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WHAT FAIR HOUSING MEANS FOR PEOPLE WITH DISABILITIES



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The Bazelon Center is the leading national legal-advocacy group representing people with mental disabilities.

Founded in 1972, the nonprofit organization uses litigation, public-policy advocacy and technical support for lawyers and other advocates to establish and advance the rights of adults and children with mental illnesses or developmental disabilities who rely on public services and to ensure their equal access to health and mental health care, education, housing, and employment.

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WHAT “FAIR HOUSING” MEANS FOR PEOPLE WITH DISABILITIES

This publication is written for people with disabilities who want to rent a home—an apartment or house or condominium or co-op—whether privately or publicly owned or operated. (The concepts discussed here also apply to the sale, financing and purchase of housing.) Others who may find the information useful include landlords, housing developers and administrators, real estate agents, and advocates for people with disabilities.

If you or someone in your family has a disability, you might encounter housing discrimination when you apply for a lease. If you are trying to move into or develop a community residence or supported apartment program, you might encounter the prejudice of neighbors who mistakenly assume your presence will threaten their property values or their safety. You might face discrimination if a landlord refuses to make changes that would help you to avoid eviction or enable you fully to enjoy your housing. Or you may experience harassment by a neighbor because of your disability.

Even if no one in your family has a disability, discrimination can violate your right to enjoy the use of your home—for example, when a person with a disability can't visit or share an apartment with you because the only building entrance has steps or your landlord says your visitor's appearance offends the neighbors.

These are just a few examples of housing discrimination prohibited by the federal Fair Housing Act (FHA). This booklet will help you recognize illegal discrimination against people with disabilities and put an end to it. Notes at the end list cases and other legal resources.

The Big Picture

► What federal laws protect me from housing discrimination?

Three federal laws prohibit housing discrimination against people with disabilities:

- The Fair Housing Act¹ (FHA),
- Section 504 of the Rehabilitation Act of 1973² (Section 504) and
- Title II of the Americans With Disabilities Act³ (ADA or Title II)

These laws overlap in their coverage. Some types of housing may be covered by only one of the laws, while some housing may be subject to two or all three of them.

► Who is protected by these federal laws?

Housing applicants, tenants and buyers with any kind of disability—mental or physical—are covered by the FHA, Section 504 and Title II. The FHA provides protection against discrimination based on a person’s own disability or history of disability; association with a person who has a disability, such as a family member; or the disability of a person who will reside in a house or apartment after it is sold or rented.⁴ The FHA, Section 504, and the ADA also prohibit landlords and others from discriminating against people who are believed to have disabilities, but in fact do not.⁵

A person with a “handicap” or “disability” is defined in the FHA as someone:

- (1) with a “physical or mental impairment that substantially limits one or more major life activities”; or

- (2) who has a record of having such an impairment; or
- (3) who is regarded as having such an impairment.⁶

Section 504 and the ADA also use this definition.⁷

This definition is broader than the definition used to qualify for Social Security disability benefits, so a person may be protected under the FHA but still not be eligible for disability or supplemental security income (SSI).

The definition also means that, even if you do not now have a disability, you are protected if you are treated differently because you have a history of mental or physical disability or because someone believes you have a disability.⁸

► Are any people with disabilities not covered by these laws?

Current illegal drug users are not covered under any of these federal laws but individuals with alcoholism—whether or not in recovery—generally are,⁹ as are former drug users who have successfully completed an addiction-recovery program.¹⁰ Using prescription drugs at a doctor’s direction does not disqualify you from coverage.¹¹

None of the three federal laws protects someone “whose tenancy would constitute a direct threat to the health and safety of other individuals, or whose tenancy would result in substantial physical damage to the property of others.”¹² A landlord can treat a person as a **direct threat** only if there is recent objective evidence of behavior that will put others at risk of harm.¹³

The FHA and Title II do not protect an individual if being a “transvestite” is the person’s sole basis for claiming coverage.¹⁴ The ADA also states that “homosexuality” and “bisexuality” are not included in its definition of disability.¹⁵

► Who must comply with federal fair housing law?

The federal fair housing laws apply to “housing providers” in all forms—property owners, landlords, housing managers, neighborhood and condominium associations, real estate agents and brokerage service agencies.

Anyone else — including banks, insurance companies and even neighbors—who “otherwise make[s] [housing] unavailable” can also be found in violation of the FHA.¹⁶

The FHA applies to most privately owned housing in addition to housing subsidized by federal or state funds, such as low-income public housing or federally subsidized or Section 8 housing.¹⁷ Three narrow exceptions to FHA coverage are:

- a person who owns no more than three homes and sells or rents a home without discriminatory advertising or using a real estate agent;
- housing providers who lease units in buildings with four or fewer units, if the owner lives in one of the units; and
- private clubs or religious organizations that restrict occupancy in housing units to members of the club or religious organization.¹⁸

However, you should check your state and local laws because sometimes they provide additional protections against housing discrimination.

Section 504 of the Rehabilitation Act of 1973 applies only to landlords that receive federal funds, including public housing authorities and federally subsidized landlords.¹⁹ Title II applies similar requirements to housing programs funded or operated by state or local governments and their agencies, including public housing authorities.²⁰

Although some types of rental housing are covered by only one of the laws, some may be subject to two or three. For example, Section 504 will not cover housing created by a town using its own tax money, but the FHA and ADA will.²¹

Housing that is provided by the state but receives some kind of federal financial assistance is subject to all three laws.

Drop-in centers for mental health consumers are also covered by the ADA,²² and at least one court has suggested that the FHA protects tenants in housing operated by mental health agencies.²³ Depending on their funding sources and how they operate, shelters for people who are homeless or are victims of abuse

may be covered by the FHA or ADA, as may other nontraditional housing units.²⁴

➤ Who enforces these laws?

The United States Department of Housing and Urban Development (HUD) is responsible for enforcing the Fair Housing Act,²⁵ Section 504²⁶ and application of the ADA to housing.²⁷ The United States Department of Justice (DOJ) may file a lawsuit under the Fair Housing Act if there is a finding of serious or widespread discrimination.²⁸

And if your state has a law that HUD has certified as “substantially equivalent” to the FHA, one or more state agencies may also be involved.²⁹ If private individuals and organizations have been subjected to discrimination they can also enforce the FHA by filing a lawsuit in federal district court.³⁰ We describe how to challenge discrimination in more detail at the end of this booklet.

➤ What does housing discrimination look like?

You should be on the lookout for discrimination. . .

- If a landlord **refuses to rent** to you on the same terms offered to others or **asks questions about your disability** during the application process.
- If a landlord refuses to grant your request for a **reasonable accommodation** that would allow you to live in a unit and enjoy it fully (see page 12). You may request an accommodation in the application phase, during tenancy, or in the context of eviction.
- If a landlord refuses to allow you to make **reasonable modifications** to your unit (see page 24).
- If a building is inaccessible to you. The federal law has **accessibility requirements** that apply to newer construction.
- If, while you are a tenant, you are **harassed or intimidated** because of your disability or are subjected to **different “terms, conditions or privileges”** of rental because of disability.

Discrimination When You Apply for Housing

► Can a landlord reject my application because of my disability?

In general, no.³¹ But, while **disability status** is generally irrelevant to a person’s qualification for tenancy, past or current conduct can justify denial of an application.³² A landlord may refuse to rent to you only:

- If you cannot meet the obligations that apply to all tenants, such as being able to pay the rent and comply with reasonable rules and regulations. Such a rejection must be based on recent, credible, objective evidence. For example, if your previous landlord reported that you ignored reasonable building rules and refused to discuss them with him, a prospective landlord may legally reject you as a tenant. If you can provide evidence of “mitigating circumstances” that explain why a past history of inability to comply with lease obligations was related to your disability and is not likely to be repeated, the landlord must consider this evidence.³³

Similarly, if a reasonable accommodation would enable you to comply with rules, the landlord may not reject your application for inability to comply. For example, if you apply for an apartment in a “no pets” building and you have a service animal, a reasonable accommodation would allow you to keep your service animal and qualify for the apartment.

- If your living there would be a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.³⁴ The landlord must have objective evidence, recent enough to be credible, for such an assertion.³⁵ However, if a reasonable accommodation would eliminate the threat and enable you to comply with standard tenancy rules, then the landlord would be required to provide or allow for such an accommodation. (See the section on reasonable accommodation, beginning on page 12.)

Some public housing authorities and federally subsidized housing developments have special eligibility criteria that may affect the rights of people with disabilities to become tenants.³⁶

Remember, if a landlord refuses to rent to you for any other reason or imposes requirements that exclude people with disabilities, you have probably been the victim of illegal discrimination.³⁷

➤ Do I have to disclose my disability?

Even if a landlord does not refuse to rent to you, he may still violate the FHA by asking illegal questions about your disability.³⁸

Generally, a landlord may not ask if you have a disability.

Also, you may not be asked for certain kinds of general information about yourself that relates to disability.³⁹ For example, it is illegal for a landlord to ask if you are “capable of independent living.”⁴⁰

A landlord may ask questions related to disability under only two circumstances:

- If you’re applying for housing designed or designated for people with a disability, it is legal to ask if you qualify for such a unit.⁴¹
- If the housing is designated for people with a particular disability, such as an intellectual disability or HIV/AIDS, it is legal to ask if you qualify for such a unit.⁴²

If you are not applying for housing designed or designated for people with disabilities, a landlord may not ask you about your disability unless you request a reasonable accommodation (see page 12).

➤ What questions may a landlord ask me?

A landlord may ask for information to show that you can meet the same obligations as any other tenant, with or without a disability. For example, as long as all applicants are asked the same questions, a landlord may ask for financial information to show whether or not you can pay the rent.

Like any other applicant, you can also be asked for references about your history as a tenant—for example, whether or not you kept your apartment clean and undamaged except for normal wear and tear.

And, like other applicants, you may be asked if you are willing to comply with the building’s rules about such things as cleanliness and no smoking in common areas.

Generally, a landlord may NOT ask...

- › “Do you have a disability?”
- › “How severe is your disability?”
- › “May I have permission to see your medical records?”
- › “Have you ever been hospitalized because of a mental disability?”
- › “Have you ever been in a drug rehabilitation program?”

A landlord may also ask—if he asks all tenants—whether you are currently using drugs illegally or have been convicted of the illegal manufacture or distribution of a controlled substance. A landlord may ask if your tenancy would pose a direct threat to the health or safety of other people, or if you would cause substantial physical damage to other people’s property.

