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Community Associations Newsletter

Reasonable Accommodations and Reasonable Modifications for Persons with Disabilities

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From time to time, an owner or resident who has a disability will ask a community association's board of directors to make a particular accommodation of a rule or policy or to permit a structural modification of the premises in order to accommodate the person's disability. Oftentimes, the request is for something that the board of directors would not normally allow. However, because there are federal and state laws that may require the association to comply with the request, it is important for the board and management to be familiar with these requirements so that the association does not find itself in violation of the law.

Under the federal Fair Housing Act,¹ housing providers are prohibited from discriminating on the basis of race, color, religion, sex, national origin, disability and familial status. With some limited exceptions, a community association will usually qualify as a housing provider under the Fair Housing

Act. Moreover, Virginia, Maryland and D.C. (as well as some local jurisdictions) have adopted fair housing laws that may be broader than the federal Fair Housing Act.

What is a Reasonable Accommodation or Reasonable Modification?

The Fair Housing Act ("Act") makes it illegal for a housing provider to discriminate against an applicant or resident because of their disability or to treat them differently than others because of their disability. An association could be deemed to run afoul of the law if it refuses to allow a "reasonable accommodation" or "reasonable modification" for the disabled person.

According to a joint statement issued in 2004 by the U.S. Department of Justice (DOJ) and the U.S. Department of Housing and Urban Development

¹ 42 U.S.C. § 3601, *et seq.*

(HUD),² a reasonable accommodation is “a change, exception, or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.” In essence, an association is being asked to make a change or exception to its rule or policy that would otherwise prohibit the action being requested.

Similarly, an association cannot refuse to allow, at the expense of the person with the disability, a “reasonable modification” of the existing premises. According to a joint statement issued in 2008 by DOJ and HUD,³ a reasonable modification is “a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.” In other words, the association is being asked to allow a structural change to the premises that is otherwise prohibited.

One key difference is that while reasonable accommodations are made at the expense of the association, reasonable modifications are made at the

expense of the requesting owner. Additionally, in some circumstances, the association may be able to require the modified premises to be restored to their original condition (normal wear and tear excepted) once the resident in need of the modification vacates the premises.

A request for a reasonable accommodation or reasonable modification can cover a variety of requests. For example, a condominium that does not permit pets may be asked to make a reasonable accommodation to its policies by making an exception for a person who has an assistive animal, such as a guide dog. Another common example of a reasonable accommodation is when an association that does not have assigned parking is asked to provide an assigned parking space to a resident with a mobility impairment who would like a parking space close to the entrance of his or her property.

For reasonable modifications, common examples include allowing a resident who uses a wheelchair to install a ramp at an entrance to his or her home, or to widen certain doorways to allow access for the wheelchair.

What is a Disability?

The Fair Housing Act defines a person with a disability to include individuals with a physical or mental impairment that substantially limits one or more major life activities. Such impairments

² For the complete joint statement on reasonable accommodations under the Fair Housing Act, go to

<http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

³ For the complete joint statement on reasonable modifications under the Fair Housing Act, go to http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf

may include hearing, visual, mobility, and breathing impairments, among others. Notably, drug addiction, mental illness and alcoholism are included within the broad definitions of what constitutes a physical or mental impairment, and thus are covered under the Act.

One question that often arises is what type of information about the resident's disability can be requested by the association. Such requests can be sensitive or personal to the applicant, and thus an association should be careful when requesting information about, or verification of, the disability. In some instances, the disability will be obvious. Sometimes, however, the disability is not readily apparent or it is unclear what the connection is between the disability and the requested accommodation or modification. In those instances, the association may be able to request that certain information be provided by the applicant that will allow the association to properly evaluate the request.

Once a Request is Made, Proceed Cautiously

After a request for a reasonable accommodation or reasonable modification is made, the board will need to carefully consider a number of factors before making its decision. As the term implies, the requested accommodation or modification must be

reasonable; if not, the request may be denied.

What constitutes a "reasonable" accommodation is highly fact specific. For example, if an undue financial and administrative burden would be placed on the association or if the accommodation would fundamentally alter the nature of the association's operations, the request can be denied. Whether an accommodation constitutes an undue financial or administrative burden will vary from case to case and will depend on a number of factors, such as the association's financial resources, the benefits that the accommodation would provide, and the availability of alternative accommodations that may meet the person's needs.

With reasonable modifications, there must be a close relationship, or nexus, between the requested modification and the disability. If there is no such nexus, the association may be able to refuse to allow the modification. However, the nexus is often very fact specific and will vary in each case depending on the nature of the disability and the specific modification that has been requested.

Additionally, responsibility for maintenance and upkeep of the modification will depend on where the modification is located and who it is used by; in some situations, the association may be responsible for maintenance and upkeep, while in other

situations this could be the responsibility of the particular resident who has the disability.

When a request for a reasonable accommodation or reasonable modification is made, an association should take the request seriously and should make sure that it acts in a timely manner. Under the fair housing laws, a failure to respond promptly to a request for a reasonable accommodation or a reasonable modification can be deemed a denial of the request, thereby triggering the statute of limitations for a potential lawsuit.

Because each applicant and each association is different, the association's response will depend significantly on the facts and circumstances involved. In short, no two requests should be treated the same. Moreover, failure to comply with the requirements of reasonable accommodations and reasonable modifications, whether intentional or not, can carry harsh penalties for an association, making it incumbent upon

the association to be diligent when considering such requests. Given the potential liability, an association should check to see whether its current insurance policies include coverage for fair housing claims. If the association does not currently have such insurance protection, it may be prudent to look into obtaining that type of coverage if available.

Failure to comply with fair housing laws can occur even with those associations that have the best of intentions and try to meet the needs of the requesting resident. While even the most cautious associations cannot completely insulate themselves from potential liability exposure, familiarity with the issues and taking a thoughtful and considerate approach can help the association avoid potential claims. If your association is facing a claim or potential claim for fair housing discrimination, or if you would like more information regarding reasonable accommodations and reasonable modifications, please contact one of our community association specialists.