Establishing House Rules That Comply with the Law and Benefit Your Program

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Housing Options for People with Disabilities

• State licensed facilities
  – Community Care Facility (ARF, Social Rehab)
  – Alcohol and Drug Program (ADP)
• Emergency shelters
• Sober living homes
• Transitional Housing including TAYs
• Permanent Supportive Housing
• Hybrids – shelter/transitional housing
• Others
Housing Program Distinctions

• Emergency shelters – RULES but no lease
• Transitional Housing – lease agreement + rules
  - "use of a program unit in a structured living environment which is conditioned upon compliance with the transitional housing program rules and regulations"

  California Health and Safety 50582 (g)(2)
  - federal law does not compel participation but only limits to 2 years
    42 USC §11384
  - conflict of state and fed law re rules

• Hybrids - like a shelter but assigned space & other indicia of tenancy
Sober Living Homes

• Housing but no services are provided
• Landlord-tenant laws apply
• The living arrangement is protected under fair housing laws
• The residents are protected by fair housing laws provided they are not using illegal controlled substances
• Rules and more rules
• Cannot toss someone out because he or she starts drinking
Permanent Supportive Housing

• Requires individual lease agreements
• Can live there forever
• Landlord-tenant laws apply
• Participation in programs/receipt of services is voluntary – cannot be compelled
• Program rules for independent housing
• Clearly defined under state law
• Not subject to state licensing
Asserted Justifications for House Rules

• People with (mental or developmental) disabilities need more restrictions in housing (safety and conduct assertions)
• Form lease/rental agreements do not include all of the provisions the landlord wants to impose on tenants
• Housing programs permit the provider to require more of residents – “bundling” of housing + services
• In transitional housing, programs are permitted to compel some level of program participation and this requires stronger rules directed at behavior
• TAY housing program participants need more structure and restrictions because of risky behavior of young adults
Restrictive Program Rules

• May lead to assertion that housing should be licensed by the State
• Rule is unenforceable because not a “material term” of the lease
• May violate privacy rights
• May violate civil rights
• Rule conflicts with municipal laws because more restrictive
• May not be considered part of the lease/rental agreement
Basics of Lease/Rental Agreements
Written Agreements

- Names of parties to the agreement (landlord and all tenants listed)
- Address and unit number
- Rent – amount, when due, to whom paid, where to pay
- Security deposit terms
- Late and returned check provisions
- Utilities – who pays
- Any provisions re condition of premises
- Subletting
- Inspections
- Attorneys’ Fees provisions if litigation
Oral Lease/Rental Agreement

- Name, address and telephone number of manager of rental property and owner who is authorized to receive legal notices for owner
- Name, address and telephone number of person/entity to whom payment must be made.
- Form in which rent payments must be made.
- If oral agreement, tenant entitled to receive this in writing from within 15 days (on annual basis)
Prohibited Lease/Rental Agreement Provisions

These provisions are void against public policy (unenforceable under state landlord-tenant laws):

• Waiver of procedural protections during litigation (unlawful detainer actions)
• Waiver of protections of warranty of habitability
• Waiver of the right to withhold rent if repairs are needed
• Waiver of right to sue landlord for future injuries
• Waiver of rights related to security deposits
Lease/Rental Agreement Provisions Prohibited Under Fair Housing & Other Civil Rights Laws

• Any additional requirements added to the agreements based on disability:
  – May be intentional (obvious from the reading)
  – May have a disparate impact
• Singling out and treating tenants with disabilities differently under the agreement
• Restrictions against families with children
• Steering to specific units or floors of building
House Rules - Purpose and Goal

- Further the program’s specific goals or mission
- Support a healthy & safe environment for residents, visitors and staff
- Create an environment that is respectful of the quiet enjoyment & privacy rights of others
- Respect and safeguard property of all
- Further independent living environment
- Operate well in the neighborhood
Program Rule Basics

- Must be related to the tenancy
- Less is more
- Clear and simple language
- Specific language – avoid vague terms
- If you can’t enforce it, don’t put it in
- Must comply with:
  - California landlord-tenant
  - fair housing laws
  - Any applicable federal, state and municipal laws
Program Rule Basics - Enforceability

• An addendum to the lease agreement
• Signed and dated by the resident
• Referenced in the lease agreement
• Provide written notice of the consequences of violating a program rule (in the lease and rules)
• Changing the program rules – 30-day written notice
• Provide resident with a copy, attached to the lease/rental agreement
What Should Program Rules Address?

- Visitors/guests
- Quiet hours
- Conduct and safety
- Alcohol/drug restrictions in public/common areas
  - Alcohol – use is not illegal/conduct violate
  - Drug use – illegal controlled substances
  - Reasonable Accommodation requirements
- Smoking restrictions
- Use of common areas
House/Program Rules

• Cannot violate the law (landlord-tenant, civil rights laws, state and local ordinances)
• Narrowly drafted to address health & safety of residents, staff and property
• Narrowly drafted to address peaceful functioning of the building
• Clearly written so tenant has ability to comply
• Rules must apply uniformly to all tenants
• Reasonable Accommodation applies to rules
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