“Substantial physical damage” means more than ordinary wear and tear such as that caused by a wheelchair, and damage to more than a single item or property. A landlord can ask about prior criminal history.

Remember, a landlord may ask these questions of a person with a disability only if he asks the same questions of all potential tenants. Otherwise, such questions violate the FHA.⁴³

A landlord may NOT refuse to rent to you, saying, for instance:

- “I cannot rent to you. I am afraid of future liability, if you get sick.”
- “I don’t want someone with a disability living in my building.”
- “Sorry, there are no apartments available.”
(If an apartment is available.)
- “I do not allow people to live in my apartments with 24-hour personal care attendants.”

A landlord may not refuse to offer you the rental agreement he offers others...

- “People who use wheelchairs damage apartments. You have to leave a double security deposit.”
- “You can only live here if there is someone to take care of you.”
- “Do you take medications?”

➤ **May a landlord refuse to offer me the standard rental agreement he offers other tenants?**

No. A landlord may not refuse to offer you the standard rental agreement because of your disability.⁴⁴

In general, when you apply, you should be on the lookout for remarks indicating a refusal to rent, or a refusal to rent to you on the same terms as everyone else, because of your disability.

Discrimination During Tenancy

- Can a landlord require me to meet different terms and conditions from those other tenants must meet?

In addition to prohibiting discrimination when you apply for housing, the federal laws protect you against discrimination in the “terms, conditions or privileges” of rental.⁴⁵ Examples of this type of discrimination appear in the box opposite.

Even if you are not denied housing or evicted, it is also illegal for anyone—including your landlord, manager or neighbor—to “coerce, intimidate, threaten or interfere” with you as you exercise your right to live in your home.⁴⁶ For example, a landlord who broke into an apartment occupied by a tenant with AIDS, disabled the locks and turned off the electricity was found to have engaged in a pattern of harassment prohibited by the FHA.⁴⁷

It is sometimes hard to distinguish this kind of harassing behavior from poor management and across-the-board mistreatment of tenants. If you believe you are being harassed for your disability, keep track of actions that appear to single you out for harsher treatment than other tenants, or develop a chronology that will show that the harassment is linked to a landlord’s knowledge of your disability.⁴⁸

- What if my disability makes it impossible for me to comply with the rules of tenancy?

In some situations you may be entitled to a reasonable accommodation that allows you to keep your housing despite your inability to comply with tenancy rules.

In other situations, the rules might not be enforceable because, even though they seem neutral and apply to all tenants, they have a “disparate impact” (or harsher effect) on tenants with disabilities. Examples might be a rent-to-income ratio (for instance, requiring monthly income two or three times the rental amount), which would exclude tenants whose only source of income is SSI or

Social Security disability benefits, or a requirement that all tenants show that they are capable of “independent living.”⁴⁹

Discrimination during tenancy may include:

- Requiring people with mobility impairments to live in ground floor units.
- Segregating people with disabilities in a particular building or portion of an apartment complex.
- Refusing to respond to maintenance calls, or responding more slowly, because of a tenant’s disability.
- Banning people with disabilities from pools, clubhouses, or other common areas.
- Charging extra fees for maintenance calls made by people with disabilities.
- Refusing to renew the lease of a person with a disability, when the leases of people without disabilities are routinely renewed.
- Threatening or intimidating remarks or conduct by management or by other tenants directed at a person with a disability.

Reasonable Accommodation

The federal laws that forbid housing discrimination require landlords to make reasonable changes or “accommodations” in rules, policies, practices or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common area. People with disabilities often seek an accommodation so they can have full use of their housing, or to prevent eviction. This section explains what a “reasonable accommodation” is and how to request one.

► What is a reasonable accommodation?

A “reasonable accommodation” is a change in rules, policies or practices or a change in the way services are provided.

With a few exceptions, the FHA, Section 504 and the ADA require landlords to grant reasonable accommodations in order to enable a person with a disability to have an equal opportunity to use and enjoy a dwelling unit or any of a development’s public areas, such as a community room or laundry service.

⁵⁰Reasonable accommodations may be requested when someone is applying for housing, during tenancy or to prevent eviction.

You can ask for a change in any rule, policy or procedure, as long as the need for a change is linked to your disability. **However, modifying the rules does not mean that you can continue to violate your lease.**⁵¹ It means that you can have help in following the lease or perhaps can follow it in a different way. For example, a tenant whose disability makes it difficult to pay rent in person might be permitted to mail the rent. The tenant would not be entitled to a waiver of rent, however. For additional examples of reasonable accommodations, see the box on page 14.

Reasonable accommodations should be requested and made on an individual basis, depending on your disability and your particular needs and circumstances.

➤ **Is a landlord always required to grant a request for a reasonable accommodation?**

No. Accommodations are considered “reasonable” when they are practical and feasible.

Courts have interpreted this to mean that a landlord does not have to grant a request for an accommodation if it would impose an “undue burden” on the landlord or result in a “fundamental alteration” of the landlord’s provision of housing.⁵²

An **undue burden** is an unreasonable financial or administrative cost. For example, a landlord could be required to accept rent a few days late if you have to wait for your Social Security check, but requiring the landlord to forgo rent entirely would likely be an undue burden.⁵³

A **fundamental alteration** is an accommodation that would change the basic operation or nature of services provided—in this case, housing.⁵⁴

For example, the FHA would probably not require a landlord to:

- pay for a social worker or home care worker to help a tenant live independently if the housing does not normally provide such assistance; or
- take care of a pet for a tenant with a mental illness who cannot care for the pet himself.

Once an accommodation is determined to be reasonable, the landlord cannot impose the expense of providing it on the tenant, directly or indirectly.⁵⁵ The landlord must assume these costs.

A reasonable accommodation might be:

- A landlord with a first-come, first-served, parking policy makes an exception by creating a reserved parking space for a tenant who, because of her disability, has difficulty walking and needs to park close to the building.⁵⁶
- A landlord notifies a tenant with multiple chemical sensitivity in advance of painting and pest treatments.⁵⁷
- A landlord waives “guest fees” and parking fees for a disabled tenant’s home health care aide.⁵⁸
- A landlord assists an applicant with intellectual disability in filling out the standard application form.⁵⁹
- If the applicant needs oral reminders to pay the rent, the landlord agrees to call or visit to remind him before each month’s rent is due.
- A landlord permits a tenant with a mobility impairment to move from a third-floor unit to the first floor.⁶⁰
- A landlord makes an exception to the building’s “no pets” rule for people with disabilities who use guide dogs or other service or emotional support animals.⁶¹
- The monthly tenants’ or owners’ association meeting, usually held in an inaccessible building, is moved to a building with a ramp.
- An applicant has no recent rent history because she has been in a psychiatric hospital for two years. Instead of asking for rent history, the landlord accepts a reference by the applicant’s employer or social worker.
- A tenant’s mental disability causes her to damage her apartment, violating the lease. So long as the damage is not too extensive and other tenants are not disrupted, the landlord puts off eviction proceedings to allow her to obtain mental health treatment and counseling to change her behavior.⁶²
- A tenant is allowed to move to a different public housing apartment to get away from conditions (loud noise, for example) that amplify the effects of her disability.⁶³
- A tenant is permitted to move from a one- to two-bedroom apartment to have room for her live-in care provider.⁶⁴

Requesting a Reasonable Accommodation

➤ How do I get a reasonable accommodation?

You must request it.⁶⁵

As a tenant, you have the responsibility to ask for a specific accommodation when you need it. You should make your request in writing (be sure to keep a copy). A sample letter is on the next page.

➤ What must I include in my request for an accommodation?

Your request for a reasonable accommodation must disclose the fact that you have a disability. You must describe the accommodation you want—as specifically as possible—and explain why it would be helpful. You do not have to tell the landlord the specifics of your disability or give him a full copy of your medical history. You only need to provide proof that you have a covered disability, that an accommodation is needed, and that the accommodation you are proposing will allow you to use and enjoy your unit fully.⁶⁶

➤ How do I prove that I need an accommodation?

If you request an accommodation, a landlord has a right to ask you for proof of your need for it. The landlord may ask for further proof of disability and for some evidence that the accommodation is necessary. However, a landlord may not deny your request for accommodation on the grounds that the disability was not apparent.⁶⁷

The type of information you will need to provide depends on your situation. The information might be provided by a doctor or by another medical professional or by a nonmedical service agency. Remember, you are not required to tell the landlord the specifics of your disability or to give the landlord a full copy of your medical history. You only need to provide proof that you have a covered disability, that an accommodation is necessary, and that the particular accommodation you are proposing will help to overcome the effects of your disability.

Sample Letter Requesting a Reasonable Accommodation

[Put the date here]

Mr./Ms. Name of Housing Manager

Job Title of Housing Manager

Name of Housing Authority or Management Company

Address

City, State, Zip

Dear _____:

I look forward to becoming a tenant in your building [at address or name of project]. I understand that I can move in to the apartment but that there is a no-pets rule so my dog would not be able to live with me. As I told you on [date], I have a disability covered by the Fair Housing Amendments Act of 1988 that makes me emotionally dependent on my dog. I need to be able to live with my dog, and hope you will accommodate my disability by making an exception to the no pets policy for me. This accommodation is required by the Fair Housing Amendments Act of 1988. As I told you, I have documentation that I have a disability and that I need to live with my dog. I will be happy to give this to you.

Please contact me at [give address or phone number] by [give a specific date as a deadline]. If I do not hear from you, I will assume that you have approved my request, and will plan to move in with my dog.

Sincerely,

For example, if you need a support animal, you must provide a letter from the health professional who prescribed or recommended the service animal. The letter should explain how the animal is useful to you, but it need not disclose the exact nature of your disability.⁶⁸

Or if you lack a traditional credit history and need to have the prospective landlord accept a guarantor for the rent payment, you only have to supply proof that you have a disability (a document showing that you receive disability benefits, for instance) and an explanation of how the guarantor satisfies the landlord’s legitimate concerns about rent payment.⁶⁹

➤ **If I know I need a reasonable accommodation in order to apply for housing, what should I do?**

If you need an accommodation to apply for housing, then you must disclose the fact that you have a disability and ask for the accommodation.⁷⁰ An accommodation might be having the application mailed to you, getting help in filling it out, or having the interview take place at your home. If, because of your disability, you missed a deadline or forgot to provide information, you should request an accommodation, such as having your application reconsidered or being put back on the waiting list.

You may also need an accommodation that allows you to meet otherwise disqualifying requirements. For example, if your disability caused you to have a bad credit history (or no credit history), you may ask the landlord to accept other assurances that you will pay the rent, such as a guarantor or having the rent deducted directly from your disability benefits.

