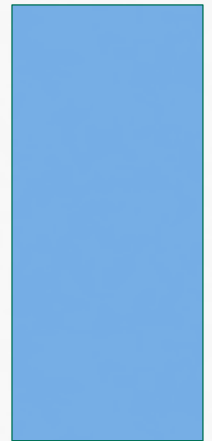




*Building Communities,
Changing Lives*

DISABILITY DISCRIMINATION IN HOUSING

A TRAINING FOR ADVOCATES



HUD FAIR HOUSING GRANT RECIPIENT

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AGENDA

- Broad overview of the Fair Housing Act
- Disability discrimination basics
 - Important disability discrimination laws
 - Who is protected
 - Who must comply
 - What conduct is prohibited
- Reasonable Accommodations and Modifications
 - The standards
 - The process
- Accessible Design

DISABILITY DISCRIMINATION BASICS



THE FAIR HOUSING ACT – HOW IT WORKS

Prohibits discrimination in housing when:

- The person belongs to a “protected class”
- The person has suffered a housing related harm or unequal treatment
- The harm suffered is connected to membership in a protected class

PROTECTED CLASSES UNDER STATE AND FEDERAL FAIR HOUSING LAWS

- Race
- Color
- National Origin
- Religion
- Sex
- Family Status
- Disability
- Sexual Orientation
- Gender Identity/Expression
- Marital Status
- Age
- Housing Subsidy
- Public Assistance
- Veteran/Military Status
- Ancestry
- Genetic Information

PROHIBITED CONDUCT

- Refusal to rent or sell
- Otherwise make unavailable
 - False information on availability
 - Steering
- Different terms or conditions
- Discriminatory Statements/advertisements (oral or written)
- Threats, intimidation, coercion, retaliation
- Denial of reasonable accommodations
- Denial of reasonable modifications

WHO MUST COMPLY

Anyone providing housing services must comply with the FHA

- Landlords
- Property managers
- Maintenance
- Condominium boards
- Home owner associations
- Service providers
- Local governments
- Realtors
- Mortgage lenders

COVERED HOUSING

All housing providers must comply with federal and state Fair Housing law – with narrow exceptions:

- FHA (Federal) – owner occupied housing with 4 or fewer units; and
 - 151B (State) – owner occupied housing with 2 or fewer units.
-
- Takeaway: Must comply with the State law, which offers all the same/greater protections as the FHA.
 - Note: discrimination based on race, source of income, and discrimination in advertising have no exemptions.

CONGRESSIONAL FINDINGS ON DISABILITY DISCRIMINATION

- “Physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society...” 42 U.S.C. §12101

KEY DISABILITY DISCRIMINATION LAWS

- The Fair Housing Act (Title VIII of the Civil Rights Act of 1968)
 - Prohibits discrimination in private and public housing and service or transactions related to housing
- The Rehabilitation Act of 1973 (Section 504)
 - Prohibits discrimination on the basis of disability in federally assisted programs and activities
- The Americans with Disabilities Act
 - Title I – prohibits discrimination on the basis of disability in employment
 - Title II – prohibits discrimination on the basis of disability in state and local governments
 - Title III – prohibits discrimination on basis of disability in public accommodations (private businesses)
- Massachusetts prohibitions against unlawful discrimination (M.G.L. 151B)
 - Provides more expansive housing protections than above federal laws

WHO IS PROTECTED FROM DISCRIMINATION BASED ON DISABILITY

- A person is protected against discrimination on the basis of disability if they have:
 - “(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.” (42 U.S.C. §3602(h); see also M.G.L. 151B:1, 17)
- “Substantially limits” – construed broadly, not a severe condition, but an impairment compared to most people.
- “Major life activity” – construed broadly, and includes: breathing, seeing, walking, communicating, speaking.

REASONABLE ACCOMMODATIONS AND MODIFICATIONS



REASONABLE ACCOMMODATIONS

Reasonable accommodations are changes “in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”
42 U.S.C. §3604(f)(3)(B).

REASONABLE ACCOMMODATIONS: MAIN IDEAS

- There is a rule, policy, procedure or practice.
- That policy or practice is preventing a person, because of their impairment, from gaining equal opportunity to use and enjoy the dwelling.
- This person is then entitled to request an accommodation.
- An accommodation must be granted if it is reasonable and is necessary to provide equal opportunity.
- Housing provider bears cost of all accommodations
 - No extra fees
 - No extra charges

REASONABLE MODIFICATIONS

Reasonable modifications are structural changes to existing premises “if such modifications may be necessary to afford such person full enjoyment of the premises.” 42 U.S.C. §3604(f)(3)(A).

