limited to dogs. A landlord shouldn't ask about training or certification of an assistance animal, but if the tenant's (or applicant's or guest's) disability is not known or obvious, the landlord may require reliable confirmation from a qualified person with personal knowledge of the individual's disability and their need for accommodation before approving the animal. Not every document is legitimate or reliable, and additional confirmation may be requested for animals that aren't traditionally kept as domesticated pets. An experienced attorney should provide guidance (Office of Fair Housing and Equal Opportunity, FHEO-2020-01, (<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>)).

Bottom Line: Luskin says the FHA, and not the ADA, primarily governs the use of assistance animals in off-campus housing communities, including student housing. And that means landlords must make reasonable accommodations for residents who are disabled.



Okay, it's your turn. Now that we've explained the seven discrimination pitfalls to avoid when renting to students, let's give you a chance to actually use what you've learned. The Coach's Quiz below sets out questions requiring you to apply the rules to real-life situations that could arise at your community.

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

Your community has a no-pets policy. A disabled student and army veteran who relies on an assistance dog to help her with post-traumatic stress disorder fills out a rental application. You screen her and find that she owes her former landlord thousands of dollars in unpaid rent and has a very poor credit report. Must you rent her an apartment?

- a. Yes, because exempting a disabled tenant's assistance animals from a no-pets policy is a legally required accommodation
- b. Yes, but only if veteran status is a protected class in your jurisdiction
- c. No, as long as you consistently reject other applicants with inadequate credit and rental history

QUESTION #2

A policy to deliberately not rent to students is most likely to be considered discriminatory under which of these circumstances (assume the community is in a town where local fair housing law doesn't list student status as a protected class):

- a. Your property is located in a college town
- b. Your property is located in a town where there's a local HBCU (Historically Black College or University)
- c. You base your policy on the assumption that students make noise, damage property, and don't reliably pay rent

**QUESTION #3**

You welcome students to your apartment community and offer by-the-bed leasing options. You currently have a few apartments available with either male or female tenants assigned to them, with at least one vacant bedroom in each apartment. You also have a fully vacant two-bedroom apartment. Two unrelated students, one male and one female, ask to live together in a two-bedroom apartment. What should you do?

- a.** Require the male student to choose one of the apartments with male roommates and the female to choose one of the apartments with female roommates
- b.** Decline to rent to these applicants together unless they're married
- c.** Rent to these applicants only if they sign a traditional joint lease for the two-bedroom apartment
- d.** Document the applicants' consent to a mixed-gender apartment and offer them each by-the-bed contracts, and assign them to the vacant two-bedroom apartment together if they request it