

THE VANTAGE

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Liability for Resident-on-Resident Harassment

In *Wetzel v. Glen St. Andrew Living Community, LLC*, 901 F.3d 856 (7th Cir. 2018), the Seventh Circuit Court of Appeals recently held that the Fair Housing Act (FHA) “creates liability against a landlord that has actual notice of tenant-on-tenant harassment ... yet chooses not to take any reasonable steps within its control to stop that harassment.” In other words, **housing providers, including property owners and managers, can be held liable for not doing enough to prevent**

residents from harassing other residents.

This decision begs the question: what exactly are housing providers required to do in order to ensure that residents are not harassing other residents? Are property managers now required to monitor resident interactions with other residents? This issue of *The Vantage* takes a closer look at this important case and the implications it has for housing providers.

Wetzel Background

In *Wetzel*, the plaintiff was a homosexual female who moved into St. Andrew, a residential community for older adults. After arrival, she spoke openly about her sexual orientation. According to her allegations, she was met with intolerance and harassment from the other residents, including being subject to multiple slurs about her sexual orientation. Ms. Wetzel also alleged severe physical abuse. The specific allegations are much more shocking and perverse, but the above is the gist of her allegations.

Importantly, Wetzel alleged that she routinely reported the abuse to St. Andrew's staff. Although she alleges that management initially took some action, they were mostly apathetic to her complaints. In some instances, she alleged that management even called her a liar. Then, Wetzel alleges that management retaliated against her, including relegating her to a less desirable dining room, barring her from the lobby and falsely accusing her of violating policies.

St. Andrew sought dismissal of the lawsuit contending that the FHA does not make a housing provider accountable for failing to stop resident-on-resident harassment, unless the housing provider itself is proven to be motivated by racial animus. The Federal District Court agreed and dismissed the case. Wetzel then appealed.

The Seventh Circuit Court of Appeals first found that the actual text of the Fair Housing Act does not preclude a claim against the housing provider for the discriminatory actions of residents. The Court then looked to Title VII and Title IX anti-discrimination statutes to find that a housing provider can be held responsible under certain circumstances.

Seventh Circuit Court of Appeals: the text of the Fair Housing Act does not preclude a claim against a housing provider for the discriminatory actions of residents.

Wetzel Test

The *Wetzel* case makes it clear that housing providers can be held liable for discriminatory actions of residents under certain circumstances. What are those circumstances?



Actual knowledge

The housing provider must have **actual** knowledge of the discriminatory behavior. In other words, generally speaking, the victim or a bystander generally must come forward and report the harassment in order for any affirmative legal obligations to arise for the housing provider. After all, what can you do to stop behavior that you do not know about? Thus far, there is not any affirmative obligation to “discover” harassing behavior.



Failure to take action

The *Wetzel* court stated that the next question is whether the landlord, upon being provided notice, was “deliberately indifferent” to the complaints. The “deliberate indifference” seems like a pretty low standard of care for the landlord to meet. It seems to suggest that if the landlord takes any action in response to the complaint, then the landlord may be protected. However, this should not be relied on. To be safe, housing providers should respond to any notice of unlawful harassment by taking affirmative steps to ensure the harassment is ceased.

Thus far, there is not any affirmative obligation for housing providers to “discover” harassing behavior.

Key Takeaways

The *Wetzel* decision provides housing providers with a couple of important takeaways:



Training

Housing providers should train management on how to respond to complaints of harassment by other residents. It is not okay to take the position that it is “not our problem.” It is the housing provider’s problem. Housing providers have an obligation under the FHA to ensure housing free from discriminatory behavior.



Reporting policies/procedures

Make sure residents are aware of the need to report these issues to management. That way, housing providers can then take affirmative steps to ensure that the behavior does not get out of hand and address these issues before they give rise to litigation.



Addressing Complaints

When complaints are received, take the allegations seriously! Investigate the allegations just as you would if you were investigating one of your own employees. If action needs to be taken against a resident for the behavior, you must do so in order to protect yourself from liability. Ensure that no retaliation is taken against the victim by employees or other residents.

Housing providers have an obligation under the FHA to ensure housing free from discriminatory behavior.

Conclusion

There may be a tendency to think that interactions between residents are not your problem as a housing provider. However, as the *Wetzel* decision makes clear, housing providers can be held liable for resident discriminatory behavior in certain instances. To reduce your organization's risk, you should take this new legal requirement seriously and ensure your policies and training prepare your personnel to respond appropriately.



Integrated Policies & Training for Reduced Risk

Grace Hill offers multiple policies via our PolicyPartner integration that can help you minimize risk in this area, such as:

- Addressing Customer Concerns
- Non-Discriminatory Practices
- Resident Complaints and Lease Violations
- Eviction - Non-Rent Breach of Lease

We are able to provide customized policies and procedures that are fully integrated with your online training inside of Vision. If you need help establishing, revising or customizing any of your policies, please reach out to your Grace Hill account manager.

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