

## NEW REASONABLE ACCOMMODATION POLICIES

HUD and DOJ (federal Department of Housing and Urban Development and Department of Justice) issued a few months ago a “Joint Statement” to provide “technical assistance” for both housing providers and housing users (landlords and tenants). What is technical assistance? In one view, it is simply explanatory material, designed to help housing providers better understand everyone’s rights and responsibilities under the law. However, some of the technical assistance, in my opinion, creates new law.

Whichever the case, you need to understand how the government is interpreting the law. Here’s a summary.

- Verification requirements. (a) Is your tenant disabled or not? In many cases it may not be obvious and you may want to verify that the tenant meets the definition of someone handicapped (*handicap* and *disability* are interchangeable terms). The Joint Statement says that if the disability is obvious, you shouldn’t go through documenting it; that’s just a delaying tactic. So if someone is blind, or in a wheelchair, it’s obvious; don’t require documentation of the *existence* of a disability. (b) If the requested accommodation is obvious, don’t require documentation. The blind person asks for permission to keep a seeing eye dog; the person in a wheelchair asks for a ramp.

But if the blind person asks for a ramp or the person in a wheelchair asks for a dog, you can and should ask for documentation, not of the existence of the disability, but for the necessity of the requested accommodation.

And of course if the disability isn’t obvious—usually the case with most mental disabilities—you can and should look for documentation of the existence of that disability.

Many landlords have worked hard to develop systems for written verification of the existence of disabilities and the need for verification. Don’t scrap those. Written procedures help with risk management. But in obvious cases allow yourself—or someone in your organization—to provide the verification. For instance, you receive an RA request from someone in a wheelchair for a pet. You need proof of the existence of a disability. Someone—your boss, your Property Manager, your 504 Compliance Officer, your spouse—is authorized under your procedures to so determine. That makes it easy. The request for the pet? Your designated person doesn’t feel qualified to make that determination. So you send that RA request off to the third party identified in the tenant’s RA request for that verification.

- The request needn’t come on a particular form. Again, we landlords have worked hard to develop procedures that will protect us from capricious complaints and lawsuits. So we have paperwork we ask everyone to go through. The Joint Statement says that’s a great idea, but holding tenants to that requirement won’t satisfy the law. It says, “housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider’s preferred forms or procedures for making such requests.” So if someone makes an RA request—be it verbally or in writing—you are obligated to follow up. Some courts have ruled this way. I regard it, though, as new law. Asking your tenants to comply with procedures is no longer a defense. When a tenant asks for some accommodation, you can of course say please fill this out, but if the tenant doesn’t, you’re no longer allowed to do nothing. You should offer the form, but if it doesn’t come back, you need to

talk to the tenant. The Joint Statement says, “the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment of a rule, policy, practice, or service because of a disability.”

If the request is for something that requires verification (of either the disability or of the necessity and relatedness of the accommodation) then there’s not much you can do without further information from the tenant (like who to talk to to verify) and if the tenant doesn’t give you something in writing, it’s unlikely you’ll get much help from most health providers, who are now scared of saying anything about anybody because of HIPAA. It would be good in the conversation with the tenant to say that, and ask again for the information (the person to verify). If you only get it verbally, it’s fine to write or call, then report back to the tenant the result.

One approach, if the tenant doesn’t give you something in writing, is to write down on your own form what you heard from the tenant, then ask the tenant to sign or initial that.

- Who can provide verification. The joint opinion says that “a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability” can provide verification, but it also says the tenant can self-verify by showing for instance proof of receipt of SSI or SSDI or—and this is new law in my opinion—a “credible statement by the individual.” It probably requires more than a tenant saying, “I’m disabled.” One attorney ventured that a credible statement is one that would hold up in court. We will have to see how that plays out.

- Promptness. “An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation,” says the Joint Statement. Verification often takes time so it’s a good idea to tell the tenant what’s going on so that he doesn’t feel he’s being ignored.

- Not new, but newly emphasized is the requirement for an “interactive process” when the landlord doesn’t feel the accommodation is reasonable. I’m going through one right now where the animal being requested is a pit-bull. I can counter with a different breed or, if the doctor insists (I’ll let you know how this plays out), asking the tenant to provide insurance, since my insurance company won’t cover misbehaviors by permitted animals.

The burden on landlords is high. In a Massachusetts case (*Cobble Hill Apartments Co. v. McLaughlin*, 1999 WL 788517 (Mass. App. Div. June 23, 1999)), a landlord attempted to evict a tenant suffering severe migraines, depression, and post-traumatic stress disorder because she made noise and was otherwise disruptive. The landlord’s only effort to find an accommodation was to have two meetings with her and offer headphones for her television to reduce noise. The court ruled that wasn’t enough. It said, “the fact that a tenant does not request a specific or suitable accommodation does not relieve a landlord from making one.”

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