COUNSEL'S CORNER

By Kenneth J. Finger,
Carl L. Finger and
Daniel S. Finger
Finger & Finger, Chief Counsel,
Building & Realty Institute (BRI)



Reasonable Modifications Under the Fair Housing Act

WHITE PLAINS—The Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status and disability (or as referred to in the Act as "handicap"). This article will only deal with the latter (disability or handicap).

One type of prohibited discrimination is a refusal by a landlord (whether it be a rental landlord or a cooperative, or even a condominium) to permit "reasonable modifications" of the existing premises which are occupied by a person or to be occupied by a person if those modifications are necessary to allow the person to have full enjoyment at the premises.

While the Landlord is not required to pay for the cost of the modifications and can require the person with the disability to pay for the cost of the modification, that is only the first step in dealing with a myriad of problems, questions and issues that arise in this area.

Inquiries

On almost a weekly basis we get calls from our clients, whether managing agents, landlords, or a board member of a cooperative or condominium, with an inquiry in this area. This article will deal only with existing premises, not new construction, and will discuss some of the issues that arise, as well as the suggested response to the particular issue.

The language of the Act prohibits anyone from refusing to make a "reasonable accommodation" as to "rules, policies, practices, or service" when any of those are required to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

A "reasonable accommodation" or in this case a "reasonable modification" may include both non-structural as well as structural changes to the premises, however, the property owner can require that they be at the sole cost of the person seeking the accommodation. Moreover, the property owner can also require that the person restore the premises upon vacating them and there are situations where the landlord might even require that the disabled person deposit funds in escrow to assure that that person has the financial ability to restore the premises to its pre-existing condition upon vacating same.

Specifics

Examples of modifications are the installation of a ramp so as to allow wheelchair access to a premises; widening doorways to make rooms accessible for wheelchairs; lowering of kitchen cabinets to a height which can allow persons with wheelchairs access; installing "grab bars" in bathrooms; and replacing door knobs with levers and others. Our office even had a situation where the landlord allowed the installation of a track and lift so that a very heavy person could be moved from the bedroom to the bath and then be lifted into the bath. It must be remembered, however, that the tenant is responsible for paying for the cost of the accommodation.

The next inquiry may be as to who is a "disabled person?" The Act provides that if a person has a physical or mental impairment that substantially limits one or more major life activities, that person meets the definition of "disabled." Next, the modification has to be specifically set forth and finally, there has to be a relationship between the person's disability and the need for the requested modification. Prima facie evidence of disability is generally met by a person providing proof that an individual under 65 receives SSI (supplemental social security income or disability benefits). That, of course, is not exclusive. A person can provide medical or other verification of disability. There frequently is no necessity for detailed medical information and the only inquiry might be whether the accommodation is necessary to meet the needs of the disabled person.

For example, if a person is wheelchair bound, and a ramp is the requested modification, it may not be necessary or even appropriate to ask for medical proof of either the disability or information establishing the nexus between the disability and the need for a ramp – it is obvious. As a general rule, the information received by the landlord/housing provider should be kept confidential.

As an example of a modification that may be refused: if a condo unit owner wants to install two doors rather than one door for ingress and egress, allegedly because it is easier to get in and out, the condo might well be within its rights in refusing to permit the change because it is not reasonable to assume that there is a nexus between the disability and the request for two doors.

Additional Areas

Reasonable modifications are not limited to the interior of an apartment, house or unit. They can be required for common areas, playgrounds, entrances and exits, and even laundry rooms and exercise rooms. Further, the property owner may not only be required to provide "handicapped parking" but might also have to provide that the parking be nearer to the premises than previously designated and will also be required to provide curb cuts, proper signage and easier access.

In any case, if there is an inquiry, the property owner is encouraged to call counsel for a discussion of the requirements of the law and possible options. They may be more extensive than indicated herein, or there may be situations where the property owner is not required to allow a modification.

Financial issues should also be discussed, not only as to installation, but possibly as to maintenance. These and other issues will be discussed in a future article as well as situations where there may be a difference between reasonable modifications and reasonable accommodations.

Editor's Note: Finger and Finger, A Professional Corporation, is based in White Plains. The firm is chief counsel to the Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI).

Reasonable modifications are not limited to the interior of an apartment, house or unit. They can be required for common areas, playgrounds, entrances and exits, and even laundry rooms and exercise rooms.

RICHARD G. BACCARI & COMPANY, LLP
Certified Public Accountants

WE UNDERSTAND YOUR BUSINESS

- Accounting and Auditing
- Tax Return Preparation and Planning
- Full Service Payroll
- Outsourcing All Accounting Functions
- Business Planning and Consulting

We work closely in all your accounting and financial needs.

10 Mitchell Place Suite 202
White Plains, NY 10601
(914) 686-1201
(914) 686-1281 fax
rich@rgbcpa.com

Richard G. Baccari, CPA, MBA
Managing Partner

JOSEPH H. ADAMS, ESQ., P.C.

Commercial, Real Estate and Land Use Litigation

General Practice in Business & Real Estate Matters

Individual and Commercial Bankruptcies; Closings

53 Burd Street, Nyack, New York 10960
845.353.6934 fax • joelaw@attglobal.net • joelaw.com

845.353.2320

BUILDERS INSTITUTE
SUPPLIER DEVELOPER BANKER BUILDER

80 Business Park Drive, Suite 309
Armonk, N.Y. 10504

(914) 273-0730
www. BuildersInstitute.org