

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

National Affordable Housing Management Association – 400 N. Columbus Street, Suite 203 - Alexandria, VA 22314
Phone 703-683-8630 - Fax 703-683-8634 - www.nahma.org



December 19, 2013

NAHMAanalysis 2013-1213

Considerations When Dealing with the Elderly or Residents with Disabilities Who Decline Caregiver Assistance

Background

During the NAHMA Winter Meeting on March 26, 2013, the Senior Housing Committee held a panel session to examine the best practices for dealing with elderly and/or disabled residents who refuse to have a caregiver or live-in aide. In some situations, the resident had a previous caregiver, but refused to have another one. In other situations, the resident had never had a caregiver. Suggesting the resident obtain a caregiver, and/or reaching out to the resident's friends or family to persuade her to get a caregiver may seem compassionate, but may also risk fair housing complaints or lawsuits for privacy violations. An O/A's appropriate consideration is whether the tenant can satisfy terms of the lease.

From this session, committee members formed a task force with the goal of finding these best practices. Later, at the NAHMA Summer Meeting, the issue was also addressed in a Fair Housing Forum with detailed attention paid to fair housing law implications of this issue. An increasingly common question for apartment owners and management agents (O/As) was how to handle situations in which elderly residents and/or residents with disabilities risk injury to themselves or pose dangers to others.

Essential Considerations for Owners and Management Agents

The following points should be considered when dealing with these situations. **This information does not constitute compliance advice. O/As should consult with their legal advisors on fair housing, privacy laws and occupancy policies.** This information was first distributed during the 2013 October meeting and is available in its [original handout form](#).

- **HUD examines these situations through a fair housing perspective.**
 - It is the resident's choice to have a caregiver or to decline assistance.
 - The O/A cannot force the resident to have a caregiver or live-in aide. In other words, an O/A can't condition continued tenancy on acceptance of a caregiver or live-in aide.
 - The same procedures for screening and occupancy must be in place for all residents. The focus must be on compliance with the terms of the lease (i.e. paying rent on time,

not interfering with other people's quiet enjoyment, not engaging in criminal activity, maintaining a decent, safe and sanitary unit, etc.).

o **The resident has a right to privacy.**

- o There is a difference between disclosing a disability and disclosing the facts about the situation. O/As should stick to the facts without disclosing the physical or mental impairment.
 - o Make sure that site staff understands the sensitivity of these situations. What the O/A says and how the O/A says it can have serious consequences for the O/A and the property.
- o The Supplement to Application for Federally Assisted Housing (Form HUD-92006) offers a good model for emergency contact forms.
 - o HUD-92006 allows applicants and residents to provide a contact that may be able to help in resolving issues that may arise during tenancy or to assist in providing any special care or services.
 - o The applicant / resident may select the reasons for contact, such as "emergency," "assist with recertification," etc. The reasons selected by the applicant / resident are the only reasons the O/A may reach out to the emergency contact.
 - o It is the resident's choice to provide this information.
- o Regardless of an O/A's good intentions, releasing information about a resident's physical or mental impairment condition to his / her emergency contact, family members or even protective service agencies without the resident's written permission could trigger a lawsuit.
 - o Focus on the safety / tenancy problem rather than what you believe to be the cause.
- o O/As need to know their states' applicable mandatory reporting requirements (for when a resident is a danger to himself or others).
 - o Who is the mandatory reporter? When is the reporting requirement triggered? To whom is the report directed?

o **The lease is the O/A's agreement with the tenant for the terms of occupancy.**

- o The question is not whether the resident needs a caregiver, but *whether the resident can satisfy the terms of the lease*.
- o The O/A must set aside personal assumptions about whether the resident needs help caring for himself and objectively examine whether the resident's *behavior* violates the lease.
- o Document lease violations and cite the resident when they occur, just as you would any resident who is not elderly or doesn't have a disability.
- o If the situation goes to court as a result of lease violations, a judge can mandate services for the resident.