REASONABLE MODIFICATIONS: MAIN IDEAS

- Applies to all covered dwellings including those built before March 13, 1991. (see also, multi-family dwelling standards for new construction.)
- Modification must be granted but may be conditioned on tenant returning the property to pre-modified condition if:
 - Federal – reasonable and would otherwise affect future tenants’ use
 - State – it would materially affect marketability of housing
- Who pays
 - Federal law – tenant pays for modifications, unless federal financial assistance (not just a housing subsidy)
 - State law – provider pays if more than 10 units or in any publicly assisted housing

REASONABLE MODIFICATIONS: OTHER CONCEPTS

- A housing provider must approve requests, but may require:
 - A description or proposal depending on complexity;
 - Permits;
 - A workman or contractor that is reasonably able to complete the work;
 - An escrow account for restoration (when reasonable); and
 - Provider may NOT require additional insurance or deposits.
- Modifications to common areas
 - Tenants expense, unless state exceptions or fed. financial assistance.
 - Alternative design of housing provider should prevail if cost neutral.
 - Tenant must approve costlier design if provider pays the difference.
 - Tenant does not have to pay for restoration.
 - Provider is responsible for upkeep of modification made to an area typically maintained by the provider.

REASONABLE ACCOMMODATIONS/MODIFICATIONS THE INTERACTIVE PROCESS

The Reasonable accommodation/modification process is designed to:

- Be flexible
 - Procedures and forms are good, but may not be required
- Be timely and efficient
 - Unnecessary delay or unresponsiveness is tantamount to denial
- Easily exchange information
 - Tenant/client must help provider understand the need
 - Housing provider must help tenant understand constraints and options
- Arrive at the best results
 - Grant the requested accommodation
 - Or offer an acceptable alternative, if unreasonable

REASONABLE ACCOMMODATIONS/MODIFICATIONS: THE TEST

- 1 – Does the person have an impairment?
 - Tenant/client burden
- 2 – Is there a nexus or connection between the request and the impairment?
 - Tenant/client burden
- 3 – Is the request reasonable?
 - Housing provider burden to show unreasonable

1 - DOES THE PERSON HAVE A DISABILITY?

- The standard – substantially limits a major life activity.
- Is the impairment obvious?
 - Yes – you may not ask for verification.
 - No – you may ask for verification. Any reliable person with knowledge may provide it.
 - May not require a doctor's letter
 - May not request medical records

DOES THE PERSON HAVE A DISABILITY?

- Examples

- Uses a wheelchair – don't ask for verification
- Uses a guide dog – don't ask
- Has an anxiety disorder – may ask

- Takeaways

- Not a high threshold
- Overwhelmingly, people asking for accommodations really do have a disability and would rather not have to ask. Asking can be difficult.

2 - A NEXUS OR CONNECTION?

- The standard – necessary to provide equal opportunity to use and enjoy
- Is the connection obvious?
 - Yes – you may not ask for verification.
 - No – you may ask for explanation and verification. Any reliable person with knowledge may provide it.
 - May not require a doctor's letter
 - May not request medical records

A NEXUS OR CONNECTION?

- Examples

- Ramp/wheelchair – don't ask for explanation
- No pet policy/seeing eye dog – don't ask
- Requests only written communication/anxiety disorder – may ask how accommodation would help

- Takeaways

- Interpret “necessary” broadly and as simply requiring a connection. Not intended as a burdensome threshold.

THE DOCTOR'S LETTER

- The doctor or knowledgeable person's letter can help a client or tenant meet the first two parts of the test.
- Letter quality is important.
- The best service provider's letters:
 - Provide credentials and describe client relationship (letterhead)
 - Provide detailed explanation of effects of impairment
 - Provide detailed explanation of why the specific accommodation requested is necessary.

STEPS 1&2 – BEST PRACTICES

- Understand asking for accommodations is difficult
 - Many people who need them won't ask
- Be responsive and timely, it is ok if you do not know the answer immediately
 - Demonstrating that you want to get it right generates goodwill
- Large providers should have a process and should follow it
- Asking about an impairment and its effects
 - Only ask if it is not obvious (if you have a file, note it)
 - Ask about how the impairment affects the tenant, not what their disability is
- Requesting documentation
 - Tell the tenant what you want in the letter (provide a sample)
 - Allow time to obtain (consider conditional approval)

3 - IS THE REQUEST REASONABLE

- Reasonableness is a fact specific inquiry applied on a case by case basis.
- Reasonableness factors:
 - Fundamental alteration;
 - Undue burden;
 - Financial;
 - Administrative; and
 - Direct threat.

FUNDAMENTAL ALTERATION

- An accommodation is a fundamental alteration when it would alter or change the essential nature of a housing providers operation.
- Examples – is it a fundamental alteration?
 - A client has a mobility impairment and requests the housing provider deliver mail to the unit instead of the mail room and assist with waste removal.
 - A client lives in a large housing complex. Housing provider regularly plows snow, but it takes several hours. Client requests housing provider begin with his building so his care attendant can assist him in his morning routine.
 - A client requests housing provider staff accompany them when they need to go to their car because of extreme PTSD.
 - Housing provider typically has one staff on site several hours a day.
 - What if there was 24 hour security?

UNDUE BURDEN

FINANCIAL AND ADMINISTRATIVE

- Fact intensive, case by case determination
- Key factors include:
 - Whether accommodation meets requester's needs
 - Benefits to the requester
 - Cost of the accommodation
 - Financial resources of housing provider
 - Availability of alternative accommodations
- When a request is unreasonable:
 - Housing providers should engage with tenant/client to offer or find an alternative accommodation.