➤ **What if my need for an accommodation arises after I am already a tenant?**

You are entitled to an accommodation whenever you have a need for one.⁷¹ You must request an accommodation—do not assume the landlord is aware of your need. However, do not allow the landlord to impose an unwanted or inappropriate accommodation.

➤ **If I have already gotten an accommodation, does my landlord have to provide me with a different or additional one?**

The law does not limit the number of accommodations you may request. If your disability has changed or you need an additional or different accommodation, it should be granted if it is reasonable.

➤ **Can I be forced to accept a reasonable accommodation if I have not requested one at all?**

No. You always have the right to refuse an accommodation or “help” if you do not want or need it.⁷² In fact, a landlord is prohibited from trying, because of your disability, to impose conditions on you that are different from conditions imposed on other tenants.

What To Do If Your Request Is Not Granted

➤ **What should I do if my landlord rejects my request for a reasonable accommodation?**

A landlord is not required to grant every request for accommodation. You may want to ask a lawyer or other advocate to assess whether your request would create an undue burden on your landlord or amount to a fundamental alteration of the housing—the two reasons a landlord can give for denying an accommodation.⁷³

Therefore, to prove that an accommodation is necessary to help you meet the terms of your lease, you may need the help of a doctor or other medical professional, a peer-support group or a nonmedical service agency.⁷⁴

Once you have proven your need for an accommodation, the landlord’s only option is to determine whether or not granting it would constitute an undue burden or fundamental alteration. If it would not, the landlord must grant your request.⁷⁵ In evaluating your request, the landlord is entitled to ask for proof that you need the accommodation you are proposing.

You may file a discrimination complaint at any time if the landlord refuses to grant your request after you have provided sufficient proof of your need for the accommodation.

➤ **What if my landlord refuses to acknowledge my request?**

Your landlord cannot ignore your request for an accommodation.⁷⁶ If he does, you may file a discrimination complaint as explained beginning on page 27.

➤ **What if my landlord rejects my proposed accommodation and insists that I accept a different one?**

Your landlord cannot reject your proposal and suggest an alternative unless it has already been determined that your request imposes an undue burden. Even if such a determination has been made, you are still not required to accept the landlord's alternative if you do not believe it will work. If you believe it will work, you may want to agree to the landlord's suggested accommodation. If you do not think the landlord's alternative plan will work, you should explain your reasons.

You may:

- agree to the plan under protest and write the landlord a letter saying that this was not the accommodation you requested and you do not think that it will work completely;
- give the landlord a letter from a doctor or health care worker explaining why the plan will not work;
- contact a lawyer or other advocate to help you;
- if you live in public or assisted housing, file a grievance with the housing authority or landlord; or
- file a complaint with HUD.

➤ **If I am being evicted because of behavior that is a result of my disability, what should I do?**

If your landlord tries to evict you because of your disability or because of disability-related behavior that would not otherwise be considered a breach of

your lease, the landlord is illegally discriminating against you.⁷⁷ If your behavior has resulted in a lease violation and you believe that a reasonable accommodation will enable you to comply with the terms of your lease, then ask for the accommodation and explain how it will change your compliance. A landlord may be required to give you time to secure services that might enable you to comply with the terms of your lease.⁷⁸

In some cases, even if your behavior could be considered a direct threat to other tenants, a landlord must allow you to obtain services that would address the behavior before evicting you.⁷⁹ If your disability makes it hard for you to communicate verbally and, as a result, you get easily frustrated and appear threatening to management staff, you might request that all communication be in writing.⁸⁰

A landlord may also be required to make accommodations before evicting you if your disability makes it difficult for you to maintain your apartment, leading to its deterioration.⁸¹ You might ask for an opportunity to arrange for someone to help you maintain the apartment.⁸² Or, if you are hospitalized, a landlord may have to allow early termination of your lease⁸³ or postpone the eviction hearing until after your hospitalization.⁸⁴

If the landlord refuses to provide the reasonable accommodation, you may want to contact a lawyer or an advocate immediately for assistance. (See the section on where to get help, on page 44, for a list of legal services and protection and advocacy agencies.)

➤ **If a landlord is providing an accommodation and I continue to break the terms of my lease and now face eviction proceedings, what should I do?**

If you believe a different accommodation will enable you to follow the terms of your lease, then ask for it. The law does not limit the number of accommodations you may request or how many a landlord has to give you. However, if you have repeatedly violated your lease despite accommodations, your landlord could refuse to consider another on the grounds that you are

unable to show him that the accommodation will be effective in solving your lease violations. At this point you need to consider whether you need a different type of housing, legal advocacy, other types of advocacy assistance, or all three.

Accessibility Requirements

Multifamily housing built for first occupancy after March 13, 1991 must have certain accessibility and adaptability features. The FHA includes specific design and construction requirements (see the box on page 23) that apply to all units in buildings with elevators.⁸⁵ In buildings without elevators, only the ground-floor units must be accessible.⁸⁶ Units on certain sites may be exempt because of the terrain or unusual characteristics of the site.⁸⁷

These requirements apply whether the multifamily housing is being built for rental or for sale—even if a buyer might choose not to have accessibility features. The Rehabilitation Act and Title II impose somewhat stricter requirements on federally funded and state or locally funded housing.⁸⁸

Many builders are still unaware of these requirements, and municipal governments sometimes fail to include them in local building codes. Don't be afraid to ask a builder or government official if new multifamily housing meets Fair Housing Act specifications.

➤ What if my apartment doesn't meet the minimum accessibility requirements?

If your apartment:

- was built for first occupancy after March 13, 1991;
- is in a building with four or more units; or
- is a ground floor unit or is in a building with an elevator;

and the unit does not meet the accessibility requirements, you may want to file a complaint, as described below. You may also want to contact a lawyer or an advocate for assistance (see page 44).

If your apartment does not meet these conditions, it is not covered by the federal accessibility requirements. (However, state or local law may require accessibility features beyond these.) You may need to make a reasonable modification to the physical structure of the apartment in order to allow you to continue living in it. Reasonable modifications are discussed on page 24.

➤ What if I need modifications in new construction?

The design features listed in the box below are minimum requirements. If you need more accessibility, you may request modifications. If you do, you will be responsible for any cost beyond the cost of meeting the minimum requirements, which the builder pays.⁸⁹ For example, the FHA only requires kitchens and bathrooms to be “usable” in a way that allows someone in a wheelchair to maneuver.⁹³

Suppose a builder follows the accessibility guidelines and produces a bathroom layout with a parallel approach to a vanity with a cabinet below it. If you prefer a forward approach and want a pedestal sink without cabinets, you may pay for the modification, with the builder’s permission. If the pedestal sink costs \$350, while the cabinet vanity costs \$300, you would be responsible only for the \$50 difference.

➤ What if a builder won’t make newly built units accessible?

If the builder’s refusal means that you are denied housing because of your disability, you may file a complaint as described on page 27. If you do, file it right away, especially if the building is still under construction. Design corrections are easier to make before construction is too far along. If necessary, a court can issue a temporary restraining order to prevent further construction while your complaint is investigated.⁹⁴

Requirements for new housing:

New multifamily housing with four or more units, built for first occupancy after March 13, 1991, must include:

- a building entrance that is wide enough for a wheelchair accessed via a route without steps;
- accessible public and common-use areas;
- doors that allow passage by a person in a wheelchair;
- an accessible route into and through the dwelling unit;
- light switches, thermostats and other environmental controls in accessible locations;
- reinforcements in bathroom walls for later installation of grab bars; and
- kitchens and bathrooms that allow a wheelchair to maneuver about the space.⁹⁰

The builder must ensure that these features are included, but has some design flexibility. The builder may look to existing standards for design of accessible buildings, such as the American National Standards Institute (ANSI) standard, or the Uniform Federal Accessibility Standard (UFAS).⁹¹

HUD published the final Fair Housing Accessibility Guidelines on March 6, 1991.⁹² HUD’s Fair Housing Offices will answer questions about the guidelines. The Washington DC phone number is 202-708-2618; ask for the Office of Program Compliance. Builders may use any of these design standards as long as they satisfy the law’s requirements.

Reasonable Modification

Sometimes a person with a disability needs to make physical changes in a dwelling. A landlord must allow a tenant to make modifications to an apartment or common areas if the modifications are “reasonable” and necessary for the tenant to use and enjoy the dwelling unit.

► Is a landlord required to let me make physical changes to my unit, building, or grounds?

Yes, your landlord must let you make a change as long as it is a “reasonable modification.”⁹⁵ A landlord can condition approval of a modification on assurance that the modification will be done properly and will comply with all necessary building and architectural codes. The landlord can also require that when you move out, you leave the unit in a condition acceptable to someone who doesn’t need the modifications you have made.⁹⁶

However, you do not have to undo modifications that will not interfere with the next tenant’s ability to use and enjoy the unit.⁹⁷ For example, if you removed a cabinet below the bathroom sink to accommodate your wheelchair, you would probably have to replace it. But you would not have to narrow doorways that you widened to accommodate a wheelchair.

► Who must pay for these physical changes?

The answer depends on the type of housing you are renting and the laws that apply to it. A landlord who is subject only to the Fair Housing Act does not have to pay for the changes you request.⁹⁸

However, the FHA requires that any new multifamily housing built to be occupied for the first time after March 13, 1991 must be architecturally accessible (see page 23). If a covered multi-family dwelling does not meet accessibility standards, the housing provider must pay the cost of bringing it into compliance. If your landlord receives federal funds and is, therefore, covered by Section 504

or Title II of the ADA, he may be required to make physical changes to accommodate your disability and to pay for those changes, unless it would cause him significant financial or administrative hardship.⁹⁹ Each time a tenant requests a physical modification, the landlord must consider whether the work is reasonable in light of the total budget of the complex. The landlord should provide whatever part of the cost he is able to pay, and must allow you to make the change if you can pay enough of the remaining cost to eliminate the hardship.

