

Questions Re Tenanting--Elderly & Phys. Handicapped

Legal Opinion: GME-0003

Index: 9.207

Subject: Questions Re Tenanting--Elderly & Phys. Handicapped

November 6, 1991

Ms. Jackie S. Crnak
Administrator
Calvary Towers
1099 Clay Street
Winter Park, Florida 32789

Dear Ms. Crnak:

This responds to your letter dated September 10, 1991, in which you ask the following questions relating to tenanting of a Section 202/Section 8 complex for the elderly and physically handicapped:

1. May management require incoming tenants to provide a doctor's certification that the tenant is able to care for himself or herself, with or without an attendant, and also care for the apartment?

2. Does a handicapped/mobility impaired or disabled person under age 62 have to occupy a modified (accessible) apartment, or may that person occupy any apartment in the complex?

With regard to the first question, the regulations implementing the Fair Housing Act, at 24 CFR 100.202(c), permit management of an apartment building to make only limited inquiry relating to the handicap of a prospective tenant. If the inquiries are made of all applicants, whether or not they have handicaps, management may inquire into the applicant's ability to meet the requirements of tenancy (100.202(c)(1)) but not about the nature of the individual's disability.

The requirements of tenancy include such responsibilities as paying the rent on time and keeping the premises clean and in good condition. Thus, we do not believe that the requirements of tenancy mandate a tenant's ability to care for himself or herself, either with or without an attendant, and such an inquiry should not be made. It would be appropriate to consider prior rental references or other sources of information for all applicants concerning their maintenance of property and other objective criteria for tenancy.

In response to the second question, the HUD-approved occupancy policy for the type of project in question (Section 202 project for the elderly and physically handicapped) limits all except modified (accessible) units to the elderly. Thus, a

handicapped person wishing to live in an unmodified unit which becomes vacant would be eligible for the unit only if he or she is also elderly (age 62 or over). However, if the handicapped

person is otherwise eligible (by virtue of age) for such an unmodified unit, restricting that person from living in that unit because of the handicap could constitute unlawful housing discrimination on that basis.

On the other hand, if the handicapped person is under age 62, he or she would not, under the approved project occupancy policy, be otherwise eligible to live in an unmodified unit in the complex. Thus, restricting that person from living in such a unit because of his or her age (a lawful program limit authorized by statute) would not appear to constitute unlawful discrimination, either on the basis of age or handicap.

I hope that this information proves helpful to you. Please let us know if you have any further questions.

Sincerely,

Harry L. Carey
Assistant General Counsel for
Fair Housing