

FLYNN LAW GROUP

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by

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Hypothetical #1

Inigo Montoya had been a resident of Patenkin Apartments for over 15 years. Inigo had always been an interesting resident. His small talk with other residents and Management usually revolved around his passion for fencing, which was odd but endearing.

Over the last year, however, Inigo's behavior took a turn for the worse. He had taken to screaming about a quest for finding a six-fingered man late at night and the early morning hours, and to moving furniture around to practice fencing in his apartment. He had even begun confronting residents and Management staff in the hallway and screaming at them with conviction, "*My name is Inigo Montoya. You killed my father. Prepare to die.*" Residents and Management staff were disturbed by this behavior. Residents lost sleep and feared that Inigo may actually engage in violence. Management staff found it difficult to get their work done and found it difficult to tell if Inigo's threats posed an actual risk to residents and Management personnel. After receiving numerous complaints from residents, Management had responded to these complaints by serving Inigo with several Notices of Lease Violation that warned him that his disturbances and threats must cease or he would be placing his tenancy at risk. However, nothing seemed to work. Inigo was obsessed with fencing and his quest for a seeming mythical six fingered man. After several more sleepless nights for residents, Management finally decided to refer the case to their attorneys to commence eviction proceedings, as Inigo's behavior was affecting the quiet enjoyment of other residents. A notice of non-compliance was served on him and you continued to receive complaints from other residents prompting the filing of a complaint.

The week before the scheduled trial, Management's attorney received a letter from Inigo's attorney, Andre Von Buttercup, Esq. Attorney Von Buttercup claimed that the reason for Inigo's change of behavior was that he had stopped taking medication for his mental illness. The attorney indicated that Inigo had been hospitalized in an attempt to stabilize his mental illness,

and that he was scheduled to be discharged after two weeks. Attorney Von Buttercup indicated that upon discharge, Inigo would be visited daily by a nurse, who would ensure that Inigo took his medication. Attorney Von Buttercup enclosed a letter from Inigo's doctor attesting this the doctor's belief that with his medication being administered daily, Inigo's disturbing and threatening behavior should subside. Attorney Von Buttercup asked for a reasonable accommodation to discontinue eviction proceedings and give Inigo the opportunity to continue to reside in his apartment while receiving daily medication for his mental illness.

Management's attorney indicated that state and federal disability discrimination law seemed to necessitate granting the reasonable accommodation request. Management granted the request as result, and eviction proceedings were put on hold.

After being discharged, Inigo seemed quiet for a couple of weeks, and Management was cautiously optimistic that the plan to administer medication to Inigo daily was a success. However, after Inigo spotted a pizza delivery driver wearing gloves that he thought disguised the driver's six fingers, Inigo's behavior again took a turn for the worse. He again started causing disturbances and engaging in threatening behavior. He even challenged one resident to a "pick the glass with poison" drinking contest. Inigo was now refusing to take his medication.

As a result, Management again commenced eviction proceedings against Inigo. Management's attorney inquired with Attorney Von Buttercup, who indicated that Inigo's doctor could not identify a way to force Inigo to take his medication. However, Attorney Von Buttercup was adamant that federal and state disability discrimination laws required Management to further reasonably accommodate Inigo by allowing Inigo to continue to reside in his apartment, while asking residents to just avoid Inigo, ignore his threats, and sleep with noise cancelling ear buds. Management found this request to be inconceivable.

At trial, the facts and history of the case were presented to Judge Falk. Judge Falk weighed the rights of Inigo and the rights of other residents to quietly enjoy their homes. When weighing whether to evict Inigo, how do you think Judge Falk rules?

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Hypothetical #2

The property manager was totally shocked and appalled when she entered the tenant's apartment and saw the damage and destruction to the apartment. In her 20 years as a property manager she had never seen anything like it: knife carvings into the walls of the living room and bedroom, large holes punched in all the walls, heavy black marker writings all over the walls, furniture tossed around the apartment, some of it broken, and trash strewn everywhere – just total upheaval and destruction. But most disturbing was the writing all over the walls with such language as “666”, “death, death, death”, “die, die, die”, “kill, kill, kill”, “I pray to Lucifer Death Pain Suffering”, “Lucifer Lucifer Lucifer help me”, “blood”, “kill Trump”, “fuck everyone”, “death to my enemies!”. Clearly, this appeared to be a seriously disturbed tenant but there had been no prior indication of any of this. The tenant, the only occupant of the apartment, was a quiet, young, apparently mild-mannered woman in her early 20's, and there had been no complaints from other residents about her. The damage was only discovered during the landlord's routine inspection of the unit when the tenant was not home. The property manager took pictures of the damage and immediately contacted the landlord's attorneys, who advised sending the tenant a Notice of Non-Compliance, which includes as a remedy to pay for the damage to the unit. The property manager agreed.

