

Kimball, Tirey & St. John LLP

A Slip of the Tongue Can Cost You

D.J. Ryan

Revised July, 2012

One of the most common questions asked by managers, leasing professionals, and owners in fair housing trainings is, "What can I, or can't I say, so I won't get in trouble with fair housing?" Although the answer is simple, "Don't say or ask anything that could be construed as discriminatory," the implementation of the answer requires housing providers to be familiar with the laws and to THINK before they speak. The list of comments that follows can be used to stimulate your thinking and to reevaluate comments that you or your staff might be making.

Referring to a person's protected class

Gosh, that's an interesting last name. What nationality is it? (National Origin/Ancestry)
So is he your husband? (Marital status)
Do you have children? (Familial status)
You look so frail. What if you hurt yourself? (Disabled)
Are you sure you can live alone safely? (Disabled)
Can you live independently? (Disabled)

Comments that could discourage the person from living there

We have a very quiet property, mostly older people, but we will consider children.
This isn't a very safe neighborhood for children.
The schools aren't particularly good in this area.
This property isn't very safe for children because of the (fill in the blanks) balconies, creek, fountain, busy street, cliff, stairs . . .
You know, we don't have a playground or any place for children to play here.

Comments that indicate the presence of "steering" practices

This property wasn't designed for children. But the "Acme" Apartments down the street has a great playground.
We prefer to have our families with children live in ground floor units or near the playground.

Comments that indicate the presence of other discriminatory practices

Sorry, but our units are not accessible so we can't rent to you.
We'll have to charge you a higher security deposit because of your guide dog (or because your wheelchair might damage the door frames).
Sorry, we don't take Section 8.
We can't rent to you and your guide dog because we have a "no pet" policy here.

Other comments to avoid

Housing providers are commonly asked discriminatory questions by applicants. There can be a fine line between what information is acceptable to provide and what might be discriminatory. When asked by a prospective resident, "What kind of people live here?" or "Are there many children living here?" or a similar inquiry about the make-up of the residents, respond with, "We are an equal opportunity housing provider and anyone who meets our qualifications is welcome to live here." If pushed further, say, "I'm sorry, but responding to that kind of question is a violation of fair housing law."

Other common, loaded questions from prospects are “Who lives next door?” to the vacant unit, or a request to live in a unit that is “not next to” someone from a protected class. With the first question, rather than responding, “Oh, a family with a new baby,” or with a similarly direct answer, you should simply point out that all the apartments are occupied by fully qualified residents. Some managers add the reminder, “Besides, whoever is living there today may move tomorrow.” If pressed, remind the applicant that because of fair housing laws, you are not able to respond to their request.

Why can't I say that?

If you don't understand why some of these comments are discriminatory, or the fair housing laws that underlie them, it's time to give your fair housing IQ an educational boost -- or you may find yourself on the receiving end of a complaint. Reminder: KTS provides webinars, as well as online and on-site fair housing training for its client companies to help them avoid costly mistakes.

Kimball, Tirey & St. John LLP is a full service real estate law firm representing residential and commercial property owners and managers. This article is for general information purposes only. While KTS provides clients with information on legislative changes, our courtesy notifications are not meant to be exhaustive and do not take the place of legislative services or membership in trade associations. Our legal alerts are provided on selected topics and should not be relied upon as a complete report of all new changes of local, state, and federal laws affecting property owners and managers. Laws may have changed since this article was published. Before acting, be sure to receive legal advice from our office. For contact information, please visit our website: www.kts-law.com. For past Legal Alerts, Questions & Answers and Legal Articles, please consult the resource section of our website.