



## Substance Use/Abuse and the Lease

This document, taken from CSH's publication *Between the Lines: A Question and Answer Guide on Legal Issues in Supportive Housing – National Edition* (prepared by the Law Offices of Goldfarb and Lipman and available at [www.csh.org/publications](http://www.csh.org/publications)), discusses the legal implications of substance abuse and the use of illegal drugs within a supportive housing development.

**Question:** May a housing provider evict for non-sobriety?

**Answer:** *Evictions for non-sobriety may be difficult because alcoholism is a disability.*

Generally, in standard rental housing a housing provider cannot impose sobriety conditions on tenants since alcoholism is a disability under the Fair Housing Act. However, if a housing provider is providing housing to recovering alcoholics, sobriety may be a reasonable condition to occupancy as part of the services the housing provider makes available to the residents. In such an instance the housing provider would have a compelling interest in maintaining an alcohol-free environment.

Caution should be exercised in evicting any residents solely for failure to abide by the sobriety rules, however. An alcoholic may be considered a disabled person entitled to a reasonable accommodation and this accommodation may require waiver of the sobriety rules. Housing providers could argue that waiver of a sobriety rule is a fundamental alteration in the nature of a clean and sober housing program, and therefore is not a reasonable accommodation, but at this time there are no reported cases on this issue. When making such an argument, a housing provider may need to offer an alternative accommodation such as permitting continued occupancy by a tenant who breaks a sobriety rule if he or she attends a rehabilitation program.

Some housing providers attempting to maintain sobriety policies include the sobriety rules in their lease or house rules, but do not evict for failure to comply with the rules, since such evictions are difficult and often fail. The success of such an eviction will most likely depend upon the vigor of the tenant's advocate and the judge's own inclinations regarding individual rights. Behavior problems that result from problems with alcohol may be grounds for eviction if these behavior problems interfere with other tenants' rights or affect the tenant's ability to meet the terms of tenancy.

**Question:** May a housing provider evict for illegal drug use?

**Answer:** *Yes, however, evidence to support the claim may be difficult to get, thereby making it difficult to successfully evict a tenant for illegal drug use.*

The use of illegal drugs should generally be sufficient grounds for eviction; however, it is advisable that leases contain a provision prohibiting the use of illegal drugs so the eviction is based on a lease violation. Most jurisdictions allow eviction for criminal activity, including

---

Note: This document is included within the *Housing Operations* section of CSH's *Toolkit for Developing and Operating Supportive Housing*, which is available at [www.csh.org/toolkit2](http://www.csh.org/toolkit2).

illegal drug use. Housing providers should be prepared for the resident to assert the need for a reasonable accommodation in any eviction. Although it is difficult to think of what the reasonable accommodation would be in the instance where the housing provider has clear evidence of illegal drug use, providers should be prepared for creative defenses asserted by tenants who are being evicted for drug use.

Housing providers may have difficulty obtaining convincing evidence of the tenant's drug use. Rarely will a tenant use drugs in front of staff and other tenants are often reluctant to testify against fellow residents. Evidence based on behavior may not be convincing or explained away by the tenant.