

Legal Inquiries Regarding A Resident's Handicaps A Very Sensitive Issue

Landlords must be careful when inquiring about a person's handicap status.

The law clearly prohibits asking a potential renter if he or she is handicapped or the nature and severity of an impairment.

But the law does allow a landlord to ask certain questions if the inquiries are made of all applicants. They include:

- 1) The applicant's ability to meet the requirements of tenancy.
- 2) Whether the potential renter currently abuses or is addicted to an illegal drug or controlled substance.
- 3) Whether the person qualifies for an apartment limited to or a priority for handicapped individuals or people with a particular type of handicap.

Note that legally asking the third question can occur only when renting an apartment unit that is limited to or a priority for handicapped individuals.

For example, if a unit is available to individuals on a priority basis who have mobility impairments, the apartment manager may ask applicants if they have a mobility impairment that would qualify them for such a priority. However, the manager cannot ask the persons if they have other types of impairments that don't relate to the question of mobility.

What is permissible inquiries is set forth in the Code of Federal Regulations, which interprets various provisions of the Fair Housing Amendments Act.

As expected, several court decisions ruled on what is and not lawful inquires regarding a person's handicaps. A recent case, *Cason v. Rochester Housing Authority* is an example of what not to do.

The housing authority had a practice of asking applicants if they could live independently. The court found such questioning had a discriminatory impact on applicants with handicaps. Further, it said the ability to live independently is not one of the "requirements of tenancy" provided in the Code of Federal Regulations relating to public housing.

A more common example concerns the right of a resident to a handicap parking space at an apartment community. In this lawyer's opinion, management can inquire as to the resident's handicapped status to properly assign a handicap parking space with the dwelling unit made available on a priority basis to persons with handicaps.

A simple way to bridge this controversial area of the law is to accept a brief letter from the resident's doctor stating the individual's need for a handicap parking space. Another solution is to recognize the handicap designation on the person's vehicle license plate or the handicap vehicle sticker issued by the state.

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Just remember that you need to be very specific as to what you can ask of a resident regarding his or her handicaps. If in doubt, seek legal advise before questioning an individual.

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