Now, as the Notice is expiring, the landlord's attorneys have been contacted by a Legal Services attorney. The Legal Services attorney is requesting a reasonable accommodation for the tenant. The attorney informs the landlord that the tenant has obtained help for her untreated mental illness, she has been diagnosed with bipolar disorder, and she is on medication and a treatment plan to control the hallucinations and other effects that caused her extreme behavior. The attorney has provided a letter from the tenant's psychiatrist confirming the diagnosis and requesting that she be allowed to remain as a tenant.

1. The tenant's attorney is requesting as a reasonable accommodation that the tenant not be evicted, *and also* that the landlord not file any court action against the tenant unless there are any further incidents. The attorney is very concerned about creating a public record of the tenant's untreated bizarre behavior. How should the landlord respond? If the landlord is determined to proceed with the court case will this open up the landlord to a claim for discrimination and failure to accommodate?

2. The tenant's attorney is further requesting, as a requested accommodation, that the tenant not be required to pay for the damage to her unit, because the damage was not intentional and was only the result of the tenant's untreated mental illness. The attorney says her client simply cannot pay for the damage because she is a Section 8 voucher holder who only pays \$25.00 per month as the tenant's portion of her rent, and that requiring her to pay for the damage would constitute discrimination. How should the landlord respond? If the landlord refuses this request does it risk opening the landlord to a claim for discrimination and failure to accommodate?

3. Alternatively, the tenant's attorney proposes as a reasonable accommodation for the tenant, that the landlord allow a local community group of youth volunteers to repair the damage to the tenant's apartment at no cost to the landlord. How should the landlord respond? If the landlord refuses this request does it risk opening up the landlord to a claim for discrimination and failure to accommodate?

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Hypothetical #3

Quick Draw McGraw has resided at your development for 3 years and has been a model resident. He pays his rent on time and seemingly keeps to himself. You are aware that he is disabled and receives SSDI funds, but you are not aware of his disability.

One day things go from zero to a thousand in your development very quick. The police storm your building and reports filter in to your office that Quick Draw is in the hallway with a gun waving it in the air and threatening to shoot the first person he sees. The police surround him and Quick Draw fires a gunshot in the air, thankfully not injuring anyone. The police use a taser to subdue Quick Draw and he is arrested.

You discover that Quick Draw is actually a schizophrenic who suffers from bipolar disorder. He has not been taking his medication for weeks. Your attorney immediately sends a notice of non-compliance terminating his tenancy. However, the hospital where Quick Draw is being held at is calling you every few hours and is asking you if the police have concluded their investigation and he can come back to his apartment. What do you do?

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Hypothetical #4

Blue is an elderly Navy veteran who resides at your property. Over the past few years Blue has gone from being a normal resident to that of a loose cannon.

You have always known Blue to be a drinker but his alcohol consumption has gotten out of control in the past year or two and on top of that you suspect that Blue is also suffering from dementia and possibly Alzheimer's disease as he has no idea what your name is despite the fact that you have known him for years. Making matters worse Blue's hygiene is becoming deplorable. You attempt to get social services, elder services and veterans services involved and Blue refuses help from all of them. He is 2 months behind on rent and you have no other choice but to take him to court.

You even attempt to get Legal Services involved to see if they can provide any assistance and he refuses their help as well. Blue tells you he doesn't care about the rent owed, does not show up to court and is defaulted. You are planning on having the constable levy on the execution you have obtained. Is there anything you should prepare for or any other ways to help Blue?

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Hypothetical #5

Mr. Magoo has always been a bit “odd” since moving into your elderly development. However, his odd behavior has evolved into disturbing behavior.

Recently you received mail from Mr. Magoo. He sent a letter to you that was many pages in length and contained very disturbing sexual ramblings. He now goes outside for about four hours every day and has located a spot in the common area where he can stare into your office for this time period. Recently, he has accused you of raping him and called the police to report it. When police showed up to investigate he was asked for any proof that he had of you raping him. His response was that he used to have grey hair on his arms but now since you raped him, his arm hair is the same color as the hair on your head.

How do you proceed with Mr. Magoo?

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Hypothetical #6

You are a property manager of a residential housing development in Rhode Island. One of your residents, Ted Norton, has been complaining that his neighbor, Tyler Durden, is hosting a female visitor late at night. Ted says that Tyler and the female visitor are purposely making noises in Tyler's apartment that is keeping him up at night. According to Ted, Tyler and the female visitor are whispering to each other late at night and turning on a machine, which causes a loud ear-piercing noise.

None of your other residents have seen any visitors going into Tyler's apartment or heard any loud noises coming from his apartment. You have viewed the footage from the security cameras and have not seen any visitors entering the building or Tyler's apartment late at night. You have shown the security camera footage to Ted, but he is convinced that the female visitor entering Tyler's apartment every night.

Tyler, who is an elderly resident, denies having any visitors in his apartment late at night. Tyler has also complained to you that Ted wakes him up in the middle of the night by banging on the walls and screaming "TURN THAT THING OFF!" Tyler says he feels harassed by Ted, who has confronted him numerous times about the female visitor, even though Tyler has no idea who Ted is talking about.

What can you do about this situation?