

Podcast

Avoiding Unlawful Housing Discrimination in New York State: Part 3

By Diane Krebs

January 4, 2024

Meet the Authors



Diane Krebs

(She/Her)

Principal

631-247-4670

Diane.Krebs@jacksonlewis.com

Related Services

Real Estate

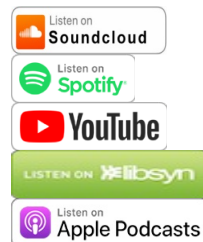
Details

December 22, 2024

Guest Speaker: Chelsea L. John, Director of Fair Housing Investigations at NYS Division of Human Rights

Landlords, property managers, realtors, and others in residential real estate strive to avoid inadvertently discriminating against individuals renting or leasing residential properties. Despite best intentions, discrimination can occur against protected classes covered under the New York State Human Rights Law.

Jackson Lewis P.C. · Avoiding Unlawful Housing Discrimination in New York State: Part 3



Transcript

Alitia Faccone:

Welcome to Jackson Lewis's podcast, We get work™, focused solely on workplace issues. It is our job to help employers develop proactive strategies, strong policies, and business-oriented solutions to cultivate an engaged, stable and inclusive workforce. Our podcast identifies issues that influence and impact the workplace, and its continuing evolution and helps answer the question on every employer's mind. How will my business be impacted?

Alitia Faccone:

In part three of this three-part episode of We get work™, we wrap up our discussion with the New York State Division of Human Rights regarding the prevalence of disability discrimination claims and how such claims may arise concerning housing.

Our hosts today are Diane Krebs, principal in Jackson Lewis' Long Island office and member of the Real Estate Industry group, and special guest Chelsea L. John, Director of Housing Investigations with the New York State Division of Human Rights.

With experience in housing, civil rights, labor, and employment discrimination matters, Diane provides comprehensive counseling, advice, and litigation defense to

employers and real estate professionals.

Chelsea, whose prior experience includes positions at the New York City Commission on Human Rights and New York City nonprofit organizations, is well-versed in employment law, public accommodations, and housing discrimination, as well as bias-based policing.

Diane and Chelsea, the question on everyone's mind today is, what are some best practices for working with prospective or current tenants with disabilities to minimize discrimination claims, and how does that impact my business?

Diane Krebs:

Okay, so why don't we switch gears a little bit? We've been talking about source of income discrimination, but another big topic that you mentioned for the division is disability discrimination. And I think that given its prevalence, in fact you've said that at least half on average of your claims are disability discrimination claims. I think we would be remiss if we didn't at least talk about this a little bit. So can you first give us a general idea, what kinds of disability discrimination claims are you seeing in the real estate arena?

Chelsea John:

So there's two main types of claims in disability discrimination. There's differential treatment, so someone being treated differently because they have a disability, and failure to accommodate, so someone has a disability and needs an accommodation to essentially use and enjoy their unit or building. We, of course, always see a lot of animal cases, emotional support animals and service animals in New York State, and that comes down to an accommodation issue most typically that we're seeing.

Diane Krebs:

Great. So now, what are some key everyday best practices that real estate professionals could and should utilize to help either steer clear of or at least minimize some of these kinds of disability discrimination claims?

Chelsea John:

So there's a couple things. It's really important for housing providers and agents in the real estate industry to know this portion of the law very well, especially because it's something that's so prevalent. So for reasonable accommodation cases, something that I want to highlight is that the standard for not accommodating someone is not just that it's unreasonable, like, oh, that sounds ridiculous, I'm not going to provide them with that. That's unreasonable. It's not subjective. There's actually an undue hardship standard that we as investigators look into. So we're going to be looking into, does this create a financial insolvency issue for you? Is it structurally infeasible? Did you provide any other alternative accommodations to this person? So we would really investigate that defense. So it's important to know when having that conversation with an applicant or a tenant who requests an accommodation, you're not just denying it, you're engaging in this interactive process, this conversation to see, does it cause me an undue hardship as a housing provider or real estate agent?

So that's one thing I want to point out. And of course, we force the state's human rights law and also, under Fair Housing Act and ADA with HUD. But there's also the city, for example, New York City Human Rights Law and other local ordinances that have their own protections within this arena. So while engaging in the interactive process, something I definitely want to highlight is, for example, in New York City, there's a separate requirement to engage in a cooperative dialogue and to conclude that interactive process or cooperative dialogue with a piece of writing. So while that may not be required under state and federal law, that is required under the city's law. So my advice is have items in writing. So you can't require, of course, the person requesting the accommodation to only communicate in writing, but having a record saying, we've concluded this conversation, this interactive process with a piece of writing, that would be really helpful for us as an investigator to also have in the end. So undue hardship, know it and state it, if so, and state it in writing, if needed.

And then the last piece is that in 2022, in the spring of 2022, our agency adopted a regulation that required New York landlords and real estate professionals to provide a notice and disclosure about the rights for a tenant or occupant to request a reasonable accommodation or modification housing. And that is supposed to be posted in every single rental and real estate office in New York State. So I just want to put it out there, for those who don't have that up, please make sure that you've displayed that notice. You can retrieve a copy from our website, but that is something that is required in New York State.

Diane Krebs:

What constitutes a rental or real estate office? Is it only at the location where the broker or the agent works out of or is there some requirement of that in the residential building itself?