➤ **Does the landlord have a right to approve or disapprove my modifications even if I pay for them?**

Yes. If you need to modify the interior of a unit, the landlord may require you to agree to restore the unit to its condition before the modification, except for reasonable wear and tear.¹⁰⁰ Before receiving permission to modify your unit, you may have to provide a description of the modifications and assurance that they will be done in a workmanlike manner.¹⁰¹

A reasonable modification could be:

- installing an automatic water faucet shut-off for people who can't remember to turn off the water;
- installing a ramp for a tenant who could not otherwise access her mobile home;
- installing pictures, color-coded signs or pathways for people whose cognitive disabilities make written signs impossible to use;
- installing carpeting or acoustic tiles to reduce noise made by a person whose disability causes him or her to make a lot of noise;
- disconnecting a stove and installing a microwave for a person unable to operate a stove safely

The landlord may also require you to obtain any necessary building permits.¹⁰² If a landlord refuses to allow the modifications and instead proposes an alternative design that will not meet your needs, you are not obligated to accept the proposed modification and should re-assert your right to make reasonable modifications that do meet your needs.¹⁰³ Unless the modification imposes an undue burden or fundamental alteration, a landlord does not have the right to make you even consider alternative designs.¹⁰⁴

➤ Must I set money aside to restore the unit?

Some kinds of modifications may be quite costly to undo. For example, suppose you wanted to lower the kitchen counters and take out cabinets so a wheelchair could fit underneath. A new tenant who didn't use a wheelchair would want the counters raised. Before giving permission for you to make such a change, your landlord may require you to pay into an interest-bearing escrow account the amount estimated for the restoration.¹⁰⁵

How to Challenge Discrimination

➤ How do I challenge housing discrimination?

Challenging discrimination can be done in various ways, depending on the particular law involved and how you wish to proceed. If your landlord has internal grievance procedures, you can use them. Or you may wish to file an administrative complaint with HUD or a lawsuit on your own. You can also use FHA requirements as a defense in an eviction proceeding in state court.¹⁰⁶

If you file a discrimination complaint, it is very important to act soon after the discrimination occurs, or you could lose your legal right to complain. All three federal laws have filing deadlines, often called “statutes of limitation.” You must file an administrative complaint with HUD under Section 504 and Title II of the ADA within 180 days,¹⁰⁷ but you have one year to file an administrative complaint under the FHA.¹⁰⁸

Each of these laws also has a different time frame for filing a lawsuit in federal court. The table on the next page summarizes the federal laws and their enforcement procedures.

► How do I file a complaint under the FHA with HUD?

Contact your nearest HUD Fair Housing and Equal Opportunity (FHEO) field office or call HUD’s toll-free complaint hotline:

1-800-669-9777

TDD 1-800-927-9275

Request HUD form 903.1, a housing discrimination information form. Available at {https://www.hud.gov/sites/documents/DOC_12150.PDF}

When you complete the form, describe as clearly and fully as you can what happened that you believe was discriminatory, including all relevant dates. If you believe a series of events led to the discriminatory denial of housing, describe each, with its date. It’s often useful to ask a lawyer or other advocate to help you file the complaint, although it is not necessary. Be sure to keep copies of your complaint and all other documents, contracts, leases, brochures and any other papers related to it.

HUD should conduct an investigation within 100 days of the date you filed your complaint.¹⁰⁹ If HUD has certified that a state’s or locality’s law, procedures and remedies are “substantially equivalent” to those provided in the FHA, the agency will automatically refer any complaint to the state or local administrative office for investigation and resolution.¹¹⁰

You can also file a complaint directly with your state or local “substantially equivalent” enforcement agency (likely to be listed in the phone book section on government agencies, under “human rights,” “human relations” or “civil rights”). However, to make sure all of your rights are preserved, it is best to file directly with HUD, as well.

LAW	ENFORCEMENT	REMEDIES (what you can get if you prove discrimination)
Rehabilitation Act, 29 U.S.C. § 794 (“Section 504”)	Grievance with housing agency or authority if it employs 15 or more people or administrative complaint with federal agency providing the financial assistance, approximately 2 to 3 years of the discrimination, depending on the state where you are located.	The housing agency can lose its federal money; you can get money damages for actual financial losses and attorney’s fees, and for emotional distress. The court could order the housing authority or agency to stop discriminating against you and to give you an apartment or do something else.
Fair Housing Amendments Act, 42 U.S.C. § 3601 et seq.	Complaint to HUD within 1 year of discrimination, and/or lawsuit within 2 years.	You could get money damages including emotional distress damages, punitive damages and attorney’s fees, and the court could order the housing authority or agency to stop discriminating against you and/or to do something, like give you an apartment or a reasonable accommodation.
Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.	Grievance with housing agency or authority if it employs 50 or more people or complaint to designated federal agency, within 2 to 3 years of the discrimination, depending on the state where you are located.	You could get money damages, including emotional distress damages, attorney’s fees and costs, and the court could order the housing agency or authority to stop discriminating against you and/or to do something, like give you an apartment or a reasonable accommodation.

➤ What happens after I file a complaint with HUD?

Initially, a HUD investigator will determine whether you and your situation meet the basic requirements for making a complaint. Then HUD (or the equivalent state or local agency) will conduct an investigation of your complaint within 100 days of the filing date.¹¹¹ During this investigatory period, HUD will try to “conciliate” your case, using mediation or other forms of negotiation to try to get you and the landlord to reach an agreement that will resolve the complaint without going to an administrative hearing or to court. Neither you nor the landlord is required to engage in conciliation or to settle the complaint.¹¹²

If no agreement can be reached, HUD issues a final report on whether or not there is “reasonable cause” to believe discrimination may have occurred.¹¹³ If HUD finds that there is reasonable cause, it will issue a “charge of discrimination.”¹¹⁴

Once a charge of discrimination has been issued, either you or the landlord can choose, within 20 days, to have the case moved to federal court.¹¹⁵ If the case goes to federal court, the Department of Justice will represent you.¹¹⁶ If you don’t take the case to court, HUD attorneys will represent you in a trial before an administrative law judge.¹¹⁷ The trial will be held within 120 days after the charge was issued.¹¹⁸

➤ Can I file a lawsuit directly in federal court?

Yes. You do not have to use the administrative process to enforce your fair housing rights. The FHA gives you the right to file a discrimination complaint directly in federal district court.¹¹⁹ You must file your complaint within two years of the date the discrimination occurred.¹²⁰ Although not required, it is best to have a lawyer represent you in court.

➤ What if I want to go to court but can’t afford a lawyer?

If you can’t afford to hire your own lawyer, the FHA authorizes (but does not require) judges to appoint a lawyer to represent you. If the judge doesn’t appoint one, you may have to proceed in court, have to proceed in court *pro se*, or without an attorney.¹²¹

Some lawyers at public-interest organizations or in private law firms are willing to represent individuals in lawsuits without advance payment for their time. Under the FHA, successful claims often lead to the payment of attorney’s fees by the defendant.

Notes

1. 42 U.S.C. § § 3601-3619 (2012). Originally, the Fair Housing Act only prohibited discrimination based on race, color, religion or national origin in the sale, rental or financing of housing. In 1974, discrimination on the basis of sex was added and, in 1988, the Act was amended to include familial status and persons with disabilities. The Fair Housing Act uses the now outmoded term “handicap.” Because that term is defined identically with “disability” in the Rehabilitation Act of 1973 and the Americans with Disabilities Act, we use “disability” in place of “handicap.”
2. 29 U.S.C. § 794 (2012). Section 504 provides that no program receiving federal financial assistance shall discriminate based on disability. Examples of housing that is covered by Section 504 include public housing or federally subsidized housing. Section 504 covers a wide range of programs in addition to housing.
3. 42 U.S.C. § § 12131-12165 (2012). The Americans with Disabilities Act, 42 U.S.C. § 12101-12213 (2012), is an antidiscrimination statute. It protects individuals with disabilities against discrimination in the areas of employment (Title I), public services (Title II), and privately-operated public accommodations and services (Title III). Title II of the ADA applies to housing provided by state and local governments, including public housing authorities and state housing finance agencies, regardless of whether they receive federal financial assistance. The U.S. Department of Justice’s ADA regulations may be found at 28 C.F.R. Part 35 (public services) and 28 C.F.R. Part 36 (privately operated public accommodations), and at www.ada.gov.
4. 42 U.S.C. § 3604(f)(1) (2012); 24 C.F.R. § 100.202 (2017).
5. For instance, a landlord believes a tenant has a disability, but the tenant has no such condition or has a condition that does not interfere with daily life. If the landlord tries to evict this tenant, he may be held liable for discrimination in regarding the tenant as having a disability. *See* 42 U.S.C. § 3602(h)(3) (2012) and 24 C.F.R. § 100.201 (2017) (definition of “handicap”).
6. 42 U.S.C. § 3602(h) (2012); 24 C.F.R. § 100.201 (2017).
7. For Section 504, *see* 29 U.S.C. § 705(20) (2012); 24 C.F.R. § 8.3 (2017). For the ADA, *see* 42 U.S.C. § 12102 (2012); 28 C.F.R. § 35.108 (2017).

8. See *supra* notes 6-7.

9. Alcoholism qualifies as a disability under all three laws. For the FHA, see 24 C.F.R. § 100.201(a)(2)(2017). For the ADA, see 28 C.F.R. § 35.108(b)(2) (2017). For Section 504, see 24 C.F.R. § 8.3 (2017).

10. For the FHA, see 24 C.F.R. § 100.201(a)(2) (2017). For the ADA, see 42 U.S.C. § 12210(a), (b) (2012); 28 C.F.R. §§ 35.104, 35.131 (2017). Individuals currently using drugs are not considered to have a disability under the FHA or ADA. For example, in *Peabody Properties, Inc. v. Sherman*, 638 N.E.2d 906, 908 (Mass. 1994), the court held that a landlord who evicted a disabled tenant after he was convicted of possession with intent to distribute a controlled substance did not violate the FHA. See also *A.B. ex rel. Kehoe v. Hous. Auth. of S. Bend*, No. 3:11 CV 163 PPS, 2011 WL 4005987, at *6 (N.D. Ind. Sept. 8, 2011) (granting defendant housing authority’s motion to dismiss claim that an eviction notice following a tenant’s arrest for possession of cocaine violated the FHA). An individual who has used drugs in the recent past may be considered a current drug user. See, e.g., *Mauerhan v. Wagner Corp.*, 649 F.3d 1180, 1188 (10th Cir. 2011) (“[A]n individual’s eligibility for the safe harbor must be determined on a case-by-case basis, examining whether the circumstances of the plaintiff’s drug use and recovery justify a reasonable belief that drug use is no longer a problem.”); *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1186 (9th Cir. 2001) (drug addiction is considered a disability only if an individual has “refrained from using drugs for a significant amount of time”); *Zenor v. El Paso Healthcare Sys., Ltd.*, 176 F.3d 847, 856 (5th Cir. 1999) (“Under the ADA, ‘currently’ means that the drug use was sufficiently recent to justify the employer’s recent belief that the drug abuse remained an ongoing problem.”); but see *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 922-23 (4th Cir. 1992) (a one-year abstinence from drugs means the person is no longer a current user). Former drug users are also protected in the context of zoning laws. See *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725 (9th Cir. 1999) (finding zoning ordinances preventing the relocation of methadone clinics to be discriminatory). Under the Rehabilitation Act, a person currently engaged in the use of illegal drugs is excluded from protection only if the use of illegal drugs interferes with the person’s ability to participate in the program, or causes the person to pose a direct threat to the property or safety of others. See the definition of “individual with handicaps” at 24 C.F.R. § 8.3 (2017). See also *infra* note 12.

