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Landlord can't exclude folks who need a little help

Demand for adequate senior housing continues to expand. The Joint Center for Housing Studies estimated that in 2000, the 65 and older population was approximately 35 million, or 12.4 percent of the population. The age group will surge to 69.4 million by 2030, expanding the senior population to more than 20 percent of the total.

Senior housing providers struggle to keep pace by constructing retirement communities that offer a continuum of services and care. As the percentage living in senior housing increases, providers must confront implications of the Fair Housing Act.

Originally enacted as Title VIII of the Civil Rights Act of 1968 to address discrimination based on race, color, religion or national origin, the act has evolved to include prohibitions against discrimination based on sex, familial status and disability.

Because disabilities protected by the act are broadly defined, debilitating conditions such as heart disease, arthritis, blindness, dementia and ambulatory difficulties are covered by its protections.

Therefore, as America's seniors live longer, it is increasingly likely they will qualify as "disabled" under the act. Accordingly, providers must take the act into consideration when making decisions affecting their communities and residents. This is especially true as providers seek to attract healthier or less disabled seniors to active, livable communities whose resident populations differ significantly from the classic "retirement home."

Some providers attempt to attract an active senior population by advertising for and sometimes requiring residents who are capable of "living independently." These so-called "independent living" requirements violate the act if they are used to disqualify or dissuade disabled people from residency.

The pursuit of healthier, more active seniors can also have implications under the act if restrictions are placed upon assistive devices, such as motorized carts, service

LONG-TERM CARE



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communities struggle with how to accommodate residents' reliance on motorized carts while ensuring the safety of others. Restrictions on the time, place and manner of use of motorized carts because of safety concerns are more acceptable than outright prohibition.

The act protects the rights of people with disabilities to keep guide or emotional support animals, and they must be allowed in housing that otherwise has a "no pet" rule. In addition, service animals are exempt from pet deposits.

The tenant must demonstrate a relationship between his or her ability to function and the need for the animal. These animals are considered assistive devices that allow the disabled person to fully use and enjoy his or her dwelling. The Department of Housing and Urban Development and several courts have explicitly stated that an exception to a no-pets policy qualifies as a reasonable accommodation. If the tenant has a letter or prescription from a professional, such as a physician or therapist, and meets the definition of a person with a disability, emotional support animals must be allowed.

Disruptive, unsafe or unsanitary animals can be excluded. In one case, an eviction

animals or personal caregivers.

The increasing use of motorized carts presents its own unique set of problems. The act requires that communities make "reasonable accommodation" in rules, policies, practices or services to allow individuals the use and enjoyment of facilities and services. Com-

of a resident whose dog fouled the walking paths was upheld.

An aging resident may require on-going private care in order to remain in an independent setting and avoid transfer to a more restrictive nursing home. This may involve the act if the community has age or occupancy restrictions indicating they would not allow the presence of a full-time caregiver.

In purely private housing, the right to a live-in aide is controlled entirely by the act and applicable state law, and derives from the landlord's obligation to provide reasonable accommodations. Providers that do not offer services designed to care for people with disabilities, such as senior apartments or retirement communities, are not required to alter their businesses by initiating an accommodating service program.

However, they should admit disabled residents who demonstrate they meet the tenancy requirements, even if they need third-party assistance. The community should make reasonable accommodations, such as waiving age requirements for a live-in aide, to allow the resident to meet the tenancy requirements.

Federal courts have ruled that a disabled person may sue a provider for charging a long-term guest fee to the resident's live-in aide, even though the fee was also charged for the guests of nondisabled residents, on the grounds that reasonable accommodation of a disabled person might include waiving such a nominal fee.

As the senior population ages, senior housing providers must take the requirements of the act into consideration. Failure to do so could result in administrative or civil remedies being imposed by regulatory agencies and the courts.

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