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Landlords are not required to verify Tenant's legal status in the U.S.

In June, a national organization for immigration reform filed a lawsuit against a property management company for harboring illegal aliens in rental housing located in Plainfield, NJ. The organization, the Immigration Reform Law Institute, has alleged in its lawsuit against Connelly Properties, Inc., that, because it has many undocumented tenants in the buildings that it manages, this activity constitutes harboring undocumented aliens. The lawsuit cites the Racketeer Influenced and Corrupt Practices Act, which allows prosecution of organized criminal activity, including human trafficking and illegal alien harboring and smuggling. The lawsuit cites state and federal fair housing laws and alleges that the company intentionally targeted undocumented aliens to fill vacant apartments and purposefully steered tenants to specific buildings based on their race, national origin, or income. The lawsuit also alleges that the landlord is laundering the proceeds of illegal alien rental income, discriminating against U.S. citizen tenants, and mistreating U.S. citizen tenants and a former employee in the process.

In October, Connelly filed a motion to dismiss portions of the lawsuit that relate to claims of RICO violations. In the motion, attorneys for Connelly state that a landlord cannot be held liable for renting to an undocumented alien, knowingly or unknowingly, because proof of legal U.S. residence is not a requirement. The motion cites that the plaintiff's RICO claims are not based in law and that it is not a crime for a landlord to rent to an illegal alien.

What Should You Do as a Landlord?

Currently, proof of legal immigrant status is not required to rent housing in New Jersey. As Connelly's motion correctly stated, proof of legal U.S. residence is not a requirement. Landlords are not required to check the legal immigrant status of current or potential tenants.

The law has not changed and therefore, landlords are not required to do anything. If, however, you do have concerns about renting to undocumented aliens, or believe that you currently rent to undocumented aliens, you should be careful in your actions regarding potential and current tenants because of anti-discrimination laws on the books. Just as one source of law, the federal Fair Housing Act prohibits discrimination in the rental of dwellings and other housing-related transactions based on race, national origin, and familial status. A landlord may be subject to punishment if he or she purposefully discriminates against housing applicants based on their national origin or race because the landlord fears the applicant may be an undocumented alien.

The harboring of illegal aliens is a serious crime and there have been arrests by the Immigration and Customs Enforcement (ICE), a law enforcement division of the Department of Homeland Security, and federal indictments by the U.S. Department of Justice. These convictions however, were prosecuted under the Immigration Reform and Control Act of 1986 (IRCA). This law makes punishable for knowingly *hiring* undocumented workers and employing them for more than 12 months. IRCA also requires that employers verify the legal employment status of their employees. Thus, landlords, in merely renting to tenants without checking out the tenants employment status, do not fall under the purview of IRCA. Landlords, however, should carefully comply with employment authorization verification requirements when using tenants to manage or care for their rental properties.

This article is not intended as legal advice, but to provide information regarding federal requirements. You should contact the appropriate federal or state agency or consult with an attorney to determine what is appropriate to your specific situation.