11. See 42 U.S.C. § 3602(h)(3) (2012) (FHA); 42 U.S.C. § 12210(d)(2012), 28 C.F.R. § 35.104 (2017) (ADA); 24 CFR § 9.103 (2017) (Rehabilitation Act).

12. 42 U.S.C. § 3604(f)(9) (2012) (FHA); 42 U.S.C. § 12182(b)(3) (2012), 28 C.F.R. § 36.208 (2017) (ADA); 24 C.F.R. § 8.3 (2017) (Rehabilitation Act); *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) (holding that a school teacher with tuberculosis is a “handicapped individual” within meaning of Rehabilitation Act, but that a person who poses significant risk

of communicating an infectious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk).

13. *See, e.g., Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339, 1351-52 (S.D. Fla. 2007) (finding substance abuse treatment center residents did not pose a direct threat to neighbors). State courts hearing eviction matters have often grappled with the direct threat exception, more often than not finding evidence of a direct threat. *See Wirtz Realty Corp. v. Freund*, 721 N.E. 2d 589 (Ill. App. 1999) (finding a direct threat when a tenant repeatedly engaged in threatening behavior toward other tenants and building employees, including use of verbal threats, brandishing knives, and urinating in building elevators); *Arnold Murray Construction, LLC v. Hicks*, 621 N.W. 2d 171 (S.D. 2001) (finding a direct threat when a tenant repeatedly engaged in emotional outbursts, verbal threats, nude appearance, and other offensive conduct), *but see Cornwell & Taylor LLP v. Moore*, No. C8-00-1000, 2000 WL1887528, at *5-6 (Minn. App., Dec. 22, 2000) (finding landlord had a duty to reasonably accommodate tenant’s handicap and did not meet its burden of proving that tenant posed a direct threat to others after receiving letter from tenant assuring landlord tenant had a plan in place to ensure he stayed on his medication).

14. 42 U.S.C. § 3602 (2012) (FHA); 42 U.S.C. § 12208 (2012) (ADA).

15. 42 U.S.C. § 12211(a) (2012).

16. 42 U.S.C. § 3604(f)(1) (2012). *See Smith v. Brown*, No. C10-1021 MJP, 2010 WL 3120203 (W.D. Wash. Aug. 7, 2010) (neighbors’ enforcement of restrictive covenant to exclude group home violated FHA); *Martin v. Constance*, 843 F. Supp. 1321 (E.D. Mo. 1994) (similar holding).

17. *See* 42 U.S.C. § § 3603 (a)(1), (2) (2012).

18. 42 U.S.C. § 3603(b)(1), (2) (2012) and 42 U.S.C. § 3607 (2012).

19. 29 U.S.C. § 794 (2012). Landlords who accept Section 8 vouchers and certificates are not considered federally assisted and are, therefore, not covered by Section 504. Nevertheless, they are required to sign a housing assistance payment contract binding them to compliance with Section 504. *See* 24 C.F.R. 8.3 (definition of “recipient”). The Internal Revenue Service has taken the position that housing developed under the Low Income Housing Tax Credit Program is not governed by Section 504 because tax credits are not “federal financial assistance.” For contrary arguments, *see “Building Opportunity: Civil Rights Best Practices in the Low-Income Housing Tax Credit Program,”* Poverty & Race Research Action Council 2008 (<http://www.prrac.org/pdf/2008-Best-Practices-final.pdf>).

20. 42 U.S.C. § § 12131-12133 (2012). An April 1994 report to HUD and Congress discusses many issues related to federally assisted housing and recommends ways for HUD and landlords to incorporate civil rights requirements into housing-management practices that would be more likely to generate safe and decent housing. The report, available from HUD, was developed by a 33-member Housing Occupancy Task Force, composed of landlords and providers of mental health services, along with advocates for tenants, the elderly, and people with disabilities.

21. 29 U.S.C. § 794 (2012) (Rehabilitation Act); 42 U. S. C. § 3604 (2012) (FHA); 42 U.S.C. § 12182 (2012) (ADA).

22. *See First Step, Inc. v. City of New London*, 247 F. Supp. 2d 135, 148 (D. Conn. 2003); *Pathways Psychosocial v. Town of Leonardtown*, 133 F. Supp. 2d 772, 781 (D. Md. 2001). *See also Innovative Health Systems, Inc. v. City of White Plains*, 117 F. 3d 37, 49 (2d Cir. 1997) (holding that the ADA applies to zoning decisions made by a town with respect to placement of a treatment center).

23. *See Rodriguez v. Westhab, Inc.*, 833 F. Supp. 425, 427 (S.D.N.Y. 1993) (if the plaintiff’s alleged objectionable behavior did not occur, or if it poses no serious problem to the mental health agency operated housing or its other residents, or if it has abated, or if it can reasonably be accommodated without harm to the functioning of the housing, his eviction may be subject to challenge) Tenants in mental health facilities may also be protected by state landlord-tenant law in addition to the ADA and FHA protections. *See Carr v. Friends of the Homeless*, No. 89-LE-3492-5 (Mass. Trial Ct., Housing Ct., Hampden Div. Apr. 3, 1990)(ruling that participants in transitional housing programs are tenants and can only be evicted according to regular tenancy eviction procedures). This case is important because it suggests that consumers in mental health operated facilities do not shed their due process rights simply because they have no alternative but to live in a “program.”

24. 42 U.S.C. §12181(7)(k) (2012) (ADA); 42 U. S. C. § 3602(b) (2012) (FHA); 24 C.F.R. § 100.201 (2017) (FHA). Additionally, at least one court has assumed, for purposes of the zoning provisions of the Fair Housing Act, that a motor home may be a “dwelling” within the meaning of the Act. *See Burnham v. Rohnert Park*, No. C 92-1439, 1992 WL 672965 (N.D. Cal. May 18, 1992). One court has found that a ship’s berth also qualifies as a dwelling unit under the FHA. *See Project Life, Inc. v. Glendening*, 139 F. Supp. 2d 703 (D. Md. 2001).

25. 24 C.F.R. § 100.1 (2017).

26. 24 C.F.R. § 8.50 (2017).

27. 28 C.F.R. § 35.190(b)(4) (2017).

28. 42 U.S.C. § 3614 (2012). Such circumstances might include those in which a landlord discriminates repeatedly, or if the discrimination affects more than a few people, or if zoning or other local laws are involved, or if it is necessary to ask a court to act immediately.

29. 42 U.S.C. § 3616 (2012).

30. 42 U.S.C. § 3613 (2012).

31. *See, e.g., Giebeler v. M&B Assocs.*, 343 F.3d 1143 (9th Cir. 2003) (finding leasing company violated FHAA by refusing to make the reasonable accommodation of waiving a no cosigner rule for applicant who could not work as a result of his disability and needed his mother to pay for the apartment); *Valenti v. Salz*, No. 94 C 7053, 1995 WL 417547 (N.D. Ill. July 13, 1995)

(holding that tenant with a mental disability established a prima facie case of discrimination by alleging his landlords had made an offer he was ready to accept but refused to rent to him after becoming aware of his disability); *Doe v. Smith*, No. 94-16 (D.D.C. Jan 14, 1994) (ordering a management company that had refused to rent an apartment to a man because of his mental illness to accept him as a tenant).

32. See, e.g., *Evans v. UDR, Inc.*, 644 F. Supp. 2d 675 (E.D.N.C. 2009) (finding leasing company did not violate FHAA when it denied a disabled tenant’s application based on its policy to deny applications for adults with a criminal history involving physical harm); *Hackett v. Commission on Human Rights and Opportunities*, NO. 0122312, 1996 WL 457157 (Conn. Super. Dec. 13, 1996) (court upheld finding of no probable cause when refusal to rent was based on insufficient income and an arrest record unrelated to applicant’s disability).

33. See Occupancy Task Force Report, *supra* note 20, at 1-33 to 1-34, 1-38 to 1-44; *but see Schanz v. Village Apartments*, 998 F. Supp. 784 (E.D. Mich. 1998) (poor rental and credit history).

34. 42 U.S.C. § 3604(f)(9)(2012). See *supra* cases at note 13.

35. See H.R. REP. NO. 711, at 5 (1987), as reprinted in 1998 U.S.C.C.A.N. 2173, 2189–90 (“Generalized assumptions, subjective fears, and speculation are insufficient to prove the requisite direct threat to others. In the case of a person with a mental illness, for example, there must be objective evidence from the person’s prior behavior that the person has committed overt acts which caused harm or which directly threatened harm.”).

36. The Housing and Community Development Act of 1992 permits public housing authorities and qualified owners of subsidized housing to designate certain units as “elderly only” and refuse applications from younger people with disabilities. 42 U.S. Code § 13611 (2012). *But see United States v. Forest Dale, Inc.*, 818 F. Supp. 954 (N.D. Tex. 1993) (Section 202 housing project was not allowed to reject application of elderly man with disabilities).

37. See, e.g., *Ryan v. Ramsey*, 936 F. Supp. 417 (S.D. Tex. 1996) (holding it was illegal for landlord to refuse the application of tenant on SSI because she “was nervous about this disability thing” and preferred tenants who were employed); *Bolthouse v. Continental Wingate Co., Inc.*, 656 F. Supp. 620 (W.D. Mich. 1987) (Section 504 case holding it was illegal for landlord to reject applicants as not “otherwise qualified” to live in Section 8 housing because of reliance on supportive services that are provided at no cost to the landlord); *Weinstein v. Cherry Oaks Retirement Community*, 917 P.2d 336 (Colo. App. 1996) (invalidating policy requiring that all tenants be able to transfer from wheelchairs to ordinary chairs when taking meals); *HUD v. Pheasant Ridge Associates, Ltd.*, No. HUD ALJ 05-94-0845-8 (HUD Office of Administrative Law Judges, Oct. 25, 1996) (awarding over \$50,000 in damages when landlord fabricated evidence of history of violence to justify rejection of tenants with disabilities).

