

FAIR HOUSING COMPLIANCE

REASONABLY ACCOMMODATING DISABLED HOMEOWNERS AND AVOIDING RETALIATION

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EDITOR'S NOTE: In the February issue, authors and attorneys Laura Alaniz and Justin Markel gave an insightful overview of the obligations of the Fair housing Act. In this issue, they will discuss the considerations necessary in making reasonable accommodations and then, should you receive a fair housing complaint, how to respond. --JD

PART II: CONSIDERATIONS IN MAKING REASONABLE ACCOMMODATIONS

When a homeowner requests a reasonable accommodation, a community association should provide the accommodation if the homeowner shows: 1) that the homeowner is disabled and needs an accommodation to enjoy the homeowner's home or common areas on an equal basis, and 2) that the request is reasonable, i.e., it does not impose an excessive financial, administrative or safety burden on the association.



The following is a very brief discussion of steps to take to comply with the law. It is not meant to cover the entire scope of the law, but serves as an outline to make a community association aware of its rights and responsibilities.

1. Determine if the person is disabled. Information from a treating physician should be considered sufficient proof of a disability. The most common method to obtain such information is to give the member a "Reasonable Accommodation Request Verification" form that their physician can fill out. The form should ask whether the member is disabled, whether the accommodation is needed and whether the condition can be treated. The form should not ask about the severity or the type of disability.
2. Determine if the accommodation is reasonable. Reasonableness depends on the individual circumstances surrounding each individual request. For example, a reasonable parking accommodation may include a closer parking space, reassignment of parking spaces, an extra wide space, a curb cut or wheel chair ramp, the right to park a van in the driveway if it is a vehicle necessary for transportation, the installation of an accessibility sign if the homeowner wants one or an accessible sign that states the space is assigned to a specific permit number. An association may not charge for an accessible parking space or charge more than what other members pay.
3. An accommodation does not have to be made if it causes an undue burden. If parking a van near a corner is a safety hazard for school children or pedestrians, the accommodation does not need to be made at that location. If the accommodation would create a financial burden, such as requiring a structural change to the building or garage so that the member can park close to his entrance, an association can make the disabled member pay for the requested accommodation.

In determining what constitutes a reasonable accommodation, an association should keep in mind that the purpose of fair housing laws is to allow equal access to all homeowners, not necessarily preferential treatment to anyone. More importantly, an association should engage in an interactive discussion on how to reasonably accommodate its disabled member who is requesting the accommodation. Many times the difference between resolving an accommodation issue and having a complaint filed is whether the association took the time to discuss with the homeowner what his or her needs are and jointly work out a plan to accommodate the homeowner. During these discussions, the association and the homeowner may be able to come up with a possible alternative to the requested accommodation that would comply with the association's deed restrictions, meet the needs of the homeowner and is not cost prohibitive. When accommodating a disabled member, the association is not required to grant any request for accommodation, it is only required to provide an accommodation that is reasonable and addresses the need for the accommodation.

Responding to a Fair Housing Complaint

Your response to the fair housing discrimination complaint may make the difference between a finding that discrimination occurred and a no-cause finding. Thus, if your association receives a fair housing complaint, you should immediately contact your legal counsel, particularly given the short deadlines for responding to the complaint. Typically, fair housing complaints allow ten days from receipt of the complaint for the submission of a response. It is extremely important to comply with all time limits set out by the fair housing investigative agency appointed to investigate the complaint. Upon request for an extension of time, most investigators will grant an extension for gathering data and preparing the response.

These deadlines are extremely important considering what is needed to adequately respond to a complaint. The association must thoroughly investigate the facts surrounding the complaint so that the association can provide a detailed response to all of the charging party's factual allegations, as well as a historical perspective of the neighborhood. This factual investigation may require interviews and affidavits of board members or other witnesses, and often seeks as much supporting documentation as possible. Legal research may also be needed to support the argument that the association did not violate the FHA. With sufficient legal arguments and supporting documentation, a strong response to a fair housing complaint may prevent a finding of discrimination and any subsequent civil lawsuit.

Retaliation

Even if a community association properly addresses a request for an accommodation, or prevails on a fair housing complaint and receives a no-cause finding, it may still hit a snag if it takes any action that can be construed as retaliation. What is retaliation? The FHA has defined retaliation as any action which may "coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised, or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by" the FHA. In other words, if an association decides to charge attorney's fees for having to defend a fair housing complaint, this could be construed as an attempt to intimidate or interfere with the member's right to file a housing complaint. Typically with these types of complaints, members assert that by trying to charge attorney's fees, the association is attempting to intimidate them so that they will either withdraw their complaint or dissuade them from filing complaints in the future.

Thus, after an association has received a housing complaint, it should be careful when imposing any fines or taking any action against the member filing the complaint, particularly if the action or fine relates to the housing complaint. Taking such an action may turn a defensible fair housing complaint into a lawsuit and possible award of damages against an association for interfering with the member's right to file a housing complaint.

Conclusion

Dealing with accommodation requests can be difficult. Because this area can be complicated, it is important for associations to work with their counsel early when dealing with a fair housing issue. Otherwise, they may find themselves in the middle of a costly fair-housing lawsuit for violating fair housing laws.

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