

Kimball, Tirey & St. John LLP

Legal Alert

Reasonable Accommodations for the Disabled

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US Court of Appeals for the 9th Circuit (Giebeler v. M&B Associates, September 15, 2003). This significant decision made in 2003 has important fair housing implications for residential rental owners and property managers. Essentially the decision states that M&B Associates discriminated against a disabled person, Mr. Giebeler, by not permitting a reasonable accommodation of a co-signer or other reasonable alternative, as a modification of the company's "no co-signers" policy. In this case, the applicant had a good rental history, with excellent credit and a good job. When he became ill with AIDS, he could no longer afford his apartment and needed assistance. He found a more affordable apartment that was closer to his mother. Because he didn't meet the minimum income requirements of three times the rent at Branham, he was denied residency. His mother went to the manager the next day offering to rent the apartment on her son's behalf. She had good credit, owned her home outright and her income met the M&B's requirement. This arrangement was rejected by management based on their policy against allowing co-signers on lease agreements. Management never reviewed the rental and credit history of the parties.

The complaint claimed disparate impact (having a "neutral" policy that impacts one or more protected classes), intentional discrimination and failure to reasonably accommodate the applicant's disability through refusal to waive the no-cosigner policy.

The court found that the applicant was not asking for a discounted rent, only a different way of proving that the same rent would be paid for the apartment as everyone else—that the income relied upon would be his mother's instead of his own. The court determined the request was reasonable and necessary in order to fulfill the goals of the Fair Housing Amendments Act of 1968. "Ordinarily, an accommodation is reasonable under the FHAA 'when it imposes no 'fundamental alteration in the nature of the program' or undue financial or administrative burdens."

There are more complexities in the findings made by the court that we can cover in this brief alert; however, it is clear that it further broadens the scope of what is considered a reasonable accommodation. To reduce immediate risks, we have several recommendations:

1. Be sure your rental criteria are reviewed and updated at least annually to ensure that they reflect both current law and current court decisions. We commonly identify criteria that have disparate impact on one or more protected classes. You can contact our Fair Housing Department at 800-338-6039 to schedule a review.
2. Do not deny a request for a modification or accommodation from a disabled applicant or resident without appropriate legal guidance (such denials were responsible for 15% of all complaints last fiscal year in California).

Disability is the number one category of complaint in California and throughout the United States, with the numbers continuing to grow. Our goal is to prevent your company from being a part of that increase.

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