38. *But see Williams v. Secretary of the Executive Office of Human Services*, 609 N.E.2d 447 (Mass. 1993) (state Department of Mental Health’s practice of referring only those clients who agreed to disclose whether they had a current substance or alcohol abuse problem not violative of FHA). This is a very rare departure from the rule against disability-inquiry.

39. *See* 24 C.F.R. § 100.202(c) (2017).

40. *See Cason v. Rochester Housing Authority*, 748 F. Supp. 1002 (W.D.N.Y. 1990); *Murray v. New York City Housing Authority*, No. 42268/91 (N.Y. Sup. Ct. June 24, 1994).

41. 24 C.F.R. § 100.202(c) (2017); *see Robards v. Cotton Mill Associates*, 713 A.2d 952 (Me. 1998) (upholding decision that it was illegal for landlord to require completion of form describing disability, rather than simply asking whether applicant qualified as a person with a disability).

42. *See, e.g., Knutzen v. Eben Ezer Hous. Ctr.*, 815 F.2d 1343 (10th Cir. 1987) (holding that a landlord’s categorical exclusion of all but elderly and mobility impaired was authorized by National Housing Act). Although landlords may reserve housing for people with particular disabilities under the FHA, there is considerable case law under § 504 and the ADA which prohibits excluding people with disabilities based on the nature or severity of their disability. *See, e.g., Jackson v. Fort Stanton Hosp. and Training Sch.*, 757 F. Supp. 2d 1243, 1298 (D.N.M. 1990), *rev’d in part on other grounds*, 964 F.2d 980 (10th Cir. 1992) (holding that state violated § 504 by denying institutional residents with severe mental disabilities access to community programs); *Martin v. Voinovich*, 840 F. Supp. 1175, 1192 (S.D. Ohio 1993) (discrimination on the basis of severity or nature of disability in providing community housing is actionable under § 504); *Garrity v. Gallen*, 522 F. Supp. 171, 213-14 (D.N.H. 1981) (state violated § 504 by assuming that individuals with profound intellectual disabilities could not benefit from community-based services); *Geobel v. Colo. Dep’t of Insts.*, 764 P.2d. 785 (Colo. 1988) (discrimination against some members of plaintiff class based on severity of handicap would violate § 504); *but see People First of Tenn. v. Arlington Developmental Ctr.*, 878 F. Supp. 97 (W.D. Tenn. 1992) (Rehabilitation Act does not cover discrimination among similarly handicapped persons); *Williams v. Sec’y of Exec. Office of Human Servs.*, 609 N.E.2d 447 (Mass. 1993) (Department of Mental Health did not violate the FHA by conditioning housing referral services on the client’s disclosure of active substance abuse problems).

43. 24 C.F.R. § 100.202(c) (2017).

44. *See Aguilar-Mendoza v. Brigadoon Apartments*, No. 110916306, 2012 WL 5998098 (D. Utah May 2, 2012); *Bolthouse v. Cont’l Wingate Co.*, 656 F. Supp. 620 (W.D. Mich. 1987); *Ryan v. Ramsey*, 936 F. Supp. 417 (S.D. Tex. 1996).

45. 42 U.S.C. § 3604(f)(2) (1988).

46. 42 U.S.C. § 3617 (1988).

47. *119-121 E. 97th St. Corp. v. N.Y.C. Comm’n on Human Rights*, 642 N.Y.S.2d 638 (N.Y. App. Div. 2006) (harassment of a tenant with AIDS violates FHA); *Sec’y, U.S. Dep’t of Hous. & Urban Dev. v. Williams*, HUDALJ 02-89-0459-1, 1991 WL 442796 (Mar. 22, 1991); *Garnett v. Pearson*, No. 1:96CV1719, 1997 WL 374748 (N.D. Ohio Mar. 12, 1997).
48. *See, e.g., Valenti v. Salz*, No. 94C7053, 1995 WL 417547 (N.D. Ill. July 13, 1995) (holding that landlord’s refusal to accept rent and filing of eviction action after learning of tenant’s disability could constitute discrimination under the FHA).
49. *See, e.g., Weinstein v. Cherry Gardens Ret. Cmty.*, 917 P.2d 336 (Colo. App. 1996); *Cason v. Rochester Hous. Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 2007).
50. 42 U.S.C. § 3604(f)(3)(B) (1988), 24 C.F.R. § 100.204 (2017), 24 C.F.R. § 8.33 (2017), 28 C.F.R. § 35.130(b)(7) (2017).
51. *See, e.g., Woodside Vill. v. Hertzmark*, No. SPH9204-65092, 1993 WL 268293 (Conn. Super. Ct. June 22, 1993) (holding that it was not illegal to evict a tenant who failed to walk his dog in the designated area and failed to clean up after the animal).
52. The fundamental alteration and undue burden exceptions derive from a Rehabilitation Act employment discrimination case, *Se. Cmty. Coll. v. Davis*, 442 U.S. 397 (1979). *See also* 28 C.F.R. § 35.130(b)(7); 24 C.F.R. § 8.33; 24 C.F.R. § 100.204.
53. For an application of undue burden analysis in a housing case and an overview of the legislative and case law history of the concept, *see United States v. Cal. Mobile Home Park*, 29 F.3d 1413 (9th Cir. 1993); *also Giebler v. M&B Assocs.*, 343 F.3d 1143 (4th Cir. 2003).
54. *See* 28 C.F.R. § 35.130(b); 24 C.F.R. § 8.33; 24 C.F.R. § 100.204. For a case in which the fundamental alteration exception was invoked to refuse an accommodation, *see Salute v. Stratford Greens*, 136 F.3d 293, 299-300 (2d Cir. 1998).
55. *See Cal. Mobile Home Park*, 29 F.3d 1413; *see* 28 C.F.R. § 35.130(f) (2017).
56. *Shapiro v. Cadman Towers*, 51 F.3d 328 (2d Cir. 1995), *aff’g* 844 F. Supp. 116 (E.D.N.Y. 1994) (requiring cooperative to designate a space for an owner with disabilities). *See also Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891 (7th Cir. 1996) (landlord was required to reserve a number of handicapped spaces or to designate a reserved parking space for a disabled tenant); *Gittleman v. Woodhaven Condo. Ass’n*, 972 F. Supp. 894 (D.N.J. 1997) (refusing to allow condo association to rely on contradictory state law or private agreement among owners to excuse refusal to grant request for reserved parking space).
57. *Lincoln Realty Mgmt. v. Penn. Human Relations Comm’n*, 598 A.2d 594 (Pa. 1991). *But see Temple v. Gunsalus*, No. 95-3175, 1996 WL 536710 (6th Cir. Sept. 20, 1996) (reasonable

accommodation provision of FHA did not require landlord to evict neighbor whose use of cleaning fluids irritated tenant who suffered from multiple chemical sensitivity).

58. *Cal. Mobile Home Park*, 29 F.3d 1413 (holding that housing provider was required to waive \$1.50 daily guest fee and \$25 monthly parking fee for tenant’s home health aide and emphasizing that the reasonable accommodation inquiry is highly fact-specific). *But see United States v. Cal. Mobile Home Park*, 107 F.3d 1374 (9th Cir. 1997) (finding that tenant’s request for waiver of fees lacked a sufficient nexus with daughter’s disability).

59. JOINT STATEMENT OF DEP’T. OF HOUS. & URBAN DEV. AND DEP’T. OF JUSTICE, REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT (May 17, 2004), at 13, <https://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf>.

60. *Roseborough v. Cottonwood Apartments*, No. 94C3708, 1994 WL 530835 (N.D. Ill. Sept. 29, 1994) (holding that the tenant was not entitled to be released from her lease under FHA).

61. 24 C.F.R. § 100.204(b) (2017). For an explanation of the difference between pets and service or therapeutic animals, see DEP’T OF HOUS. & URBAN DEV., PET OWNERSHIP FOR THE ELDERLY AND PERSONS WITH DISABILITIES (Oct. 27, 2008), https://www.hud.gov/offices/fheo/FINALRULE/Pet_Ownership_Final_Rule.pdf. The rule applies to all HUD-assisted housing, and HUD uses the same reasoning in its enforcement of the Fair Housing Act against private housing. For favorable decisions involving therapeutic animals, see *Green v. Hous. Auth. Of Clackamas Cty.*, 994 F. Supp. 1253 (D. Or. 1998) (housing authority could not substitute its own determination that a modified smoke detector and doorbell were sufficient accommodations when tenant requested permission to keep hearing ear dog; the court emphasized that licensing or certification was not required for a service animal as long as the tenant demonstrated that the service animal provided necessary assistance); *Fulciniti v. Vill. of Shadyside Condo. Ass’n*, No. 96-1825, 1998 U.S. Dist. LEXIS 23450 at *1 (W.D. Pa. Nov. 20, 1998) (absent evidence that a dog created a disturbance or threat to other residents, condo association could not refuse to grant plaintiff’s request that she be allowed to keep the dog as an emotional support animal); *Bronk v. Ineichen*, 54 F.3d 425 (7th Cir. 1995) (an animal may be considered a service animal even in the absence of formal training and certification); *Whittier Terrace v. Hampshire*, 532 N.E.2d 712 (Mass. App. Ct. 1989) (tenant with a psychiatric disability cannot be evicted from subsidized housing for keeping a cat where evidence shows a relationship between her ability to function and the animal’s companionship); *Crossroads Apartments Assocs. v. Leboo*, 578 N.Y.S.2d 1004 (Rochester City Ct., N.Y. 1991) (summary judgment denied where mentally handicapped defendant raised discrimination in defense to eviction and there are factual issues regarding his need for a therapeutic animal). For unfavorable decisions, see *In re Kenna Homes Coop. Corp.*, 557 S.E.2d 787 (W.Va. 2001) (tenant requesting an emotional support animal must show that an animal has been specifically trained to provide assistance with the disability in question); *Hous. Auth. of New London v. Tarrant*, No. 12480, 1997 WL 30320 (Conn. Super. Ct. Jan. 14, 1997) (no violation

under Connecticut law where tenant had not provided any medical or psychological evidence of her son’s mental disability and had not established that his academic deterioration was related to the prospect of losing his dog); *Durkee v. Staszak*, 636 N.Y.S.2d 880 (N.Y. App. Div. 1996) (insufficient evidence to justify disabled man’s claim of emotional dependence on his dog); *Nason v. Stone Hill Realty Ass’n*, No. 961591, 1996 WL 1186942 at *3 (Mass. Super. Ct. May 6, 1996) (no nexus established between a disabled tenant’s need to keep a cat despite a doctor’s affidavit saying that removal of the cat would result in “increased symptoms of depression, weakness, spasticity, and fatigue”); *Woodside Vill. v. Hertzmark*, No. SPH9204-65092, 1993 WL 268293 (Conn. Super. Ct. June 22, 1993) (eviction of disabled tenant did not violate FHA where tenant repeatedly failed to walk his dog in designated areas or clean up after the animal after numerous attempts to accommodate him).

