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### TENANT LEASE TUNE-UP: COURT SAYS LANDLORDS LIABLE FOR TENANT-ON-TENANT DISCRIMINATION

There are not many reported cases on whether a landlord can be liable under Fair Housing law for tenant-on-tenant discrimination. But now there's one more: *Francis v. Kings Park Manor*, 15-cv-1823 (2nd Cir. 2019). In *Francis*, the United States Court of Appeals for the Second Circuit held that an owner and property manager "may be liable for failing to intervene in tenant-on-tenant racial discrimination of which it knew or reasonably should have known and had the power to address."

The tenant in this case was subject to verbal harassment and physical intimidation by another tenant on the basis of race. The perpetrating tenant ultimately pled guilty to hate crimes. The landlord knew about the problem as it unfolded but took no action. Tenant letters to the landlord went unanswered and, at one point, the property manager was specifically told "not to get involved." The Court asked HUD to weigh in on the issues as a "friend of the court" and HUD submitted that its Quid Pro Quo and Hostile Environment Harassment Rule, 81 Fed. Reg. 63054 (Sept. 14, 2016) (issued after this case was filed but before it was decided) expressed HUD's "long-standing view" that a landlord can be liable for third-party discrimination when the landlord fails to address tenant-on-tenant discrimination while it had the power to do so.

The obvious message of this holding is that landlords have a duty to take remedial action when a tenant discriminates against or harasses another tenant in violation of the Fair Housing laws.

#### TIME FOR A TUNE-UP

In light of this decision, which exemplifies a small but apparently growing consensus on the issue, we suggest that property managers take this opportunity to tune-up tenant leases by including provisions that make it clear that tenants may not discriminate against, harass, or otherwise create a hostile environment for other tenants or visitors on the property on a basis that is covered by Fair Housing laws. The lease should ensure that the landlord has the power to take remedial action to address such harassment, up to and including good cause termination of the lease. Further, the definition of "good cause" in the lease should include discrimination against, harassment of, or creation of a hostile environment for, others on the property in violation of state and federal Fair Housing laws. Finally, landlords should investigate and respond to complaints from tenants about discriminatory and harassing behavior by other tenants or their guests.

The take-away is that landlords cannot ignore complaints of tenant-on-tenant discrimination or harassment. Failure to take action increases the risk of landlord liability.

If you have any questions about how to implement appropriate lease provisions or how to handle difficult situations with or among tenants, call or email Jeff Streiffer (jstreiffer@goldfarblipman.com), Dave Kroot (mkroot@goldfarblipman.com), or any other attorney at Goldfarb & Lipman: 510-836-6336.