

Issues Relating To The Handicapped Person Under Fair Housing Laws

The Federal and Arizona Fair Housing Laws prohibit discrimination because of an individual's handicap. "Handicap" is defined to be a physical or mental impairment (including alcoholics and persons with communicable diseases) that substantially limits one or more of the major life activities of the individual, a record of such an impairment or being regarded as having such an impairment. While handicapped does not include a current illegal use or addiction to any drug the possession or distribution of which is unlawful under federal law, it must be emphasized that one who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been successfully rehabilitated and no longer using illegal drugs or is participating in a supervised rehabilitation program while not engaging in the illegal use of drugs or is mistakenly felt to be engaging in the illegal use of drugs may be regarded as a handicapped person. Obviously, the determination as to whether or not a person would be regarded as currently engaging in the illegal use of drugs is a difficult if not impossible determination to make. However, in the event a determination is made upon a prospective resident's application based upon concern pertaining to drug usage, an objective basis for this determination must exist, i.e., criminal conviction or current addiction to drugs.

It should also be emphasized that certain classes of individuals, due to their particular circumstances, may not be deemed handicapped as defined by the American With Disabilities Act of 1990. Such persons include those with certain sexual proclivities such as transvestism and other sexual behavior disorders, compulsive gamblers, kleptomaniacs or pyromaniacs, psychoactive substance use disorders from the current illegal use of drugs, homosexuality or bisexuality.

Then what types of inquiries can be made to the prospective resident? First and foremost, it should be pointed out that the inquiries made in relation to the handicapped Issue are inquiries that must be made of all applicants, whether or not they have handicaps, such as the following:

1. Inquiring whether the prospective resident has the ability to meet the bona fide requirements of tenancy;
2. Determining whether the prospective resident is qualified for a dwelling unit which is available only to persons with handicaps or to persons with a particular type of handicap;
3. Determining whether the prospective resident for a dwelling is qualified for a priority which would be available to persons with handicaps or with persons with a particular type of handicap;
4. Asking whether the prospective resident is a current illegal drug user or addict of a controlled substance; and
5. Asking whether the applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

Finally, Fair Housing Laws do permit the landlord to refuse to rent to an individual who poses a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Presumably, such a determination would have to be made by objective indications of current or previous actions, which would support such a determination.

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