62. *Citywide Assocs. v. Penfield*, 564 N.E.2d 1003 (Mass. 1991) (requiring landlord to absorb minor costs where a tenant’s auditory hallucinations caused her to strike the wall, causing noise and physical damage).

63. *Andrews v. Springfield Hous. Auth.*, No. 91-CV-0106 (Mass. Trial Ct., Hous. Ct. Hampden Div. 1991) (requiring housing authority to allow a recovering substance abuser to use her state-funded rental assistance to move from her drug-associated environment to a nearby city).

64. *Armbruster v. Monument 3: Realty Fund VIII Ltd.*, 963 F. Supp. 862 (N.D. Cal. 1997) (refusal to allow an elderly woman to move from a one-bedroom apartment to a two-bedroom unit to allow a live-in attendant may violate the FHA).

65. It is illegal for landlords to inquire or seek to determine whether a person has a disability (24 C.F.R. § 100.202(c) (2017)), or to offer or impose different terms or conditions upon a tenant because of disability (24 C.F.R. § 100.202(b) (2017)). Accordingly, landlords should only respond to requests for accommodations. This rule also allows a tenant to propose the accommodation that best meets the tenant’s needs, rather than accepting a landlord’s proposal that might be less effective. See, e.g., *Green v. Hous. Auth. Of Clackamas Cty.*, 994 F. Supp. 1253 (D. Or. 1998).

66. Proper documentation of a disability and the necessity of an accommodation is becoming more and more important. See JOINT STATEMENT OF DEPT. OF HOUSING & URBAN DEV. AND DEPT. OF JUSTICE, REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT (Mar. 5, 2008), https://www.hud.gov/sites/documents/DOC_7502.PDF.

67. *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891 (7th Cir. 1996) (rejecting landlord’s defense that a tenant’s disability was not apparent and finding that the landlord did not ask the tenant for any further verification of his disability).

68. See, e.g., *Green*, 994 F. Supp. 1253; but see *Hous. Auth. Of New London v. Tarrant*, No. 12480, 1997 WL 30320 (Conn. Super. Ct. Jan. 14, 1997). See also Right to Emotional Support Animals in ‘No Pet’ Housing, JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW (June 2017), <http://www.bazelon.org/wp-content/uploads/2017/04/2017-06-16-Emotional-Support-Animal-Fact-Sheet-for-Website-final.pdf>; *Grubbs v. Hous. Auth. of Joliet*, No. 91C6454, 1997 WL 281297 (N.D. Ill. May 20, 1997) (dismissing complaint where tenant failed to show proof of disability or need for the accommodation requested).

69. *Giebeler v. M&B Assocs.*, 343 F.3d 1143 (4th Cir. 2003) (a request to use co-signer to meet income requirement is a reasonable accommodation); Pub. & Assisted Hous. Occupancy Task Force, *Report to Congress and to the Department of Housing and Urban Development* at 1-39-1-40, 1-42-1-44 (Apr. 7, 1994), <https://www.huduser.gov/portal/Publications/pdf/HUD-11653.pdf>; *but see Schanz v. Vill. Apartments*, 998 F. Supp. 784 (E.D. Mich. 1998) (holding that applicant's request that landlord accept a guarantor in lieu of a good credit history was a request for a preference rather than an accommodation necessary because of the applicant's disability).

70. Pub. & Assisted Hous. Occupancy Task Force, *Report to Congress and to the Department of Housing and Urban Development* (Apr. 7, 1994), <https://www.huduser.gov/portal/Publications/pdf/HUD-11653.pdf>.

71. JOINT STATEMENT OF U.S. DEP'T OF HOUS. & URBAN DEV. AND U.S. DEP'T OF JUSTICE, *supra* note 66; *see also Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109 (D.C. 2005) (holding that a tenant's request for brief stay in eviction proceedings to allow time for her apartment to be cleaned, followed by extension of stay and eventual dismissal of action for possession if apartment remained clean, met statutory test for reasonable accommodation under FHA); *Fulciniti v. Vill. of Shadyside Condo. Ass'n*, No. 96-1825, 1998 U.S. Dist. LEXIS 23450 at *1 (W.D. Pa. Nov. 20, 1998) (woman with depression and multiple sclerosis got a dog to provide emotional support and companionship once her children left home).

72. *See Green v. Hous. Auth. of Clackamas Cty.* 994 F. Supp. 1253 (D. Or. 1998).

73. *See* discussion *infra* p. 12: “Is a landlord always required to grant a request for reasonable accommodation?”

74. JOINT STATEMENT OF U.S. DEP'T OF HOUS. & URBAN DEV. AND U.S. DEP'T OF JUSTICE, *supra* note 66, at 4-5 (verification of disability may come from documentation provided by the individual requesting the accommodation, or from a physician, peer support group, a non-medical service provider, or a reliable third party. For an example of the difficulty in establishing disability when the impairment is not fully recognized or easily identifiable by medical professionals, *see Lincoln Realty Mgmt. v. Penn. Human Relations Comm'n*, 598 A.2d 594 (Pa. 1991).

75. *Green*, 994 F. Supp. 1253; *U.S. v. Cal. Mobile Home Park*, 29 F.3d 1413 (9th Cir. 1993).

76. At least one court has held that the failure to timely consider a reasonable accommodation request is the same as denying the request altogether. *See Groome Res., Ltd. v. Parish of Jefferson*, 52 F.Supp.2d 721 (E.D. La. 1999); *see also Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109 (D.C. 2005).

77. *Waterbury Hous. Auth. v. Lebel*, No. SPWA900808613, 1991 WL 135112 (Conn. Super. Ct. July 8, 1991) (tenant with a neurological disorder and legal blindness fell frequently, causing noise and physical damage to the apartment; court held that landlord could not evict because the damage and noise were not material breaches of the health and safety of other tenants).

78. *Citywide Assocs. v. Penfield*, 564 N.E.2d 1003 (Mass. 1991) (landlord required to accommodate mentally ill tenant experiencing auditory hallucinations by absorbing minor repair costs and giving tenant time to secure heightened services).

79. *Roe v. Hous. Auth.*, 909 F. Supp. 814 (D. Colo. 1995) (housing provider required to show that no reasonable accommodation would eliminate or acceptably minimize the risk of a tenant to other tenants before proceeding with an eviction); *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636 (D.N.H. 1993) (landlord cannot evict tenant without showing that no reasonable accommodation would eliminate or reduce risk posed to other tenants).

80. *Peabody Properties, Inc. v. Jeffries*, No. 88-SP-7613-S (Mass. Trial Ct., Hampden Div., Jan. 6, 1989) (a court prevented the eviction of a deaf tenant labeled mentally ill who had allegedly taunted and harassed other tenants and the building's security guards by making gestures and noises, kicking over trash cans, and kicking the walls in common areas. The court concluded that although the tenant had engaged in disorderly and inappropriate behavior, she could not be evicted because the landlord had not attempted to accommodate her disability).

81. *Cordrey v. Housing Authority of the Town of Holyoke*, No. 80-C-881, 1980 WL 617679 (D. Colo. 1980).

82. *Id.*

83. *See Samuelson v. Mid-Atlantic Realty Co.*, 947 F. Supp. 756 (E.D. Mich. 1998) (denying motion to dismiss and finding tenant stated claim under Fair Housing Act when he alleged that landlord unreasonably refused to allow him to terminate lease after tenant was hospitalized for a mental health condition).

84. *Anast v. Commonwealth Apartments*, 956 F. Supp. 792 (N.D. Ill. 1997) (holding that a landlord was required to postpone eviction proceedings until the tenant was released from the hospital).

85. 42 U.S.C. § 3604(f)(3)(C) (2012). “Covered multifamily dwellings: are “buildings consisting of 4 or more units if such buildings have one or more elevators ... and ground floor units in other buildings consisting of 4 or more units.” 42 U.S.C. § 3604(f)(7) (2012). HUD has developed a website and training program for stakeholders interested in this issue. *See* www.fairhousingfirst.com.

86. *Id.*

87. 24 C.F.R. § 100.05(a) & (b) (2017).

88. 28 C.F.R. §§ 35.150-35.151 (2017) [ADA]; 24 C.F.R. §§ 8.20-8.24 (2017) [Rehab Act]. Additionally, the Architectural Barriers Act of 1968 imposes accessibility requirements. *See* 42 U.S.C. §§ 4151-4157 (2012); 24 C.F.R. Part 40 (2017). The ADA’s regulations for housing built with public funds do so as well. *See* 28 C.F.R. § 35.150, 35.151 (2017).

89. 56 Fed. Reg. No. 44, 9495-6 (March 6, 1991) (HUD Final Fair Housing Accessibility Guidelines) (available at: <https://cdn.loc.gov/service/ll/fedreg/fr056/fr056044/fr056044.pdf>).

90. 42 U.S.C. § 3604(f)(3)(C)(iii)(IV) (2012).

91. 42 U.S.C. § 3610(e) (2012).

92. 42 U.S.C. § 3604(f)(3)(C) (2012).

93. 42 U.S.C. § 3604(f)(4) (2012).

94. 56 Fed. Reg. No. 44, 9497-9514 (March 6, 1991). More information from HUD is available at https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/accessibilityR.

95. 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203 (2017). *See, e.g., Sec. Dept. Housing & Urban Development v. Ocean Sands*, FH-FL Rptr ¶¶ 22,055, 25,056, 25,061 (ALJ 1993), 25,070 (ALJ 1994) (condo association required to allow tenant to install ramp or wheelchair lift as “reasonable accommodation”) (available at <https://portal.hud.gov/hudportal/documents/hud-doc?id=HUD1993-09-03.pdf>); *Sec. Dept. Housing and Urban Development v. Twinbrook Village Apartments*, FH-FL Rptr ¶ 25,157 (ALJ 2001) (finding that landlord’s refusal to permit tenant to install wheelchair ramp was discriminatory, in spite of offer to move tenant to accessible housing) (available at <https://www.hud.gov/sites/documents/HUD2002-00-0256-8.PDF>).

