Fair Housing Tip of the Month

Tip #1: Reasonable Accommodations Require an Interactive Process

“I have a process for tenant application. I ask for a reference from a prior landlord, credit history, proof of income and the like. I have an applicant who, because of his disability, has lived in a subsidized group home for the last several years and does not have recent rental history. I am uncomfortable renting to him. Can I refuse to consider his application?”

The law says: A landlord may not withhold, deny, make unavailable, or refuse to rent, lease, or sell a dwelling because of the disability of a prospective tenant or buyer. Even if the prospective tenant’s disability is not the sole or even dominant cause of the refusal to rent, a landlord is still committing unlawful rental discrimination if the disability was a motivating factor. A landlord may refuse to consider the prospective tenant, if the refusal is based on a purely objective, legitimate business interest such as the prospective tenant being a factually poor credit risk or the applicant having a proven record of being disruptive or destructive. If lack of credit history is related to the applicant’s disability, fair housing laws oblige the landlord to make reasonable changes to his standard application process. The landlord is required to make reasonable accommodations by modifying his application process and to engage with the applicant in an interactive process to identify an appropriate accommodation for the tenant’s application. The landlord must avoid discriminating against an applicant based on his disability or a stereotype of his disability, such as “people with disabilities are a credit risk.”

What to do: The landlord, in this case, has properly implemented a uniform application process to ensure fairness in reviewing applications. However, the landlord cannot refuse to rent to a prospective tenant with a disability on the basis of his disability. The reason that this applicant does not have the required rental history is due to the tenant’s disability and the landlord must recognize that the applicant is requesting a reasonable accommodation to the policy. Thus the landlord must participate in an interactive process with an applicant to identify alternative ways for the applicant to prove his tenant-worthiness in a non-discriminatory fashion. Part of the interactive process should include reviewing alternative ways of identifying the credit worthiness of the applicant. The applicant’s disability does not necessarily mean that the applicant is a credit risk.

Fair Housing: It’s the Law: You may not refuse to rent, lease, or sell a dwelling because of the applicant’s disability. You should engage in an interactive process with the applicant in identifying an alternative means to acquire information necessary to determine the applicant’s objective qualifications as a tenant.

1 42 U.S.C.A. § 3604; see Cal. Gov’t Code § 12955.8.
2 Gov.C. § 12955.8(a).
3 See Williams v. Matthews Co., 499 F.2d 819, 826 (8th Cir. 1974); see also Woods-Drake v. Lundy, 667 F.2d 1198, 1202 (5th Cir. 1982).
5 See Diffey v. Riverside County Sheriff's Dept. (2000) 84 Cal.App.4th 1031, 1037
8 See Williams v. Matthews Co., 499 F.2d at 826.

Disclaimer: The Fair Housing Tip of the Month program is for educational purposes only and does not constitute legal advice. If you have a legal question, please contact MHAS or another attorney of your choice.

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