

Hopkins • Tschetter • Sulzer  
Attorneys and Counselors at Law



# Landlord News

2821 South Parker Road, Pavilion Tower II Suite 228, Aurora, Colorado 80014

htsnews@htspc.com

www.htspc.com

Denver Phone 303.766.8004

FAX Completed Eviction Forms To: 303.766.1181 or 303.766.1819

Colorado Springs Phone 719.550.8004

FAX Completed Eviction Forms To: 719.227.1181

## SEXUAL ORIENTATION IS A PROTECTED CLASS IN COLORADO

Federal fair housing law does not protect sexual orientation, but Colorado fair housing law does. Under the Colorado Anti-Discrimination Act (“CADA”), sexual orientation and gender identity have been a protected class in employment since August 3, 2007. *On May 29, 2008, the Colorado General Assembly amended CADA and made sexual orientation and gender identity a protected class in housing, public accommodation, and advertising.* Prior to the amendment of CADA, various Colorado municipalities, such as Denver, had already

adopted ordinances making sexual orientation a protected class.

Under Colorado law, sexual orientation and gender identity are a single protected class. Colorado law defines “sexual

orientation’ to be heterosexuality, homosexuality, bisexuality, transgender status, and any perception thereof”. Transgender status, or gender identity, is included in the general definition and is an umbrella term that describes an individual whose gender identity or gender expression is different from that traditionally associated with that individual’s gender at birth. Sexual orientation is broadly defined to include someone who does not actually fit the definition but who is perceived to fit the definition.

Under CADA, discrimination is illegal against anyone who fits within the definition of “sexual orientation” and subject to the same consequences as any other type of housing discrimination. For example, any resident claiming sexual orientation discrimination can file a discrimination complaint with the Colorado Civil Rights Division (“CCRD”). Residents falling within this protected class are protected against discrimination that results in different terms, conditions, and privileges of housing. Remember, the expression “terms, conditions and privileges” of housing is so broad that it covers almost

**CONTINUED ON PAGE 2**



## HTS ENDORSES AMBER APARTMENT ALERTS PROGRAM

In the interest of public safety, Hopkins Tschetter Sulzer would like to enlist the support of our clients for a vital new service that we are recommending to all Apartment communities. The AMBER Apartment Alerts program, that is now a secondary party distributor of the national AMBER Alert system, is the brain child of Jim White, Regional Manager of Elkco Properties, Inc. Jim was motivated to undertake creating this program for Apartment communities because over 2,100 children are reported missing every day. With twenty-three years working in the multi-family housing industry he recognized the incredible outreach that could be achieved in circulating information on missing children to multi-housing family providers beyond what is achieved through media outlets.

The AMBER Apartment Alerts is a program that distributes AMBER Alerts and other reports of missing or exploited children issued by our national and

state law enforcement agencies. The alerts go directly to apartment communities in the areas where the reported missing or exploited children may be found, or in any areas where authorities believe such children may be enroute to. Currently the Apartment Association of Southern Colorado (AASC) and Boulder Area Rental Housing Association (BARHA) are already actively involved in this program, and are encouraging their members to participate. Jim has been successful in receiving the support of Apartment Associations in several other states. Our Firm joins with Jim in encouraging the CAA and the AAMD as well as all other Colorado Apartment Associations to

**CONTINUED ON PAGE 2**



**SEXUAL ORIENTATION IS A PROTECTED CLASS IN COLORADO** Continued From Page 1

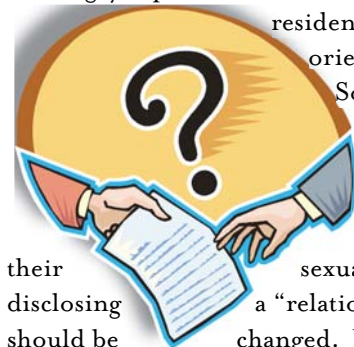
any aspect of your relationship with a resident. Simply put, it means that a community, its owner, and agents cannot treat a resident or a prospective resident differently because of sexual orientation or gender identity.