96. 42 U.S.C. § 3604(f)(3)(A) (2012); 24 C.F.R. § 100.203 (2017).

97. 24 C.F.R. § 100.203 (2017).

98. 42 U.S.C. § 3604(f)(3)(A) (2012).

99. 24 C.F.R. § 8.24 (2017); 28 C.F.R. § 35.150 (2017).

100. *See* 24 C.F.R. § 100.203 (2017).

101. 24 C.F.R. § 100.203(b) (2017)

102. *Id.*

103. *See* DEPT. HOUSING & URBAN DEVELOPMENT, DEPT. OF JUSTICE, Reasonable Accommodations under the Fair Housing Act (July 6, 2017) (available at https://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf).

104. *United States v. Freer*, 864 F. Supp. 324 (W.D.N.Y. 1994) (barring trailer park owners from rejecting resident’s request to build ramp and holding that she did not even have to consider their alternative proposal). *See also Elliott v. Sherwood Manor Mobile Home Park*, 947 F. Supp. 1574 (M.D. Fla. 1996) (court refuses to dismiss case in which landlord attempted to remove ramp that tenant had installed and told tenant to move to a handicapped facility).

105. 24 C.F.R. § 100.203 (2017).

106. *Waterbury v. Lebel*, 1991 WL 135112.

107. 24 C.F.R. § 8.56(C)(3)-(4) (2017); 28 C.F.R. § 35.170(b) (2017).

108. 42 U.S.C. § 3610(a) (2012); 24 C.F.R. § 103.15 (2017).

109. 42 U.S.C. § 3610(a) (2012); but see NATL. COUNCIL ON DISABILITY, Reconstructing Fair Housing (July 6, 2017) (available at https://www.ncd.gov/rawmedia_repository/c8b3f693_4db-b_482d_92c7_b16d37858b4c.pdf) (observing that in fiscal year 2000, it took HUD an average of 497 days to process a complaint to conclusion).

110. 42 U.S.C. § 3610(f) (2012); 24 C.F.R. § 103.100 (2017).

111. *See supra* note 109.

112. 42 U.S.C. § 3610(b) (2012); 24 C.F.R. §§ 103.330, 103.325 (2017).

113. 42 U.S.C. § 3610(b)(5)(A) (2012); 24 C.F.R. § 103.230 (2017).

114. 42 U.S.C. § 3610(g) (2012); *but see* NATL. COUNCIL ON DISABILITY, *supra* note 109 (finding that HUD issued few charges of discrimination).

115. 42 U.S.C. § 3612(a) (2012).

116. 42 U.S.C. § 3612(O) (2012).

117. 42 U.S.C. § 3612 (b-g) (2012).

118. 42 U.S.C. § 3612(g) (2012).

119. 42 U.S.C. § 3612(a) (2012).

120. *Id.*

121. 42 U.S.C. § 3613(b) (2012).

Where to Get Help

- For more information about your fair housing rights, contact:
 - HUD’s toll-free hotline: 1-800-669-9777; 1-800-927-9275 (TDD); www.hud.gov.
 - The Housing and Civil Enforcement Section of the Civil Rights Division of the U.S. Department of Justice: (202) 514-4713; www.usdoj.gov.
 - The Bazelon Center for Mental Health Law: www.bazelon.org.
 - The main HUD fair housing/discrimination page, useful for anyone interested in filing a complaint: http://portal.hud.gov/portal/page/portal/HUD/topics/housing_discrimination.
- For assistance:
 - Your state Protection and Advocacy Office To locate your local office, call 202-408-9514 or 202-408-9521 (TDD) or search on www.ndrn.org.
 - National Fair Housing Alliance, (202) 898-1661 or (202)898-1670 (TDD); <http://www.nationalfairhousing.org/FindLocalHelp/tabid/2574/Default.aspx>.
 - Local legal services offices. To locate the office that serves your area, call (202) 452-0620 or search on www.lsc.gov.
 - The National Fair Housing Advocate Online website, www.fairhousing.com, offers a search for private fair housing agencies and public fair housing enforcement agencies all over the country. See the box on the next page.

National Fair Housing Advocate Online

You can visit www.fairhousing.com for the latest fair housing news. This valuable resource offers consumers, housing industry professionals and advocates useful information about housing discrimination.

Some features are:

- ▶ News about fair housing, housing access and other discrimination issues, updated regularly.
- ▶ A news archive with press releases dating back to 1996 and issues of the National Fair Housing Advocate, a newsletter produced by the Kentucky Fair Housing Council, back to 1992.
- ▶ Legal resources, including HUD guidance memos on fair housing, a database of court settlements and a database with more than 2,500 decisions in fair housing cases before courts and administrative agencies. (This is the only part of the site that requires a subscription fee.)
- ▶ An online discussion board giving access to fair housing experts who can answer questions about housing discrimination, predatory lending and land lord-tenant law.
- ▶ Job and event listings. Individuals seeking jobs in the fair housing field or a good conference on fair housing can check to see what's in their area.

The National Fair Housing Advocate Online is operated by the Tennessee Fair Housing Council and the Fair Housing Council of Suburban Philadelphia.

Selected Bibliography

Department of Justice and Department of Housing and Urban Development,
Joint Statement: Reasonable Accommodations Under the Fair Housing Act, May
2004, available at www.hud.gov/offices/fheo/library/huddojstatement.pdf.

Department of Justice and Department of Housing and Urban Development,
Joint Statement: Group Homes, Local Land Use, and the Fair Housing Act, August
1999, available at www.justice.gov/crt/about/hce/final8_1.php.

Bazon Center Articles and Publications

Michael Allen & Robert G. Schwemm, For the Rest of Their Lives: Seniors and the Fair Housing Act, 90 *Iowa Law Review* 101 (2004).

Michael Allen & Sara Pratt, *Addressing Community Opposition to Affordable Housing Development: A Fair Housing Toolkit*. Housing Alliance of Pennsylvania (2004).

Michael Allen, Fair Housing Laws, *Encyclopedia of Homelessness*, 143-148, Sage Publications (2004).

Michael Allen, “We Already Have Our Fair Share”: Fair Housing Complaints as a Weapon in the Battle Against Affordable Housing. *The NIMBY Report* (National Low Income Housing Coalition, March 2004).

Michael Allen, Let My People Go: The Promise of ‘Deconcentration’ for People with disabilities, *The NIMBY Report* (National Low Income Housing Coalition, March 2004).

Michael Allen, We Are Where We Live: Seniors, Housing Choice and the Fair Housing Act, 31 *Human Rights* 15 (2004).

Michael Allen, No Shelter in the Storm: The Supreme Court Hands NIMBY Forces a Powerful Weapon, *Shelterforce* #131 (Sept./Oct. 2003).

Michael Allen, From NIMBY to YIMBY: How to Get (and Keep) the Government on Your Side in Zoning and Land Use Matters. *The NIMBY Report* (National Low Income Housing Coalition (2003).

Michael Allen & Susan Silverstein, Preserving Elders' Housing Rights, 39(10) *Trial* 32 (2003).

Michael Allen, Waking Rip vanWinkle: Why Developments in the Last Twenty Years Should Teach the Mental Health System Not to Use Housing as a Tool of Coercion, 21 *Behavioral Sciences and the Law* 503 (2003).

Michael Allen, Can't We All Just Get Along: A Friendly Argument About Discrimination in Long-Term Care, *NAELA News* (National Academy of Elder Law Attorneys), May/June 2002 (co-authored with Eric Carlson).

Michael Allen, The Fair Housing Act Is a Critical Tool in Expanding Housing Opportunities for People with Disabilities, November 1998. Available at www.fairhousing.com/index.cfm?method=page.display&pageID=3259.

Michael Allen, Making Room at the Inn: Civil Rights and Inclusive Siting Practices, 8 *Journal of Affordable Housing and Community Development Law* 115 (Winter 1999).

Michael Allen, Separate and Unequal: The Struggle of Tenants with Mental Illness to Maintain Housing, 30 *Clearinghouse Rev.* 720 (1996).

Michael Allen, What Does Reasonable Accommodation Mean to People with Disabilities? Strategies for seeking reasonable accommodation under the Fair Housing Act, 1996. (16 pp. BC).

Michael Allen, Why Not in Our Back Yard? *Planning Commissioners Journal*, Winter 2002.

Bazelon Center for Mental Health Law, The Effects of Group Homes on Neighboring Property. Annotated bibliography of social science research on the economic and environmental impact of group homes, 1996.

Sarah Lawsky, Disregarding Disability: The Effect of *Sutton v. United Airlines* on Litigation Under the Fair Housing Amendments Act, August 1999. Available at www.fairhousing.com, click on “The Guest Room.”

Bonnie Milstein, Beth Pepper and Leonard Rubenstein, The Fair Housing Amendments Act of 1988: What It Means for People With Mental Disabilities, 23 *Clearinghouse Rev.* 1274 (1989).

Beth Pepper, Highlights in Fair Housing Law: Strengthening the Rights of People with Disabilities to Live in the Community of Their Choice, 26 *Clearinghouse Rev.* 1458 (1993).

Sherry Trafford, Using Reasonable Accommodations to Preserve Rights of Tenants with Disabilities, 33 *Clearinghouse Rev.* 131 (1999). Also available by subscription at www.povertylaw.org/clearinghouse-review/issues/1999/19990715/500260.

Bazon Information Sheets

The Bazon Center produces reports, issue papers, and manuals that analyze major federal laws, policies, and regulations that affect access to services and the rights of people with mental disabilities. Our publications are available for free download as a PDF. Some items may be available for purchase. We have a list of housing resources, as well as other topics like education, criminal justice, healthcare, and employment.

Visit <http://www.bazon.org/resource-library/publications/> to view this list.

Technical Assistance Collaborative

The Technical Assistance Collaborative provides technical assistance, training and policy consultation to public and non-profit organizations to increase safe and affordable housing opportunities for people with disabilities and people who are homeless. Among its popular reports are:

- *Priced Out in 2008*. A biennial report on the worsening housing-affordability problem for people living on SSI disability benefits. Available at www.tacinc.org/publications_.php.
- *Section 8 Made Simple*, available at www.tacinc.org/downloads/Sect8_2ndEd.pdf.

The TAC website also includes the acclaimed quarterly journal, *Opening Doors*.

HUD Form for Housing Discrimination Information

To download the HUD Housing Discrimination Form, visit https://www.hud.gov/sites/documents/DOC_12150.PDF.