

ACCOMMODATING THE DISABLED MEMBER

BY KERRY L. MORGAN, ESQ.- MAY 2003

What are the legal obligations a cooperative housing association owes to disabled members who seek changes in the policies or rules of the Cooperative because of the member's medical condition?

In answering this question, management and members should be aware that the Fair Housing Act (FHA) imposes liability on the cooperative if it refuses:

[§3604(B)] to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may necessary to afford such person equal opportunity to use and enjoy a dwelling.

The cooperative may not refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a member *equal opportunity* to use and enjoy his or her dwelling, provided he or she is disabled or handicapped. The law does not require changes in rules in order to provide special privileges for disabled persons. It only requires changes when they are reasonable and afford equal opportunity to enjoy the cooperative as do non-disabled members.

Section 3602(h) of the Act defines "Handicap" to mean "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." Such term does not include current, illegal use of or addiction to a controlled substance. A physical or mental impairment is broadly defined. It also includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Many States also impose similar obligations. Check your state laws for particular details. Michigan, for example, provides in MCL 37.1102 for a general prohibition on discrimination against persons with a handicap in housing. The law also makes accommodation mandatory as does the FHA. Likewise, MCL 37.1103(e) further provides that "handicap" means 1 or more of the following:

(I) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic . . . substantially limits 1 or more of that individual's major life activities and is unrelated to the individual's ability to acquire, rent, or maintain property.

(ii) A history of a determinable physical or mental characteristic described in subparagraph (I).

(iii) Being regarded as having a determinable physical or mental characteristic described in subparagraph (I).

If a member has a handicap or is disabled as defined by law, then the Cooperative is under a legal obligation to make reasonable accommodations in its rules, policies, practices, or services, when such accommodations may be necessary to afford the disabled member *equal opportunity* to use and enjoy his or her dwelling unit.

For more details please feel free to contact an attorney familiar with cooperative housing and non-discrimination law.

