

**Fair Housing: 'Sex' Education for Property Management**  
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LAW OFFICES OF **Kimball, Tirey & St. John LLP**

June 15-18, 2016  
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Think about it →  
What do these numbers have in common?

2,130,000 50,000  
959,000 2,000,000

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**Does Sex Really Matter?**

- Women historically not provided the same rights and privileges as men
- Gender roles still commonly applied throughout the country
- Sex discrimination continues today!
  - Discrimination based on sex can occur
    - In the workforce
    - In the home
    - In marketing tactics
    - In education
    - In housing
    - In religious organizations

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### The Role of Sex in Fair Housing

- As a protected class
- In pregnancy
- In domestic violence
- In HUD-subsidized housing
- In sexual harassment
  - And how sex harassment differs from sexual harassment



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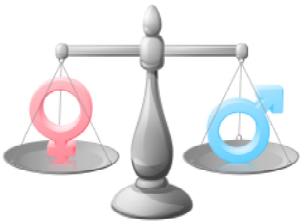
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### The Protected Class of Sex

- Male v. female
  - Sex v. gender
- No preferences or limitations
- No different or special treatment



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### Think About it → Preferential Treatment

- Maintenance employee Franks displays extra consideration to the women (particularly older women) at the property. He is known to open doors for them and will offer to carry their groceries/other personal items for them. Frank tells you that his helpful nature is a direct result of his upbringing; he was raised to respect women and the elderly.
  - Could Frank's actions subject himself and his supervisors to liability?

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**Pregnancy**

- Covered under sex?
- Covered under familial status
- Equal opportunity to use facilities
- No limitations



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**Think About it → Occupancy**

- Prospective resident Stephanie visits your property and inquires about your unit availability. Stephanie is visibly pregnant and is looking for a 1 bedroom. Based on her current household size (not including her unborn child), you know that once she has the baby she will be over-occupancy for your 1 bedroom unit.
  - [Should you tell her about the 1 bedroom that you have available?](#)

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**Domestic Violence – Federal VAWA**

- Violence Against Women Act
  - Includes: Native American women, immigrants, LGBT victims and colleges must maintain records re: campus housing violence
- Applies to HUD project-based plus LIHTC & HCV
- Disparate impact & domestic violence



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### Domestic Violence – Fair Housing Issues

- Domestic violence protections under VAWA
  - Applicants
  - Evictions
- Examples of violations:
  - Evicting entire household due to domestic violence
  - Policy that would result in denial of housing to a victim of domestic violence



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### Sexual Harassment in Housing

- November 17, 2008 - HUD memo to property management/owners
  - Addresses general questions about sexual harassment in housing under the Fair Housing Act
- HUD Proposed Rule: “Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Practices”



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### Definition of Sexual Harassment

Sexual harassment is defined as:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
  - Tenancy decisions conditioned upon submission
  - Conduct creates an intimidating, hostile or offensive home environment



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**“Unwelcome” Behavior...**

*....is the critical word.*

- Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome



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**Think About it → Liability**

- Your luxury apartment community offers valet parking for all residents. Rather than have your own employees work as valet, you hire an outside vendor to provide this service. One day, valet driver Mike is accused of inappropriately fondling a female resident.
  - [Does management need to get involved?](#)

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**Sexual Harassment  
Doesn't Only Happen to Women...**

- Men file 1 in 6 claims
- It happens to persons of the same sex



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### Two Types of Sexual Harassment

- Hostile environment
  - Can include:
    - Visual conduct
    - Verbal conduct
    - Physical conduct
  - Is a single incident sufficient?
- Quid pro quo: "this for that"
  - When an employment or housing decision or condition is based on whether or not an employee or resident is willing to grant sexual favors to a person of authority



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### Examples of Quid Pro Quo

- Telling a resident that in exchange for sexual favors:
  - Late rent will be overlooked or a late fee waived
  - The household will not be evicted
  - Repairs will be made to the apartment
  - Special treatment will be given to the resident by management or maintenance



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### Think About it → Sexual Harassment

- Melissa, a leasing consultant, receives information from other residents that maintenance employees have been leering at and making inappropriate sexual advances towards female residents at the property. Moreover, residents tell Melissa that maintenance employees have demanded sexual favors in exchange for making repairs.
  - What, if anything, should Melissa do?

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### Special Maintenance Situations

- Code of conduct while in apartment home
- What to do if resident is inappropriate
- Documenting "situations"
- Entering apartments when child is present but no adult
- Don't mistake friendliness for more
- Witness "protection" program



*Oh hi there! I've been expecting you! Come on in!*

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### Consensual Relationships

- Between employees & residents
- Favoritism
- Risks if relationship ends



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### Harassment Based on Sex

- Examples: treating someone differently because of their sex...playing pranks/jokes on females but not men
- Making it harder for women to get an application approved or setting higher standards for women than men
- Manager who likes the male residents but is hard on women
- Bullying – between residents, etc.
- Verbally abusing



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### Sexual Orientation

- Homosexuality
- Heterosexuality
- Bisexuality
- No limits or preferences
- Watch for harassment



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### Federal LGBT Regulation

- Definitions of family, gender identity and sexual orientation in all HUD programs
- Equal access to HUD housing
  - Eligibility determined without regard to status
  - Prohibition on inquiries regarding sexual orientation or gender identity



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### Gender Identity/Gender Expression

- Definitions
- Only 17 states have fair housing laws which specifically protect transgender persons
- Protections
  - HUD's protection
  - Recommendations

- Male
- Female
- Neither

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### Transgender Discrimination

- Transgender discrimination is on the rise throughout the country
- How might this apply to rental housing?
  - Rental decisions
  - Allow person to use restroom/amenities that conform to his/her gender identity
  - Use of name that person wants to be called
    - Changes to lease



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### Think about it → Policy and Practice



- Policy review
  - Do you/your company have policies in place to address sex discrimination?
  - Do these policies address all areas of concern?
    - "Sex" is broader than "male" or "female"
- In practice
  - Employee acknowledgement?
    - How do you know your employees have reviewed and understand the policies?
  - Investigations?
    - What is the process for reporting and investigating claims of sex-based discrimination?

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## Thank You

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