Discouraging telephone prospects because they sound gay is prohibited. You may not inquire about a

resident's or a prospect's sexual orientation, or their sex lives. Some applications require applicants to "disclose" their relationships. If your application requires an applicant to disclose their sexual orientation as a result of disclosing a "relationship", your application should be changed. You cannot charge different rents based on sexual orientation, or steer gay residents to certain units. A community's occupancy policies can't discriminate against residents based on their sexual orientation. The community should not treat residents differently based on their sexual orientation, nor should the community discriminate against a resident because of gay guests. Staff should not discuss residents' or prospects' sexual orientation amongst themselves or with other residents, and should never answer inappropriate questions regarding sexual orientation.

As stated, the expression "terms, conditions and privileges" covers almost any aspect of your relationship with a resident. For example, use of amenities or the clubhouse, and attendance at community functions is a "privilege". If the community denies a resident use of a common area solely because of the resident's actual or perceived sexual orientation or gender identity, this would violate CADA. Similarly, providing inaccurate or untrue information because of sexual orientation about community events and availability of community amenities is unlawful. For example, you would be committing unlawful housing discrimination by telling a resident who is or who is believed to be homosexual, bisexual, or transgender that the clubhouse is not available for use, when it is available. If the community allows certain common areas, like the clubhouse and swimming pool, to be reserved for private events, then the community has to make such facilities available to anyone who meets the legitimate nondiscriminatory criteria to reserve such facilities. Subject to legitimate rules applicable to all residents, the community must allow use of common areas and other amenities regardless of sexual orientation.

Because sexual orientation is a protected class, discrimination based on a hostile living environment  
**CONTINUED ON PAGE 3**



**HTS ENDORSES AMBER APARTMENT ALERTS PROGRAM** Continued From Page 1

become part of this very important public service program. Currently, Jim is working on the AMBER Apartment Alerts project with the DOJ, Office of Juvenile Justice and Delinquency Programs.

Because of programs like AMBER Alert over 98.9% of children who are reported missing every day are successfully found. With the AMBER Apartment Alerts program, AMBER Alerts and other reports of missing or exploited children in Colorado, once verified with CBI, are transmitted directly to participating apartment complexes in the area in which the missing child is most likely to be found. In addition to missing and exploited children, these alerts can arise from other situations, from runaways to custodial disputes that result in a parent or relative taking a child without proper legal authority. It is our Firm's belief that this program is extremely important for the safety of our children and communities and strongly recommend that all of our clients consider participating in the AMBER Apartment Alerts program. There is no downside to this program. *Anyone who wants further information can contact Jim White directly at [jimwhite@amberapartmentalerts.com](mailto:jimwhite@amberapartmentalerts.com) or 720-217-4680.*

m m m m m

IMPORTANT HTS MAY DATES	
June 10th -	Basic Evictions HTS 2851 S. Parker Rd Tower I Conference Room Lower Level 8:30 am. - Noon
June 11th -	Colorado Springs Client Lunch Ritz Grill 15 S. Tejon Street 11:30 a.m. -100 p.m.
June 12th -	CHFA Susidized Housing Boot Camp Call CHFA
June 19th -	South Client Luncheon Dave & Busters S. Colorado Blvd. 11:30 a.m. - 1:00 p.m.
June 25th -	Military Housing Workshop Colorado Springs AASC Call for Information 9:00 a.m - 11:30 p.m.  Carbon Monoxide Workshop Colorado Springs AASC Call for Information 1:30 p.m. - 3:30 p.m.

**SEXUAL ORIENTATION IS A PROTECTED CLASS IN COLORADO** *Continued From Page 2*

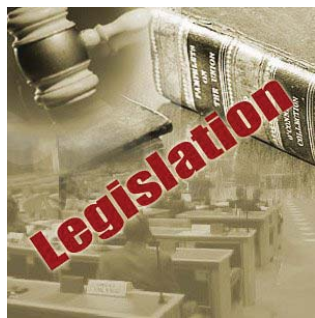
theory may be asserted more frequently. Based on gender and race (two protected classes under the federal fair housing act), residents have already claimed discrimination based on a hostile living environment theory. Under a hostile living environment theory, a resident alleges that they are being harassed because of their protected class status. For example, a female resident contends she is the target of repeated unwelcome sexual advances. The conduct makes it very uncomfortable for her to reside at the community, and thus creates a “hostile living environment”. The CCRD enforces the Colorado Fair Housing Act and CADA. The CCRD will likely accept and issue charges of discrimination based on sexual orientation because of harassment resulting in a hostile living environment.



