

Mental Illness is neither Bar to Eviction nor License to Evict  
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The entirety of the landlord-tenant relationship, from the first advertisement to the refund of the last cent of the security deposit, is subject to the Fair Housing Act (“FHA”). Congress specifically intended that all individuals had the equal opportunity to secure and enjoy housing free from discrimination due to one’s genetic background, upbringing, or military service. This does not mean that the FHA requires a landlord to “treat everyone the same,” because while the FHA has the word “fair” in its name, the FHA was not drafted with the commandment that housing providers must treat everyone “fairly.” Instead, the FHA’s specific focus is to permit each individual an equal chance at enjoying his or her tenancy, and, in some cases, that individual will need to be treated better than other residents and applicants in order to make that happen.

The FHA applies at the time of termination of those tenancies as well. For example, a landlord cannot blindly hold a resident with mental illness to the same standards expected of other, non-ill residents when that illness precludes, or at least substantially hinders, compliance with the community’s policies or the lease. Instead, the landlord must engage in an “interactive process” with the resident and seek ways to accommodate the problem, thereby avoiding an instantaneous decision to terminate for the alleged breach of the lease.

Of course, the resident must be willing to work with the landlord. When those efforts run headlong into the unyielding brick wall of a recalcitrant resident, the landlord may still take action necessary to enforce lease compliance. The FHA does not require an absurd result – only that the disability not be the motivating factor in a landlord’s decision to terminate.

Through a 2000 decision, the Supreme Judicial Court of Maine held that mental illness is not *carte blanche* to violate the community’s rules and terrorize other residents. While Maine’s legal decisions are not precedential in Arizona, the ruling in Housing Authority of the City of Bangor v. Maheux, 748 A.2d 474 (Maine 2000) remains influential authority on the analysis of housing discrimination matters. Although the Maheux opinion was ultimately based upon a legal technicality, the Court summarized the housing issue into two succinct sentences:

If the court determines that the landlord has a duty to offer a reasonable accommodation and has failed to do so, then the court should deny the forcible entry and detainer and not grant possession to the landlord. If, however, the court determines that the landlord is otherwise entitled to possession and either has no duty to offer a reasonable accommodation or has, in fact, offered a reasonable accommodation, then the court should grant the forcible entry and detainer.

Maheux, 748 A.2d at 476-477. The resident’s son, the ill party, had verbally attacked other residents and had also engaged in violent behavior. The landlord agreed to permit the resident to continue residing at the premises only for so long as the offending party was being supervised and was undergoing counseling. When the resident and her son failed to follow through with those remedial steps, the landlord sought to recover

the leased premises. The trial court, and ultimately the Supreme Judicial Court, found that the landlord's efforts to accommodate the illness and delay eviction were a reasonable effort at compromise. This compromise, therefore, represented the second point in the Court's *dictum*, and therefore the eviction was appropriate.

The Maheux case stands for the proposition that it is not inherently discriminatory to evict disabled individuals who violate the rules and regulations of the community. Maheux reminds us, however, that where the breach was caused due to mental illness, the landlord must still take reasonable efforts to reach accommodation before resorting to the final option of lease termination and eviction.

Always keep in mind that your best business practices might not seem to be the ones that most easily spring to mind. A breach of your community policies due to noise-based disruptions might be a case of two roommates arguing, but it might also be something related to a disability. Investigating the incident must always be your first step, and if the breach proves to be a FHA-related issue, seek eviction only if accommodations fail due to the resident's recalcitrance.