
DISCRIMINATION



Basically, all prospective and current tenants must be respected and treated equally.

Current federal fair housing laws extend protection from discrimination on the basis of race, sex, religion, national origin, ancestry, color, familial status and disability. This protection applies to all sections of the United States.

Enforcement procedures in discrimination cases include the use of administrative law judges, the power to get injunctions, and the power to secure awards of up to \$100,000.00 for fair housing complaints handled through administrative or federal court procedures.

Although Kansas state discrimination laws are in compliance with federal laws, not all local governments have included families with children and persons with disabilities.

Fair housing laws cover not only the specific decision on whether to sell or rent to certain persons or classes of people, but also issues such as charging higher rent or establishing different requirements, conditions, or services. They cover the individuals involved and situations involving families or guests may apply as well.

Many landlords fear that, to protect themselves, they must rent to anyone who comes along. This is not true. The key to avoiding problems with civil rights claims is to have routine standards that are not discriminatory. (See chapters on Applications and Screening, Leases, Rules and Regulations, Landlord Responsibilities, and elsewhere in this handbook.) Then you can explain why you rejected, evicted, or took some other action against an individual and show that you have applied the same standards to all of your other tenants.

If you live in one of your rental properties yourself and there are four or fewer living units, most levels of fair housing law exempt you from prosecution for discrimination in that property. This exemption does not apply to managers, only to owners. Also, this exemption does not allow you to advertise in a discriminatory manner.

The following listing details the powers and procedures for the various sources of fair housing complaints:

LOCAL GOVERNMENT

(See box for which cities have fair housing ordinances - page 14))

Groups Covered: Varies. Generally include race, sex, religion, national origin, color, ancestry. Some include age, disability, marital status, families with children, welfare income.

Who Investigates: Volunteer board members or paid staff.

Limit to File: May vary. Generally 180 days.

How Soon Investigation Must Start: Varies. Generally 10 days.

Powers: 1) Voluntary conciliation agreements which can include cash awards, agreements to rent, not evict, change management practices, etc. 2) Public hearings before volunteer boards, legal counsel often available. Ability to order injunctions and limits on awards will vary. Enforcement assistance and appeals to District Court should be applicable, but may vary based on specific local ordinance.

How to Defend: Generally can handle personally. Can be represented by an attorney.

For Information: Call City Hall and inquire about "Human Relations," "Human Resources" or "Civil Rights" board or staff.

STATE GOVERNMENT

Groups Covered: Race, sex, religion, national origin, ancestry, color, disability, and families with children.

Who Investigates: Paid staff, based in Topeka, Wichita, Independence and Dodge City.

Limit to File: 1 year.

How Soon Investigation Must Start: Respondent must be contacted within 10 days. Investigation completed within 100 days, if possible.

Powers: 1) Voluntary conciliation agreements. (See above.) 2) Hearings generally held in the city where the complaint was filed. Administrative hearings, option of using staff attorney or private counsel, staff hearing examiner. Can award actual damages, no limit, and "pain and suffering" damages up to \$25,000. Decisions are enforced by or appealed to Kansas District Court.

How to Defend: Generally can handle personally, especially at investigation level. Can be represented by an attorney.

For Information: The main office is in Topeka at 900 SW Jackson, Suite 568 South, 66612,

phone (785) 296-3206. The **Wichita** office is at 130 South Market, Suite 7050, 67202, phone (316) 337-6270. The **Independence** office is at 200 ARCO Place, Suite 311, 67801, phone (620) 331-7083. The **Dodge City** office is at 100 Military Plaza, Suite 220, phone (620) 225-4804. Any of these offices will send you a copy of the Kansas Act Against Discrimination upon request.

FEDERAL GOVERNMENT

Groups Covered: Race, sex, religion, national origin, color, ancestry, disability, and families with children.

Disability is the same as "handicap" and is broadly defined to include anyone who has or is regarded as having a physical or mental disability (protects people with illnesses such as AIDS, specifically does not protect people with substance abuse problems). Landlords must allow physically disabled tenants, at their own expense, to make "reasonable" modifications to a rental unit to make it accessible. (The landlord does have the right to insist on certain standards of workmanship and, in some cases, on restoration of the property to its original condition at move-out.)

Renting to families with children can still be limited by occupancy limits in local housing codes in terms of how many people a landlord can rent to, but buildings or complexes which are operated exclusively or almost exclusively for senior citizens are the only ones which can exclude families.

LOCAL HUMAN RIGHTS COMMISSIONS

Currently, 24 Kansas cities have fair housing ordinances. Copies of these ordinances should be available through the city. A Community Development or Human Resources department is usually responsible for investigation. Most cities have a Human Relations Commission, a board of local citizens appointed to settle disputes.

Arkansas City	Emporia	Junction City	Manhattan	Salina
Atchison	Fort Scott	Kansas City	Olathe	Topeka
Chanute	Garden City	Lawrence	Ottawa	Wichita
Coffeyville	Hutchinson	Leavenworth	Parsons	Winfield
Dodge City	Independence	Liberal	Pittsburg	

All new rental construction with 4 or more units must be "accessible" or "adaptable" for the disabled persons. Copies of the law are available from HUD, your library, your congress person and on the Internet.

Who Investigates: Paid staff of Department of Housing and Urban Development (HUD), based in area or regional offices, who will travel as needed.

Cost: None for investigation, might be some for witness fee or court costs. Can be waived if complainant cannot afford.

