



Immigration and Discrimination

by Zachary Lawrence, JD

Illegal immigration is back in the news. Donald Trump (aka "The Donald"), claims that illegal immigrants from Mexico are made up, primarily of "rapists and murderers."

On July, 1, 2015, 32 year old Kathryn Steinle was walking on Pier 14 in San Francisco when she was gunned down by an illegal immigrant with a rap sheet as long as the Golden Gate Bridge.

San Francisco, along with several other cities are known as "sanctuary" cities. That is, the police may not stop and interrogate a person for the sole purpose of finding out if they are in this country illegally. The Steinle murder, they say,

was preventable because these "sanctuary" cities provide safe harbor for illegal immigrants with criminal backgrounds.

The law requires that the first applicant (the applicant whose paperwork is first received and processed) that meets your income criteria, is the first applicant that must be offered the unit.

Fast forward to you, the landlord. You have a vacancy and have received a rental application. Are you, the landlord, permitted by law, to in-

quire about the applicant's immigration status?

I put this question to attorney Dennis Block, on our weekly radio show "Landlord-Tenant Radio (Monday's at 1:00 pm on KTYM 1460 AM).

Block: The landlord may ask the applicants for their social security number. If they don't have one, he may then ask for other documents to support their claim that they are legal residents.

Zac: Let's say that I'm an actor residing in London. I have been hired to work on the next Bruce Willis film (Die Hard 187) and must live in California for the next 12 months. I have proof of residency, proof of income, refer-

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ences, but no social security number.

I am acknowledging that I am not a citizen of the United States. Do you have the right to reject this applicant, or any applicant, solely because they are not a citizen of the United States?

Block: If a prospective tenant is in the United States legally, on a "green card", student visa, or offers other such documents which proves legal residency, then the landlord may not reject such an applicant, solely based on their immigration status.

However, if the landlord accepts such an applicant, and it turns out that their paper-

work is bogus, this would be a material breach of the rental agreement and allow the landlord to evict. Any misrepresentation on a rental application is subject to an eviction. **(It is only a breach of the lease IF the lease contains a provision which states - "Any misrepresentation on your application will constitute a material breach of this lease agreement.")**

Zac: Please explain to our listeners the difference between a material misrepresentation and an immaterial misrepresentation.

Block: For example, if the applicant claims that he started work at his firm in 1979,

when in fact he started work in 1981, then that is of no consequence. It is immaterial and would not give the landlord the right to evict. However, if the same applicant claims that he started working for the firm in 1979 and in fact never worked at that firm, then that is a material misrepresentation, and grounds for eviction.

Zac: What if this same applicant is in fact gainfully employed at that firm, but claims on his application that he earns \$100,000.00 per year. It is later discovered that he only earns \$50,000.00 per year. Is that a material misrepresentation?

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Block: Yes. The landlord may not have rented his unit at his price if he knew the applicants true financial status.

Zac: Let's say the landlord takes in a rental application on Monday, and then another one on Tuesday. He runs both applications for credit checks. Both applicants have excellent credit. However, the "Tuesday" applicant makes \$100,000.00 per year and the "Monday" applicant makes \$50,000.00 per year. Can a landlord select an applicant simply because he makes more money than other applicants? "

Block: Regardless of the fact that its Bill Gates

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or John Q. Public, the law requires that the first applicant (the applicant whose paperwork is first received and processed) that meets your income criteria, is the first applicant that must be offered the unit. So, a good rule of thumb for landlords is *"First in time is first in line"*.

Closing Notes

Landlords in most states are free to inquire as to their applicants' and tenants' immigration status, and to reject applicants who are in the United States illegally. As long as landlords don't use immigration status as a

mask for illegal discrimination, on the basis of race, ethnicity, or national origin, such a practice is not illegal.

Notable exceptions include the federally subsidized "Section 8" program, which requires proof of legal residence before tenants may participate.

As of January 1, 2008, all California landlords are prohibited from inquiring as to their prospects and tenants immigration status (California Civil Code Section 1940.3). The law also forbids any municipality from passing laws that direct landlords to make such inquiries. Landlords may still


require documentation that will determine or verify the financial qualifications of an applicant, or to verify the identity of the prospective tenant. ADA

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(KTYM 1460am Monday's @1pm) with Attorney Dennis P. Block. For management or consultation services, Zachary Lawrence can be reached at (310) 636-1200 or park806@aol.com.


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