

The Vantage

ISSUE NO. 2 June 2017

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Navigating the Minefield of Local Nuisance Ordinances and the FHA

Complying with local nuisance ordinances could put you in violation of the FHA.

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Nuisance ordinances aim to keep communities crime-free, increase property values, and encourage economic development. However, many nuisance ordinances include incidences of domestic violence within their definition of a “nuisance,” and in turn have an adverse impact on victims of domestic violence. For example, victims of domestic violence who call law enforcement too many times may be subject to eviction under these ordinances (see the included scenarios).



The consequence of such laws for victims of domestic violence is strikingly clear – if they choose to call law enforcement, seeking protection, they may face eviction. As a result, victims are less likely to report crimes and may continue to suffer abuse.

Because domestic violence victims are overwhelmingly female, such laws cause a disparate impact based on gender, an FHA protected class. Especially in larger cities, women in low-income households and racial minority groups are generally affected the most. Research reveals that “women living in rental housing experience domestic violence at more than three times the rate of women who own their homes; and . . . women

with annual household incomes of less than \$7,500 are nearly seven times more likely than women with annual household incomes of more than \$7,500 to experience domestic violence.”

HUD’s Nuisance Ordinance Guidance

In September 2016, HUD issued “Guidance” addressing the impact of nuisance ordinances on victims of domestic violence (<https://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>). HUD’s Guidance primarily focuses on its FHA

What is a “Nuisance”?

In legal terms, a “nuisance” exists when certain activity unreasonably interferes with “a right common to the general public.” Local nuisance ordinances are intended to limit a wide range of conduct, including littering, abandoning vehicles, and other disturbing activities. Crime-free ordinances share the same goals as nuisance ordinances, but are distinct in that some crime-free ordinances require or encourage housing providers to include terms in their leases allowing the housing providers to evict tenants who have been involved in criminal activity, whether as perpetrators or victims. In many jurisdictions, both types of ordinances are combined into a single ordinance. Some of these ordinances may require housing providers either to abate the alleged nuisance or risk penalties, such as fines, loss of their rental permits, condemnation of their properties and, in some extreme instances, incarceration.

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enforcement against the sources of nuisance ordinances – local governments. However, HUD has taken the position that a multifamily housing provider may violate the FHA by selectively or generally applying nuisance ordinances in ways that discriminate against residents of a protected class. As 80% of domestic violence victims are women, sex discrimination is a likely basis for such claims. Selective compliance may be directly evidenced by a provider’s decision to apply a nuisance ordinance against a female resident after an incident of domestic violence. Selective compliance

“ Some nuisance ordinances require or encourage housing providers to include terms in their leases allowing the housing providers to evict tenants who have been involved in criminal activity, whether as perpetrators or victims. ”



80% of domestic violence victims are women

HUD Guidance, pp. 7 & 10. HUD also states that “[i]n addition to being liable for their own discriminatory conduct, housing providers may have a cause of action under the Fair Housing Act against a locality if a locality’s ordinance requires housing providers to discriminate based on a protected characteristic.” Id. at p. 7, n. 46.



Scenario One

Abuse Victim Sues Due to Eviction

Ms. Rosetta Watson, a Missouri woman who called the police at least 4 times for protection from an abusive boyfriend, is suing the city where she lived after the authorities deemed her a nuisance and ordered her to leave her home. The lawsuit alleges that the city and city officials had a role in violating Ms. Watson’s rights through an ordinance that allows the city to remove residents from their homes and bar them from living anywhere in the city for six months if they are deemed a nuisance. The policy defines one form of nuisance as more than two incidents of domestic violence that result in calls to the police within a 180-day period.

Christine Hauser, “Woman Abused by Boyfriend Sues City for Evicting Her as Nuisance,” The New York Times (Apr. 11, 2017), https://mobile.nytimes.com/2017/04/11/us/aclu-domestic-violence-st-louis.html?_r=0&referer=



Impact

The claimant alleged that being evicted due to multiple calls to report abuse constituted a violation of her rights under the FHA. Although it is the city being sued in this case, liability could also be found to lie with the property management company that evicted her.

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may be indirectly evidenced by a provider's decision to apply the same ordinance against a female resident after an incident of domestic violence but not against a male resident after an incident of domestic violence.

What does this mean for multifamily housing providers?

Although the law in this area is actively developing from state to state, the key take-away point is that multifamily housing providers often may be caught in a "Catch-22," balancing their compliance with local nuisance ordinances (or risk fines, permit revocations, or other consequences) against compliance with the FHA. Multifamily housing providers should first assess their nuisance abatement policies and procedures, and evaluate whether they are compliant with the FHA, and second, take care to consistently, and not selectively, apply nuisance ordinances (through eviction or other penalties) against any residents, especially those of FHA-protected classes, i.e., race, color, national origin, religion, sex, disability and familial status.

However, it is important to note that even if multifamily housing providers consistently apply local nuisance ordinances to their residents, it is not an absolute defense to an allegation of an FHA violation; that is, HUD still could hold the provider liable for an FHA violation if the local nuisance ordinance itself violates the FHA. In practice, however, HUD typically pursues action against the local government that enacted the ordinance, demanding that the local government amend, repeal or otherwise correct the ordinance to comply with the FHA.

What does this mean for recipients of federal housing and urban development funds?

As of 2015, HUD requires providers who receive certain government funding to take affirmative steps towards furthering fair housing as a condition of receiving said funding. Practically, a provider receiving this funding can likely comply with this requirement by reviewing its policies or practices related to nuisance ordinances and considering how such policies or practices may affect residents of protected classes.

“ Many nuisance ordinances include incidences of domestic violence within their definition of a ‘nuisance,’ and in turn have an adverse impact on victims of domestic violence. ”

What does this mean for your employees?

Employees of multifamily housing providers are the ones who make the day-to-day decisions in following nuisance ordinances. Making the right call when sensitive domestic violence issues are involved is challenging. Training employees on how to avoid selectively applying nuisance ordinances in a way that could be considered discriminatory under the FHA is a critical step in avoiding FHA liability.



Domestic violence calls make up the largest category of emergency assistance calls.



Scenario Two

Abuse Victim Sues Due to Threat of Eviction

Ms. Lakisha Briggs, a Pennsylvania woman, called law enforcement to seek protection from her abusive ex-boyfriend. However, her landlord informed her that she would be evicted from her apartment if she called 911 one more time.

Ms. Briggs refrained from calling the police during subsequent attacks by her ex-boyfriend, including an incident in which her ex-boyfriend attacked her with a brick. Ms. Briggs brought suit against the city and succeeded in overturning a local ordinance that required her landlord to evict her due to her 911 calls.

Lakisha Briggs, "I Was a Domestic Violence Victim. My Town Wanted Me Evicted for Calling 911, GUARDIAN, (Sep. 11, 2015), <https://www.theguardian.com/commentisfree/2015/sep/11/domestic-violence-victim-town-wanted-me-evicted-calling-911>



Impact

A city ordinance was found to violate the claimant's rights by dictating eviction for repeated 911 calls to report abuse. The property management company that threatened eviction could also be found liable.



Women living in rental housing are more than three times more likely to be abused than women who own their homes.

See Anna Kastner, *The Other War at Home: Chronic Nuisance Laws and the Revictimization of Survivors of Domestic Violence*, 103 CALIF. 1047 (2015).

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