

March Notes from the MAR Legal Hotline

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April 2018

Q. Am I permitted to pay a referral fee to someone with an “inactive” license?

A: Yes, you may pay a referral fee to someone with an inactive salesperson’s license. Massachusetts General Law Chapter 112, Section 87XX ½ created an “inactive” license status for those licensees who have not completed the required continuing education credits.

As inactive licensees are prohibited from affiliating with a broker, a referral fee may be paid to them directly. This is the only instance where a salesperson can receive a referral fee directly. Massachusetts General Law Chapter 112, Section 87RR requires that an active salesperson’s referral fee must be paid to the broker in which they are affiliated.

Q. Do I have to make an exception to my “No Pets” policy for a tenant with an assistance animal?

A: In many situations the answer is yes, as a tenant request for an assistance animal (either a service animal or an emotional support animal) due to a disability may be a reasonable accommodation. The landlord may not require any additional fees as a condition of allowing the tenant to keep the assistance animal. However, if the animal causes any damage to the unit or common areas, the landlord may charge the tenant for repairs, or deduct the cost of repairs from the security deposit, if it is the landlord’s usual practice to assess tenants for damage causes to the premises.

Landlords must be very cautious in what questions they ask of a tenant or applicant who is requesting an accommodation. A Landlord is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability; however, a Landlord may not ordinarily ask about the nature and severity of the disability. If a person’s disability is obvious, or otherwise known to the Landlord, and if the need for the requested accommodation is also readily apparent or known, then the Landlord may not request any additional information about the requester's disability or the need for the accommodation. If the requester's disability is known or readily apparent to the Landlord, but the need for the accommodation is not readily apparent or known, the Landlord may request only information that is necessary to evaluate the need for the accommodation.

A Landlord may request reliable disability-related information that (1) is necessary to verify that the person meets the Act’s definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person’s disability and the need for the requested accommodation. Information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.

Once a tenant or prospective tenant has provided information sufficient to satisfy the Act's definition of a disability, the Landlord then must evaluate whether the requested accommodation is related to the disability and is reasonable. If the answer to both of these questions is "yes", then the Landlord must work with the tenant to implement the accommodation.

More information on this topic, including case studies, can be found here:

https://www.hud.gov/sites/documents/DOC_7771.PDF.

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