Fair Housing Tip of the Month

Tip #2: Fair Housing Reasonable Accommodations and Confidentiality

“My tenant’s unit shares a wall with the elevator. As a reasonable accommodation based on his disability, he has asked that I allow him to move into a unit that does not share a wall with the elevator. A unit like this will be opening up soon, but I have other tenants who have requested this unit because it is on the first floor and close to the parking lot. Do I have to make this accommodation? What documentation can I request? If I make an accommodation, how do I explain it to the other tenants? They will think it is unfair unless I tell them why.”

The law says: Landlords must make reasonable accommodations to tenants with disabilities when the accommodations are necessary to provide them equal opportunity to use and enjoy a dwelling, unless granting a request would be impossible or impose an undue burden. Accommodations can include exceptions to your rules, policies, or services, where treating persons with special needs or disabilities exactly the same as others may sometimes deny them equal opportunities.1 While privacy protections limit a landlord’s ability to inquire as to the nature and severity of an individual’s disability, a landlord may request reliable disability-related information that is necessary to verify the existence of a disability and to demonstrate the relationship between the disability and the need for the requested accommodation. If the tenant’s disability is obvious, or otherwise known to the landlord, and if the need for the requested accommodation is also readily apparent, then the landlord may not request any additional information about the requesting tenant’s disability, or the related need for the accommodation.2 Any information the landlord receives in response to a request must be kept confidential.3 Additionally all formal procedures should identify to tenants that any tenant information received by the landlord is confidential.

What to do: Landlords should adopt formal procedures for reasonable accommodation requests to aid individuals with disabilities in making requests, minimize the risk of misunderstandings, and establish a record to show that the requests received proper consideration. Unless the disability is obvious to the landlord or he has previous knowledge of the disability, a request for documentation from a doctor or service provider supporting the need for the accommodation and its connection to the tenant’s disability is permissible. Though the unit is desirable to those tenants without disability, assuming the documentation supports the need for the accommodation of the tenant’s disability, the landlord must prioritize the tenant who requests the unit as a reasonable accommodation. If, however, there is no connection between the disability and the request for the new unit, a landlord may deny the request. Because a landlord cannot disclose the confidential information regarding a tenant’s disability, the landlord should direct other tenants to the previously enacted policies to show how requests for new units are screened and granted.

Fair Housing: It’s the Law: Establish formal objective procedures for processing accommodation requests to minimize the risk of misunderstandings, and establish a record to show that requests are processed in an objective manner. Any tenant information that is received in evaluating a reasonable accommodation request is confidential and cannot be shared with other tenants.

1 42 U.S.C. §3604(f)(3)(A) & (B)

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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