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Back to Basics: What Is a Disability For Fair Housing Purposes?

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Community associations confront issues about disabilities on a regular basis, but we think it is worth repeating the basic elements of the law on this topic. Fair Housing disputes can be limited or avoided by understanding this fundamental issue and getting it right from the first moment that a resident seeks preferential treatment. Disability is defined to include the following three elements:

- 1) a physical or mental impairment
- 2) that substantially limits
- 3) one or more major life activities.

In order to qualify for reasonable accommodations of association rules and procedures under the Fair Housing Act, a person must prove these three elements of a disability. It is not enough to simply state the impairment that a person has, but this frequently is the only information provided. For example, a condominium owner responds to a no-pets violation letter by claiming that he has chronic fatigue syndrome and needs a dog for assistance. This happens all the time. Is this person entitled to an accommodation to the no-pets rule?

The answer should be a confident "No" – at least not yet. The physical or mental impairment and its limitation of a major life activity need to be verified, but only if it is not obvious (e.g. someone in a wheel chair). Associations have the right to request "reliable" information to verify the disability, which is typically a written statement from a medical provider. This written statement from a medical provider should not simply re-state the owner's statement either. A doctor's note that says the owner has been diagnosed with chronic fatigue syndrome and a dog would be beneficial to the patient still fails to prove the three elements of a legal disability. The note needs to also indicate what major life activities are substantially limited by chronic fatigue syndrome.

What is a "major life activity" you ask? The Arizona Legislature just passed a clarification amendment to the state's version of the Fair Housing Act that adds the detailed list of "major life activities" from the federal version. The broad list includes the following:

Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

After you finally have the information showing all three elements of a disability, you can move on to consider if the requested accommodation is reasonable and necessary to accommodate the disability. Toward this goal, the medical provider's written statement should go further and describe the necessary accommodation and indicate how that accommodation is related to the described disability. This information is critical to the ultimate decision whether to grant an accommodation.

If you have any questions about this or other Fair Housing issues, please contact Jason Smith in our office for more information.

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