



RESPONDING TO REQUESTS FOR ACCOMMODATION

What constitutes a disability and what information is obtainable by an Association.

Introduction

Civil Code Section 1360 generally requires homeowners associations (“Associations”) to allow a disabled owner to, at the owner’s expense, make modifications to the owner’s units and potentially to the Association’s common areas in order to accommodate the owner’s disability.

When an Association receives a request for an accommodation, what steps can and should the Association take to verify the owner’s disability and to determine whether or not the owner is indeed entitled to the accommodation? This article addresses three questions that may be useful to an Association in this regard.

Who qualifies as a person with a disability?

According to the Federal Fair Housing Act (“FFHA”), a disabled person is defined as an individual who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) is regarded as having such an impairment, or (3) has a record of such an impairment.

Examples of “physical or mental impairments” can include conditions involving orthopedic, visual, speech or hearing impairments, as well as common ailments including heart disease, diabetes, drug addiction and alcoholism. Accordingly, the

range of impairments that qualify under the law is undeniably extensive. However, in order to qualify as “disabled” the impairment must “substantially limit” one or more of the individual’s “major life activities.” The term “substantially limits” simply implies that the limitation is significantly greater than what an average individual experiences in conducting the same or similar activity. The term “major life activities” includes the vital activities which allow us to go through our daily lives, such as walking, breathing, and hearing.



What inquiries may an Association pose to residents regarding disabilities?

Under the FFHA, Associations are prohibited from asking a resident about a

disability if that resident has not requested an accommodation. However, when a resident has made a formal request for an accommodation, the Association becomes entitled, subject to certain limitations, to request reasonable information establishing the existence and validity of the claimed disability. Where the disability is obvious, apparent, or already known to the Association, the Association is precluded from requesting additional information.

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What additional information may the Association request from residents with disabilities if the disability is not obvious?

The Association may request information (1) to verify that the resident meets the FFHA's definition of a disability, (2) to verify the need for the requested accommodations, and (3)

to clarify the relationship between the disability and the requested accommodation. According to the FFHA, a statement from a medical professional or even a third party with knowledge of the resident's disability may be enough to verify the disability. Although medical records would certainly satisfy such a request, the production of such records is not necessary to prove the existence of a disability, nor do we feel that requesting such records is appropriate due to privacy concerns.

Summary

Associations are required to grant reasonable accommodations to residents who qualify as disabled under the law. The extent to which the Association can verify the disability and the need for the requested accommodation is therefore important. Associations are generally permitted to request disability related information from the resident in response to the resident's request for accommodation. However, it is important to note that limitations do apply in certain circumstances, such as where claimed disability is obvious.



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