



LEGAL EASE

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REASONABLE
ACCOMMODATION:
SCORE A FEW FOR
THE LANDLORDS

Section 504. The ADA.
What do these laws mean?
How do they impact a

landlord's obligation to the tenants? These are questions landlords have struggled with for the last few years, and these questions are still difficult to answer. As more cases are decided, however, there are more guidelines for landlords to follow. Several of the most recent cases have been decided in favor of landlords.

One case which emphasized the need for reasonable accommodation was decided by the Massachusetts Supreme Judicial Court in 1991. In that case a 77 year old female tenant suffered from a mental disability which caused her to hear voices. In response, she would hit the walls of her apartment with a broom or stick and throw ob-

jects at the walls. This activity did relatively minor damage to the unit and did not substantially interfere with the quiet enjoyment of other tenants. The Court held that the landlord could not evict the tenant, but had to accommodate her by giving her further opportunities to obtain counseling to help her control her behavior.

The landlord in a drug case that came before the same Massachusetts court in 1994 obtained a more favorable result. The tenant was a quadriplegic who was given a suspended sentence for possession of marijuana with intent to distribute. The landlord then commenced an eviction proceeding. The Court stated that the tenant could be evicted

because he was engaging in current illegal drug activity which was not protected by the statutes, and that reasonable accommodation did not require landlords to permit the sale of illegal drugs. The proposed accommodation was to allow the tenant to stay while the landlord carefully investigated each visitor to the apartment, but the Court believed that accommodation would impose an undue hardship on the landlord.

In two recent cases it was held that the landlords did accommodate their tenants for a time, and that further accommodation would constitute an undue hardship.

The first case was decided by the Massachusetts

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Appeals Court in August 1995. A handicapped tenant had a separate lease for a parking space in an adjacent lot. Over the years there had been many conflicts between the tenant and others who rented spaces in the lot, with the evidence showing the tenant to have

been uncooperative, rude and abusive. The landlord finally terminated the tenants lease for the space, and the tenant claimed that he was being discriminated against because the landlord was not reasonably accommodating his parking

needs. The Court, however, held that the landlord had accommodated the tenant over

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the years. To continue to do so in light of his unruly behavior would consti-

tute an undue hardship, so the landlord was allowed to terminate the parking lease.

The second case involved a tenant who had psychiatric problems. The landlord obtained a judgment for possession after the tenant allegedly made a telephone threat to a bank and was abusive to the building manager. The tenant appealed the judgment, but did not take all of the steps necessary under the appellate rules. Instead of immediately moving to dismiss the appeal, the landlord allowed the tenant to remain in his apartment, hoping that his behavior would improve. Months later the tenant was accused of making new threats and was again abusive to the manager, so the landlord immediately moved to dismiss the appeal and obtain the execution.

The tenant argued that he should not be evicted be-

cause the landlord had an obligation to accommodate his disability. The Boston Housing Court, in its February 1996 decision, answered that the landlord was entitled to possession because it had already made an accommodation by not moving more quickly to dismiss the appeal. Moreover, the tenant was continuing to adversely impact the landlords ability to manage the building as well as the right of other tenants to quiet enjoyment, so any further accommodation would have imposed an undue hardship on the landlord.

Many of the parameters of Section 504 and the ADA are as yet undefined, but these recent cases sketch in some of the meaning of "reasonable accommodation" and "undue hardship." The statutes still contain many pitfalls for landlords, and careful compliance is a necessity. The good news as demonstrated by these cases is that accommodation only goes so far. Landlords must still be able to exercise control over activities occurring on their property.