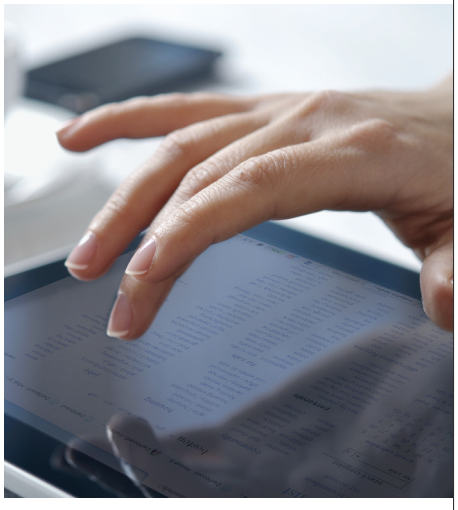
A funny thing happened in response to my Craigslist ad

April marks the 45th anniversary of the enactment of the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968.

Originally, the Act precluded discrimination in housing on the basis of race, color, religion, sex, and national origin. As the years march on, the law has expanded, both on a federal and state level, as have the types of claims that can give rise to liability.

Property managers and owners would once place an ad in the local newspaper, or put a vacancy sign in front of a housing complex to show housing was available.

No question, everyone knew the rules—you cannot advertise, for example, that a



vacancy is unavailable to certain protected classes. It has always been a problematic practice to use human models in advertising if the human models do not accurately reflect the diversity of the community.

Unfortunately, many do not realize that the same rules apply when using social media to advertise. Seeking tenants with no kids, unless the complex specifically meets the legal requirements to be housing for older persons is one of the classic offenses.

Social media can also get property managers and owners in trouble in other ways. For example, a prospective tenant responds to an ad, provides an application, or provides other appropriate identifying information. Our new societal focus on social media might cause the manager or owner to see what they can find out about the prospective tenant by looking him or her up on Facebook, MySpace, or some other social networking site.

Unfortunately, information that may be readily available online cannot legally be used to make renting decisions.

Hypothetically, a Facebook page might include pictures of the prospective tenant's commitment ceremony to his same-sex partner. While the Federal Fair Housing Act does not contain an express prohibition against discriminating in housing based on sexual orientation, many states and cities do have laws expressly prohibiting such discrimination. Hence, knowledge of the prospective tenant's status should not be known, and definitely should not be used, in making any tenancy decision.

Say you decide to Google the prospective tenant's name, and that search yields the prospective tenant's blog. The blog is all about the tenant and his boa constrictor, Lucy. The prospective tenant has a seizure disorder, and the blog is all about how Lucy protects him, and signals to him when he is about to have a seizure, so he can sit down and take steps to prevent the seizure.

You hate snakes, and would never want to rent to anyone who owns a snake. And yet, while snakes are not considered service animals under the Americans with Disabilities Act, they can qualify as "assistance animals" under the Fair Housing Act. Refusing to rent to the prospective tenant because of Lucy could give rise to potential liability.

When the applicant comes in to see the property and completes an application, a decision is made by the property owner or manager to conduct a criminal background check on the prospective tenant. This practice, if not applied properly and consistently, is fraught with traps for the unwary. If the policy is to conduct criminal background checks, then they must be conducted on all prospective tenants. Further, it is important that the results be used in a manner that is reasonable and related to the property's legitimate business interests, and should not be applied in a blanket fashion.

Finally, and most importantly, the results should be consistent. A caucasian applicant with a drug conviction must be treated in the same manner as an African-American or Asian applicant with a drug conviction.

Once the prospective tenant is offered the apartment, the obligation to treat him or her fairly doesn't end. In some respects, it is just beginning.

Remember Lucy? So, you decide you are going to rent to Lucy and her owner. But because of your fear of Lucy, you ask for a security deposit, which you ask for in all circumstances where a tenant has a pet. The problem, however, is that assistance and service animals are not pets, so you cannot charge the deposit.

A month after your new tenant moves in, you walk by the apartment, casually glance into the window, and cannot see in. It is not because the drapes are drawn. It is because there is so much stuff piled up in the apartment, that there is no line of sight through the window. You conclude that the tenant is a hoarder. While your first instinct might be to demand that the tenant clean up or move out, acting upon that instinct could give rise to a claim for disability discrimination. It is possible that hoarding could be due to a psychiatric disorder.

These are just a few examples of claims that could be raised. Claims of this nature are not only brought by tenants who feel they are wrongfully evicted. They are brought by individuals who may be having difficulty finding an apartment to rent and who believe the reason is or could be due to their membership in some protected class. Further, the Department of Housing and Urban Development utilizes testers to review housing practices.

Claims under either the federal or state fair housing laws can take a variety of forms. They could be claims brought by, or before, the federal or state agency charged with enforcing fair housing laws. Under some circumstances, they could be brought as civil lawsuits in state or federal court. Under all circumstances, they could give rise to significant liability, in the form of damages, penalties, and attorney's fees.

That is why it is vital to make certain that the individuals within your organization who are responsible for placing ads, researching tenants, making tenancy decisions, and evicting tenants are properly trained on what they should, and should not, consider in making decisions, so you don't feel Lucy tightening around your professional neck.

Source Helene Wasserman, shareholder at the law firm Littler Mendelson.