Chelsea John:

Yes, both places. So every residential building in New York State was a rental, that should be posted. And then separately, real estate agents and brokers and their brokerages, where they have a brick and mortar, honestly, I'd even say, be safe, put it on your website, that they should have that notice displayed.

Diane Krebs:

Okay. Now, you talked a little bit about undue hardship, so I just want to flesh that out a little bit more. Can you talk a little bit more about what actually constitutes an undue hardship and how it's... what the standard or the test is for that in the housing context?

Chelsea John:

So it's really broad because it depends on the situation, and I know that doesn't make people happy to hear. But there's a lot of different case law that's defined this standard. So when I'm doing an investigation, I'm looking at what defense that they're bringing up and whether it truly would be such an undue hardship for that entity that they couldn't provide it. So structural and feasibility is a good example, where a tenant with a wheelchair requests a ramp at the front entrance of their building and the landlord says, "I can't do it." It's an undue hardship because, let's say, the landmarks

division has said, "I can't modify the front entrance." That would be, for example, an undue hardship. It's infeasible to do it. Another agency has said, "You can't do that," and then we would be investigating the landmarks decision on that.

Diane Krebs:

Understood. And you made a mention of alternate accommodations that in terms of coming up with a, quote, "reasonable accommodation," is the standard for providing a reasonable accommodation in the housing context the same as in the employment context, in the sense that if there's more than one reasonable accommodation that would solve the issue, the landlord has the right to select the accommodation of his, her or its choice as opposed to giving the specific accommodation that the tenant is asking for?

Chelsea John:

Kind of. So it depends on the request, of course. So if a tenant is requesting an air purifier because smoke is entering their home and the landlord says, "No, I'd rather not give you an air purifier, I'll just transfer you," that's not what the tenant wants. They could bring a claim and we could find probable cause on that because there's case law that says that transferring a tenant is the last case scenario. So we really have to look case by case. I would say it's best practice to engage in the interactive process of the accommodation that has been requested. Of course, the tenant needs to provide a letter, at least, from their medical providers stating, they have a disability and creating a nexus or connection between that disability and the accommodation that's asked for.

But that conversation will happen and the landlord can then explore what other options they have. So at the end, the tenant is requesting, I would like to transfer to a building that, I don't know, might be accessible for my wheelchair. The landlord would need to explore their portfolio, whether they can accommodate them, and maybe placing them on a waiting list rather than offering them a buyout just to move out.

Diane Krebs:

And so what you're saying is that the obligation to provide a reasonable accommodation is not limited to the one building in which the tenant is residing. It could potentially extend to any other buildings that are owned or managed by that landlord. Is that right?

Chelsea John:

Yes.

Diane Krebs:

Okay. Now, are there any exemptions or exceptions to these requirements for any kind of real estate professional?

Chelsea John:

And under the New York State Human Rights Law, we do not typically investigate

housing providers that have a two-family home that's owner-occupied. There is an exception where there's been a discriminatory advertisement or published statement by the housing provider that brings them out of that exception. But typically, two-family owner-occupied homes, and also rooms that are being rented within an accommodation, those are typically exempt from the human rights law.

Diane Krebs:

Got it. All right. Any other comments with respect to disability discrimination that you feel compelled to share with our listeners at this point?

Chelsea John:

So what I would encourage listeners to think about is the standard for disability discrimination is really whether the respondent was on notice that someone needed an accommodation. So that's something that my team would be investigating. The complainant may not have made an accommodation request, but if the landlord knows that the tenant is using wheelchair and there are steps at the front entrance, it's best practice to engage in that interactive process, then ask them if they need any kind of an accommodation rather than waiting for the request. So really that on notice standard.

Diane Krebs:

Great. All right, so this has been a wonderful trip through housing discrimination issues. In closing, do you have any last words for our listeners?

Chelsea John:

So I really want to encourage listeners to report allegations of discrimination to our office. We accept tips from the public, so even if you yourself do not wish to file, I did mention earlier that we bring our own complaints initiated by the division. So if you are a real estate professional in New York State and you're witnessing discrimination or some kind of pattern of discrimination happening, please do report that to our office. You can report discrimination on our website, and we also have information about our address and our phone number on our website as well.

Diane Krebs:

Isn't there also a tip line or something like that, that people can use?

Chelsea John:

Yeah. So if you go to dhr.ny.gov, you will see on our website how to report a tip and also how to file your own complaint.

Diane Krebs:

Great. Chelsea, this has been amazing. Thanks again for being here and sharing your perspective on these important issues. I think you've given people a lot to think about. So thank you for being here. And thanks to all of you out there for tuning in to listen. Have a great day.

Chelsea John:

Thank you.

Alitia Faccone:

Thank you for joining us on We get work™. Please tune into our next program where we will continue to tell you not only what's legal, but what is effective. We get work™ is available to stream and subscribe on Apple Podcasts, Google Podcasts, Libsyn, Pandora, SoundCloud, Spotify, Stitcher, and YouTube. For more information on today's topic, our presenters and other Jackson Lewis resources, visit [jacksonlewis.com](https://www.jacksonlewis.com). As a reminder, this material is provided for informational purposes only. It is not intended to constitute legal advice, nor does it create a client lawyer relationship between Jackson Lewis and any recipient.

©2024 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.