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TO: Property Owners

FROM: Gurbir S. Grewal, Attorney General, State of New Jersey
Rachel Wainer Apter, Director, NJ Division on Civil Rights

DATE: October 7, 2020

SUBJECT: Housing Discrimination Laws

The New Jersey Real Estate Commission (REC) requires every licensed broker or salesperson with whom you list your property to give you a copy of this notice. The purpose is to help you comply with the New Jersey Law Against Discrimination (LAD).

Under the LAD, it is illegal to discriminate against a prospective or current buyer or tenant because of actual or perceived race, national origin, religion, gender, gender identity or expression, marital status, civil union status, domestic partner status, affectional or sexual orientation, familial status, pregnancy or breastfeeding, physical or mental disability, or liability for service in the Armed Forces of the United States. It is also illegal to discriminate against a prospective or current buyer or tenant because of any source of lawful income to be used for rental or mortgage payments. Source of lawful income includes Section 8 housing choice vouchers, SRAP (State Rental Assistance Programs), and TRA (temporary rental assistance). It is also illegal to make, print, or publish any statement, including print advertisements and online postings, expressing any preference, limitation, or discrimination based on any of those protected characteristics.

The LAD applies to a wide range of activities, such as advertising, selling, renting, leasing, subleasing, assigning, and showing property (including open land). Here are some issues that come up frequently in enforcing the LAD:

- The prohibition on discrimination based on source of lawful income means, for example, that a landlord cannot reject a prospective tenant because they intend to pay with a Section 8 housing choice voucher, State Rental Assistance Program (SRAP), temporary rental assistance (TRA), or any other subsidy or voucher provided by federal, state, or local rental-assistance programs. A housing provider cannot advertise a property in any way that discriminates based on source of lawful income, including by posting advertisements that state, directly or indirectly, a refusal to accept, or express any limitation on, vouchers or subsidies. For example, advertisements that state "No Section 8," "TRA not accepted," or "This property not approved for Section 8" violate the LAD. In addition, housing providers must calculate any minimum income requirement, financial standard, or income standard based only on the portion of the rent to be paid by the tenant, rather than the entire rental amount.

- The LAD prohibits bias-based harassment in housing, including sexual harassment. If a tenant is being subjected to bias-based harassment that creates a hostile environment, and if the housing provider knew or should have known about it, the housing provider must take reasonable steps to stop it. That includes harassment by other tenants and by a housing provider's agents or employees. "Quid pro quo" sexual harassment—for example, where a building superintendent demands sex or sexual favors as a condition of making necessary repairs—is also prohibited.

- Housing providers must reasonably accommodate tenants with disabilities unless doing so would be an undue burden on their operations. For example, if a tenant shows they have a disability and that keeping an emotional support animal is necessary to afford them an equal opportunity to use and enjoy the dwelling, the housing provider must permit the emotional support animal, even despite a "no pets" policy, unless they can show that doing so would be an undue burden.

- A "no pets" rule cannot be enforced against a person with a disability who has a service or guide animal. A landlord may also not charge a tenant with a disability an extra fee for keeping a service or guide animal.

- Landlords must permit a tenant with a disability—at that tenant's own expense—to make reasonable modifications to the premises if such modifications are needed to give the tenant an equal opportunity to use or enjoy the dwelling.

- The LAD prohibits discrimination based on "familial status"—for example, discrimination against families with children under the age of 18 and pregnant women. Landlords similarly cannot use unreasonable occupancy restrictions to prevent families with children from moving in.

- Selectively inquiring about, or requesting information about and/or documentation of, a prospective tenant's or buyer's immigration or citizenship status because of the person's actual or perceived national origin, race, or ethnicity, or otherwise discriminating on such a basis, is a violation of the LAD.

- As explained in the U.S. Department of Housing and Urban Development's April 2016 Guidance document, because of widespread racial and ethnic disparities in the criminal justice system, blanket policies that make all individuals with any prior arrest or criminal conviction ineligible to rent violate fair housing laws because they have a disproportionate impact based on race or national origin and are not supported by a legitimate business necessity. And housing providers may not use criminal history as a pretext for intentionally discriminating based on race or national origin (for example, by applying criminal-record based restrictions against Black housing applicants but not white housing applicants).

Penalties. If you commit a discriminatory housing practice that violates the LAD, you may be subject to penalties not exceeding $10,000 for a first violation, not exceeding $25,000 for a second violation within five years of the first offense, and not exceeding $50,000 for two or more violations within seven years.

Other remedies. Victims of discrimination may recover economic damages related to the discrimination (such as having to pay higher rent for another unit), as well as damages for emotional distress, pain, and humiliation. In more egregious cases, a victim may also recover punitive damages.

Brokers. The broker or salesperson with whom you list your property must transmit to you every written offer they receive on your property. Brokers and salespersons are licensed by the New Jersey Real Estate Commission and their activities are subject to the LAD as well as general real estate laws of the State and the Commission's own rules and regulations. The broker or salesperson must refuse your listing if you indicate an intent to

discriminate on any basis prohibited by the LAD.

Exemptions. The sale or rental of property (including open land), whether for business or residential purposes, is covered by the LAD, subject to the following exemptions. Note that when an LAD exemption applies, other civil rights laws may nonetheless prohibit discrimination.

- The LAD does not apply to the rental of one unit in a two-family dwelling if the owner occupies the other unit, or to the rental of a room or rooms in a one-family owner-occupied dwelling.
- A religious organization can give preference to persons of the same religion when selling or renting real property.
- In certain types of housing designated for older persons, it is not unlawful to discriminate based on familial status.

For more information about the LAD, or if you have other questions about discrimination in the sale or rental of real property, including how to report a complaint, please visit **www.NJCivilRights.gov** or call our Housing Hotline at **(866) 405-3050**. DCR has a number of fair housing fact sheets that are available at https://www.nj.gov/oag/dcr/housing.html. Thank you.

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