



Houston Apartment Association

COVID-19 IMPACTS THE APARTMENT INDUSTRY

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Are You Ready?

COVID-19 has the world's attention. By now, you've received multiple notices regarding preventive measures you can and should take to minimize risk of harm to you, your family and co-workers.

We all have been inundated with stories of people having to self-quarantine and self-isolate. Schools and businesses have developed plans requiring students and employees to stay home if they are feeling ill or have been around someone that may have the virus. Others have decided to self-quarantine if they have been in public gatherings with persons that may have tested positive for the virus.

Only time will tell how bad this will get. However, it is inevitable that the apartment industry will be involved in COVID-19 activity. As more and more people are asked or decide to self-quarantine or self-isolate, they stay at home. Where do these people live? In apartments. This means apartment owners and managers need to prepare!

Here are some of the questions that may come up as you deal with the onslaught of persons having to stay in their units.

What is the difference between self-quarantining and self-isolating?

According to HHS.gov, **isolation** is used to separate ill persons who have a communicable disease from those who are healthy. Isolation restricts the movement of ill persons to help stop the spread of certain diseases. For example, hospitals use isolation for patients with infectious tuberculosis.

Quarantine is used to separate and restrict the movement of well persons who may have been exposed to a communicable disease to see if they become ill. These people may have been exposed to a disease and do not know it or they may have the disease and do not show symptoms. Quarantine can also help limit the spread of a communicable disease.

Isolation and quarantine are used to protect the public by preventing the exposure to infected persons or to persons who may be infected.

Can a person who has contracted the virus be treated differently than other residents?

Depending upon the circumstances of the person's condition, a person who has the virus may fit the definition of a person with a disability under the Fair Housing Act (the "Act"). The Act defines a person with a disability to include: (i) individuals with a physical or mental impairment that substantially limits one or more major life activities; (ii) individuals who are regarded as having such an impairment; and (iii) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. Case law has also considered a person with tuberculosis as being disabled.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree." The term "major life activity" means activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking. The list of major life activities is not exhaustive.

What if the person may pose a threat to others?

While the Act protects persons who are disabled, it does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals unless the threat can be eliminated or significantly reduced by reasonable accommodation.

A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence. The assessment must consider: (i) the nature, duration, and severity of risk of injury; (ii) the probability that injury will actually occur; and (iii) whether there are any reasonable accommodations that will eliminate the direct threat. In evaluating a person's situation, a housing provider must take into account whether the individual received intervening treatment or medication that has eliminated the direct threat (i.e., significant risk of substantial harm). In such situations, the housing provider may request that the individual document how the circumstances have changed so that the person no longer poses a direct threat.

Case law regarding the Americans with Disabilities Act has applied similar factors to determine whether a person with tuberculosis constitutes a direct threat to others. These factors include: (i) the nature of the risk as to how the tuberculosis was transmitted; (ii) the duration of the risk as to how long the person was infectious; (iii) the severity of the risk as to what the potential harm to third parties was; and (iv) the probabilities the disease would have been transmitted or caused harm. These factors should be considered when dealing with someone who is self-quarantining or self-isolating.

Dealing with a person who has or may have come in contact with a person who has the virus requires reliance on the best available objective medical evidence. A housing provider is not a healthcare provider. Housing providers will not and cannot provide guidance with respect to medical or healthcare services. The CDC and local healthcare officials should continue to be the primary source of information and advice. You, like your residents, should rely on these resources for the latest information, updates, and guidance about COVID-19. Consequently, if you are treating a person who is self-quarantining or self-isolating differently than others, you should only rely on objective medical evidence and criteria when doing so.

Can I prevent infected persons from using the amenities?

If you are treating a person that is infected or possibly infected different than other residents, you should be prepared to present the objective medical evidence that the person is a direct threat in order to justify different treatment.

Can I ask a resident whether they are self-quarantining or self-isolating?

If you have identified an objective medical reason for why you are asking if a person is self-quarantining or self-isolating, you may be justified in making this request. For example, if you are asking if a person is self-quarantining or self-isolating for the purpose of incorporating proper precautions when entering a resident's unit to perform maintenance services, you would be justified in asking for this information if you have objective medical evidence to suggest the need for special procedures for maintaining the unit.

If someone who is self-quarantining or self-isolating in my community requests special accommodations such as delivering groceries or medical supplies, am I required to accommodate the request?

No, if this is not what you normally do. Assuming the person making the request is "disabled" under the Act, a housing provider can deny a request if providing the accommodation is not reasonable- i.e. if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operation.

The determination of undue financial and administrative burden must be made on a case- by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

What type of maintenance services should be provided to someone who is self-quarantining or self-isolating?

Once again, your decision of whether, and how to, perform maintenance-related services to a unit with an occupant who is self-quarantining or self-isolating will depend upon the nature, severity, duration and probability of the risk of transmitting the disease to the person performing the maintenance duties. Any decision you make that causes you to treat the occupant of the unit differently than the way you treat occupants in other units should be based upon objective medical evidence, not on fear or speculation.

Notwithstanding the foregoing, you will want to have a protocol to perform maintenance services to address such things as water leaks, mold, electrical problems, malfunctioning lights, broken or missing locks or latches, and other conditions that pose a hazard to property, health or safety. This can be done by either providing maintenance employees with the proper (and medically approved) personal protective equipment or by retaining the services of an outside contractor that will use the proper equipment and take appropriate precautions.

The actions we take in the apartment industry with respect to those who are infected or may be infected will largely depend upon the available medical evidence suggesting how to address different situations. In the last month, if we have learned nothing else, we have learned that medical evidence consistently changes. Keep watching the news and following the lead of the CDC and local health officials on how to address various situations.

Good luck and remember that we have been through similar issues in the past and will get through this one!