Hostile living environment cases can also be based on resident on resident harassment. Some case law supports the conclusion that communities may have an obligation to try to curb or stop harassment based on sexual orientation, if the community knows about it. Reported cases have addressed hostile living environment claims based on race, national origin, and religion. The rationale of these cases can be applied to a hostile environment based on sexual orientation as well. Unfortunately, the law provides little guidance on what steps a community must take to curb harassment that creates a hostile living environment based on some protected classes once the community is aware of it.

Colorado law does provide some guidance with respect to sexual orientation. Based on CADA, CCRD published Rule 8I.8. This rule provides that if an individual faces harassment based on sexual orientation, the individual “must take advantage of any corrective or remedial measures made available by a covered entity, unless pursuing such a complaint would be futile or impractical. A covered entity may be held liable for the harassment if it fails to initiate a reasonable investigation or to take prompt and effective remedial action, if appropriate.”

Apartment communities are a “covered entity” under this rule. This rule means that a covered entity has to: (a) investigate an allegation of harassment when it receives such allegation or should have become aware of it, and (b) address the problem in some manner promptly after investigating the allegation. Because the rule is general in nature,



the rule provides no details on how to specifically address the problem. However, similar to any resident complaint, prudence dictates that you should have a clear policy to deal with resident sexual orientation discrimination prior to any incident.

Your policy should address non-tolerance, documentation, including mandatory investigation, procedures for handling and investigating, clear and prompt communication of investigation results, and actions to be taken depending on results of investigation. Your staff should be regularly educated and trained on the policy. See, April 2008 Edition of Landlord News, “Be Prepared When A Resident Discriminates Against Another Resident”, [http://www.htspc.com/admin/newsletters/docs/109\\_HTSPCLandlordNewsApril2008.pdf](http://www.htspc.com/admin/newsletters/docs/109_HTSPCLandlordNewsApril2008.pdf).

Historically, laws protecting sexual orientation prohibit statements that express a preference for or against people with a certain sexual orientation. Advertising terms such as “family friendly” and “prefer married couples” could be per se violations of CADA. The CCRD and its staff tend to have strong opinions about these types

of advertising labels. Such labels may infer a preference for heterosexual families and/or couples and, thus, constitute an illegal preference. Communities should keep this in mind for all forms of marketing and advertising. Brochures, tri-folds, websites, and any other information used to promote the community should avoid subtle messages that suggest or



imply a preference for or against people of a particular sexual orientation. Websites should be carefully reviewed. A Google search of the term “family friendly & Colorado & Apartment” resulted in over 91,000 hits! Websites should use photos depicting a diverse community and not be limited to only images of opposite-sex couples.

m m m m m





## 18 SIGNS YOU'RE A GROWN UP

1. 6:00 AM is when you get up, not when you go to sleep.
2. You hear your favorite song on an elevator.
3. You go from 130 days of vacation time to 7.
4. Jeans and a sweater no longer qualify as 'dressed up.'
5. You're the one calling the police because those darn kids next door don't know how to turn down the stereo.
6. Your car insurance goes down and your car payments go up.
7. You keep more food than beer in the fridge.
8. You carry an umbrella and you regularly watch the Weather Channel.

9. You actually eat breakfast foods at breakfast time.
10. Grocery lists are longer than Macaroni & Cheese, Diet Pepsi & Ding Dongs
11. You don't know what time Taco Bell closes anymore.
12. Dinner and a movie - The whole date instead of the beginning of one.
13. MTV News is no longer your primary source for information.
14. You feed your dog "Science Diet" instead of McDonald's leftovers.
15. "I just can't drink the way I used to" replaces "I'm never going to drink that much again."
16. Over 90% of the time you spend in front of a computer is for real work.
17. You take naps.
- 18 You read this entire list looking for one sign that doesn't apply to you.

*"Being defeated is often a temporary condition  
Giving up is what makes it permanent"*

*Marilyn Vos Savant*

