

Discrimination and renting

Information for NSW real estate agents

The NSW Anti-Discrimination Board and the NSW Office of Fair Trading are working with real estate agents for a 'Fair Go' for tenants when renting or trying to rent a property. This fact sheet outlines an agent's rights and responsibilities, and how to avoid problems with discrimination.

Anti-discrimination laws

The law states that you must not discriminate against someone (treat them unfairly compared to others), or harass them, because of their:

- race (colour, nationality, descent eg. Aboriginal descent, ethnic, ethno-religious or national origin)
- sex
- pregnancy
- marital status
- disability (physical, intellectual or psychiatric disability)
- homosexuality (both gay men and lesbians)
- age
- transgender (transsexuality).

It is also against the law to discriminate against a person because of the race, sex, pregnancy, marital status, disability, homosexuality, age or transgender of their relatives, friends or associates.

IMPORTANT – In the case of a real estate agent, it is against the law to use characteristics such as race, disability, sex, etc to decide whether you will rent a property to a prospective tenant. It is no defence to claim that a discriminatory action was the result of following the instructions of the property owner.

Property owners should be aware that they may be liable for discriminatory acts, for example where the owner instructs an agent to only rent to white people and the agent carries out those instructions.

In that case both the owner and the agent may be liable. It is no defence for an agent to say she or he was simply carrying out the instructions of the owner.

Direct and indirect discrimination

Direct discrimination is when a person is treated less favourably than another person because of their race, sex etc.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (*Anti-Discrimination Act*) it is likely to be indirect discrimination.

The following is an example of indirect discrimination.

A real estate agent has a number of applications from people wanting to rent the same property. The agent's policy is to rank applications by the income of applicants. Since some people from Aboriginal backgrounds may earn less on average than others, this policy may result in indirect discrimination.

A fair selection process would be to rank people in order of when they lodge their application and then assess the first application for their capacity to pay the rent and maintain the property.

Fair trading laws

Fair trading laws state that you must not engage in conduct that is, in the circumstances, misleading in connection with the supply of goods and services to a customer.

The following is an example that may be both discrimination and misleading conduct.

An Aboriginal person rings the real estate agent about a rental property. On the phone the real estate agent

tells the caller that the property is available. When the Aboriginal person goes to the real estate agent to lodge an application, the real estate agent informs them that it is no longer available. Then a non-Aboriginal person asks the same agent and is told that the property is available.

In an actual case like this, the Administrative Decisions Tribunal ruled that the real estate agent was liable under anti-discrimination law and awarded \$6,000 damages against the agent.

Let's show that you are a 'Fair Go' business

In providing services to your clients, your agency must not use the race, sex, age, marital status, pregnancy, disability, transgender or homosexuality of the person (or their relatives, friends or associates) to decide:

- whether the service is provided – eg. not accepting applications for rental property from people with characteristics covered by discrimination law
- to defer a person's application for accommodation or putting them lower on a list of applicants
- the terms on which accommodation will be offered, for example charging a higher rent or bond or imposing some other condition
- the type of service provided – eg. letting a tenant's race affect the level of maintenance provided for their rental property
- the manner in which the service is provided – eg. people must not be harassed or ignored because of their race, sex, etc to evict a person or subject them to any other detriment.

Counter and phone service often gives a potential client their first impression of your office. It makes good business sense for your agency to make sure that this service is non-discriminatory. This helps you to maintain and expand your business.

You should also make sure that everybody who works in your business is aware of the law and does not

themselves discriminate in their dealings with tenants or prospective tenants.

If they do, you may be legally liable for their unlawful actions unless you can show you took all reasonable steps to prevent them doing so.

Promote your good practices

It's a good idea to develop a letting policy for your office. The letting policy should explain that your agency will not discriminate. Display it publicly to show your clients and prospective clients that you will provide a fair and equal service to all clients. The Real Estate Institute of NSW *Letting Policy* (produced in association with the Anti-Discrimination Board) is one example you may wish to copy.

It's good practice to tell tenants why they were unsuccessful with a tenancy application. If you don't give a legitimate reason, people may assume discrimination occurred. Giving reasons may help people to better understand your decision.

More information

NSW Anti-Discrimination Board
Tel: 9268 5555 or 1800 670 812
www.lawlink.nsw.gov.au/adb

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

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