Limit to File: 365 days (1 year).

How Soon Investigation Must Start: Respondent must be contacted within 10 days, investigation completed within 100 days, if possible.

Powers: 1) Voluntary conciliation agreements which can include cash awards, agreements to rent, not evict, change management practices, etc. 2) Administrative hearings. Complainant assisted by HUD investigator and HUD legal counsel, before HUD administrative law judge. Power of injunction, right to award actual damages and attorneys' fees, fines up to \$50,000. Hearings are to be held "in the vicinity" of where the complaint occurred. 3) Federal District Court, by request. Federal Department of Justice would represent complainants before federal judge and/or jury. Power of injunction, right to award actual damages and attorneys' fees, fines up to \$100,000. Federal courts in Kansas are in Kansas City, Topeka, and Wichita.

How to Defend: Generally can handle personally, especially at investigation level. Recommend attorney if goes to administrative hearing or to court.

For Information: Call 1-800-669-9777 for national information or 1-800-743-5323 for the Kansas City Regional HUD office, 400 State Avenue, Kansas City, KS 66101.

PRIVATE ATTORNEY

Groups Covered: Any covered by local, state or federal law, or other policy or regulation.

Who Investigates: Varies.

Cost: Negotiable, can be high, can be low, or "contingency fee."

Limit to File: Federal law allows up to 2 years for private lawsuit, Kansas and local law may vary up to 5 years depending on nature of lawsuit.

How Soon Investigation Must Start: Varies. Can take some time to prepare case and get through various court systems. In the past, however, there have been times when this was faster and more effective than using government procedures.

Powers: No limit on settlements, all administrative procedures, no limit on penalties requested or awarded.

How to Defend: Hiring attorney recommended.

The Rule of thumb, if you are contacted by a fair housing investigator, is to be as cooperative as possible. Many times, complaints can be resolved simply by a visit with you.

Make sure you do not threaten, intimidate, or otherwise retaliate against tenants who file complaints. Even if a complaint is totally groundless, or the tenant is a bad tenant, negative action by you is not appropriate and can weaken your position.

If an investigator finds "no probable cause," the case will be administratively closed which will end it unless the tenant is able to file a timely complaint with another level of government or hires an attorney.

To find a good defense attorney, check with local, state, and federal courts for names of attorneys who have been involved with discrimination cases. Check with local and state bar association "lawyer referral" programs. Contact libraries or human relations boards for names

of attorneys nationally who have successfully defended fair housing lawsuits. Even if you do not hire the nationally prominent person, that attorney could be a good resource for your local attorney. (Also see How to Shop for an Attorney elsewhere in this book.)

References: United States Civil Rights Act of 1968, Title VII, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 through 3619, 3631; Federal Civil Rights Act, 42 U.S.C. 2000; Americans With Disabilities Act, 42 U.S.C. 12101; Kansas Act Against Discrimination, K.S.A. 44-1001 through 44-1043; local ordinances.

MOBILE HOME PARKS

The Kansas Mobile Home Parks Residential Landlord and Tenant Act (MHRLTA) is patterned after the Kansas Residential Landlord and Tenant Act and *applies to owners of mobile homes renting lots*. Where the mobile home itself is rented, the Kansas Residential Landlord and Tenant Act (the law described in this book) applies. Most of this book applies to mobile home owners as well **EXCEPT**:

- The security deposit on a mobile home lot can be as much as two times the lot rent. Pet deposits are NOT addressed.
- The park owner is to maintain security deposits in a separate account. Payment of interest is not required.
- When a park is sold, the owners must notify each tenant in writing of the amount of the security deposit transferred to the new owners. Tenants have 20 days to dispute the amount in writing.
- A lease can be for a maximum of one year.
- When no written lease exists, 60 days' notice to terminate must be given by either party.
- Renewable, written 30-day leases may require only 30 days' notice to terminate.
- No move-in inspection of the lot is required, but it's a good idea.
- A mobile home owner can give a 14/30-Day Notice of Landlord Noncompliance for any period. It's not tied to the rent due date as with residential tenants.
- Any improvements on the lot, except a lawn, made by the mobile home owner are the property of the mobile home owner and can be removed at move out.
- A mobile home is considered abandoned if rent is more than 3 days late and the home owner is absent more than 30 days. The home owner is responsible for all past due lot rents, removal and storage costs, utilities due, and costs of serving any company that has a lien on the mobile home. Costs to the lienholder begin accruing from the date of written notification.
- A mobile home owner on active military duty renting a lot **CANNOT** give 15 days' notice to terminate a month-to-month rental agreement (as residential tenants can) when transfer orders have been received.

Tiedowns (anchors holding a mobile home to the ground) are required on any mobile home measuring 8' x 36' or larger that is not on a permanent foundation. Specifics on what is required and what has been approved for use in Kansas can be obtained from the Division of Architectural Services, Kansas Department of Administration, 900 Jackson, Room 107, Topeka, Kansas (785) 296-1318. It is a criminal offense in Kansas not to have proper tiedowns.

References: MHRLTA, K.S.A. 58-25,100 through 58-25,126; Tiedowns, K.S.A. 75-1226 through 75-1234. Some cities and counties have ordinances which set out standards for mobile homes and/or mobile home parks. Check with your own city or county for further information. Copies of the Mobile Home Parks Act may be ordered from Housing and Credit Counseling, Inc.