

Fair Housing Act Reasonable Accommodations

Barbara Chandler

Fair Housing Manager

**Metropolitan Boston Housing
Partnership**

3/10

General Principle of Housing Civil Rights:

- To prohibit housing discrimination in all related housing activities based on membership in a **protected class**.
- A protected class is a group of persons who share common characteristics and due to those shared characteristics have been historically denied equal access and opportunity in housing. Persons with disabilities are a protected class under federal fair housing law.

History of the Fair Housing Act

- The Fair Housing Act was passed in 1968
 - Prohibits discrimination based on race, color, religion and national origin – Gender was added in 1974
- Fair Housing Amendments Act was enacted in 1988 to include protection for people with disabilities and familial status
- It is enforced by:
 - The Department of Housing and Urban Development (HUD)
 - The Department of Justice
 - State and local fair housing enforcement agencies
 - Private lawsuits in federal and state courts

FHAA Definition of a Person with a Disability

- **Sec. 802. [42 U.S.C. 3602] Definitions**

(h) "Handicap" means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

Persons Covered

- Persons with disabilities
- Persons associated with persons with disabilities
- Persons regarded as having a disability

Scoping and Coverage under the Fair Housing Amendments Act of 1988

- Design and Construction Requirements apply to “covered multifamily dwelling units” built for first occupancy after **March 13, 1991 and contain four or more units**
- Reasonable Accommodations and Reasonable Modifications apply to housing regardless of date of first occupancy

Some Types of Housing Covered by the FHAA

- Multi-family housing
- Homeownership units
- Shelters
- Long-term transient lodging
- Assisted living
- Nursing homes
- Group homes
- Timeshares
- Dormitories

Reasonable Accommodations Provision

- **Sec. 804. [42 U.S.C. 3604]**
**Discrimination in sale or rental of
housing and other prohibited practices**
(B) a refusal to make reasonable
accommodations in rules, policies,
practices, or services, when such
accommodations may be necessary to
afford such person equal opportunity to
use and enjoy a dwelling;

General definition

- A request for a change or waiver to policies, practices, or services due to an individual's disability.

An RA Can Be Requested For Every Type of Housing Activity

- Application
- Screening
- Lease negotiation
- Terms & conditions
- Termination of tenancy
- Mortgage application
- Mortgage terms

Reasonable Accommodations: Common Examples

- Parking
- Assistive Animals
- Rent payment plans
- Early termination of lease
- Relocation to a more accessible unit
- Extension of search time for relocation
- Rent payment plans
- Criminal background checks
- Relocation to a more accessible unit

Interactive Process

- Requests can be verbal
- Must be done in a good faith and fair manner
- Can be informal
- Must be done in a non-harassing, non-retaliatory manner
- Confidentiality must be maintained

Request Process

- The request should be made in a timely manner.
- Provide only enough information so that the need for the request is easily understood by the housing provider.
- Housing provider forms can not be mandatory. Verbal requests and letters from the person with the disability is allowable.
- Written and dated requests are preferable
- Health care provider documentation should only be requested by the housing provider when the disability or the need for the reasonable accommodation is not apparent.

Health Care Provider Documentation

- Any health care provider with the authorization of the person with the disability can supply this information
- Only the information that is absolutely necessary should be provided. The nature and severity of the disability should not be disclosed.
- All health care or disability related information must be kept confidential by the housing provider. Such information should not become common knowledge of staff not directly involved in the reasonable accommodation request or other residents.
- Use of the housing providers forms for health care provider information can not be made mandatory
- Documentation from the health care provider should not invite the housing provider to contact them directly by any means.

RA: Conditions for Denial

- No direct connection between the disability and the request
- Causes an undue administrative and financial burden
- Changes the fundamental nature of the housing program

Examples of Allowable Denials

- Non-payment of rent or mortgage
- Waiver of “no pets” rule for assistive animal trainer or volunteer
- Multiple animals not covered in medical documentation
- Eviction for cause unrelated to disability or direct threat
- Unpaid rent due to extended hospital stay

Assistive Animals

- Assistive animals are considered reasonable accommodation requests to “no pet” policies.
- A broader concept than service animals, can range from trained guide dogs to untrained emotional support animals
- Does not mandate that the animal must be trained or certified
- There are no restrictions on species or breeds

Assistive Animals 2

- Restrictions can be placed on a specific animal if it presents a direct threat to the safety of others
- There are no restrictions on the number of assistive animals.
- There are no limitations on use of assistive animals to specific disabilities.

Assistive Animals: Reasonable Terms and Conditions

- Proof of inoculations
- Animal be properly leashed or otherwise restrained outside of the unit
- Animal be kept clean and pest free
- Animal not be “walked” in play areas

Assistive Animals: Unreasonable Terms and Conditions

- Animal must be physically carried through all common use areas
- Animal can not accompany the person into common use areas such as dining rooms, pool areas or community rooms
- Weight or other size restrictions
- Additional rent is charged
- An increase in the security deposit

Resources

HUD-DOJ Joint Statement on Reasonable
Accommodations

<http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

HUD 24 CFR Part 5: Pet Ownership for the Elderly
and Persons with Disabilities; Final Rule

[http://www.hud.gov/offices/fheo/FINALRULE/Pet
Ownership Final Rule.pdf](http://www.hud.gov/offices/fheo/FINALRULE/Pet_Ownership_Final_Rule.pdf)

To File A Fair Housing Complaints

- Call HUD toll-free at 1 (800) 669-9777
- Or file online at http://portal.hud.gov/portal/page/portal/HUD/topics/housing_discrimination

MBHP Fair Housing Technical Assistance

- Barbara Chandler
Fair Housing Manager
617-425-6681 voice/relay
617-532-7577 fax
barbara.chandler@mbhp.org