UNDUE BURDEN EXAMPLE

- A tenant has an impairment that requires climate control and air conditioning. The Housing provider has a policy prohibiting air-conditioning through unit windows for aesthetic reasons. Tenant requests the management company install and maintain air conditioning to the apartment.
 - Financial burden? -
 - Administrative burden? -
 - Fundamental alteration? -
 - Alternatives? -

DIRECT THREATS

- The Fair Housing Act does not require a dwelling be made available, or provide equal access to use and enjoy a dwelling when such tenancy or accommodation/modification "would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." 42 U.S.C. §3604(f)(9).
- Individualized inquiry – no generalizations or stereotypes
- Factors to consider:
 - Nature, duration, and severity of risk;
 - Likelihood of occurrence; and
 - Mitigating measures or accommodations.

DIRECT THREAT EXAMPLE

- Tenant/client requests accommodation to criminal record policy. States that assault conviction 10 years ago occurred during time when mental illness was unregulated, and provides information that tenant is medication compliant, receives community mental health services, and has been incident free since starting treatment 5 years ago.
- Applying the factors, individualized assessment?
 - recency
 - Intervening factors/change in circumstances
 - Any assurances?

STEP 3 – BEST PRACTICES

- Be responsive, unnecessary delays problematic
- Most requests are reasonable
 - Stop and consider carefully (fact intensive) before denying
 - Carefully document denial decision and reasons
 - Consider asking for a consult if unsure
 - Unsure? – conditional approval, trail basis
- If denying consider alternatives
 - You may have other options, so may the tenant
- Administrative burden
 - Some tenants require more attention - a cost of doing business
- Direct Threat
 - Make sure it is a real safety issue
 - Consider ameliorating measures

REASONABLENESS – PUTTING IT ALL TOGETHER

Tenant/client's assistance animal is a Pitbull, and seeks accommodation to a no pet policy.

- Direct threat - can the housing provider deny an accommodation because the animal is a dangerous breed?
- Undue burden - can the housing provider deny an accommodation because insurance rates would increase or insurance would drop?
- Undue burden - what if local ordinance prohibited dangerous breeds?
- Other accommodations?

REASONABLENESS – PUTTING IT ALL TOGETHER

Tenant/client's assistance animal is a Pitbull, and seeks accommodation to a no pet policy.

- Direct threat – Not enough information. Individualized inquiry is required. Size or species alone is a generalization.
- Undue burden (insurance) – Not enough information. Housing provider would have to demonstrate financial strain or administrative burden finding acceptable insurance.
- Undue burden (local ordinance) – Probably not. But tenant may need to seek (and is entitled to) accommodation from local government.
- Other accommodations? Likely turns on relationship between animal and tenant/client and service provided.

THE INTERACTIVE PROCESS: EXAMPLE 1 (PART 1)

- Tenant receives a non-renewal notice because of difficulties working with the provider and complaints from other tenants that they are bothered.
- Tenant requests a reasonable accommodation to communicate in writing and be notified about behavior that bothers other tenants.
- Tenant explains that he has a mental health impairment that affects his communication skills, and that he often believes people are acting aggressively and harmfully. A supporting letter is provided.
- What should the housing provider do?

THE INTERACTIVE PROCESS: EXAMPLE 1 (PART 1)

- Housing provider agrees to approve the request, and continue on a month to month basis.
 - Nature of the complaints?
 - Other tenant complaints did not indicate threatening/safety concerns.
- What should the accommodation look like?
- How should the housing provider document it?

THE INTERACTIVE PROCESS: EXAMPLE 1 (PART 2)

- Communications with housing provider improve, but other tenants keep complaining that they are uncomfortable, and tenant is disturbing them with inappropriate requests and aggressive language. Provider wants to terminate lease.
- Tenant asks for another accommodation that the provider inform his supportive housing specialist of the complaints so he can work on his behavior with a clinical approach.
- Does the housing provider have to grant another accommodation?
 - Direct threat? Administrative burden? Financial burden?

THE INTERACTIVE PROCESS: EXAMPLE 2

- Tenant has an audio sensitivity and requests installation of sound dampening material between shared walls and sound reducing ceiling panels.
- Housing provider asks for verification of tenant's impairment and need for a modification.
- Tenant provides a doctor's note that explains tenant's impairment and why soundproofing is necessary to use and enjoy the space.
- Housing provider has 8 units in the building.
- What happens?
 - Permits? Contractor? Grant it? Who pays? Should it be restored after tenancy?

ACCESSIBLE DESIGN STANDARDS



ACCESSIBLE DESIGN: COVERED DWELLINGS

- Covered multifamily dwellings means:
 - Buildings with 4+ units, where there is at least 1 elevator; and
 - Ground floor units in buildings with 4+ units (no elevator).
 - Note – building with 3+ units under state law.
- Residential buildings that must comply:
 - Covered multifamily dwellings built for first occupancy after March 13, 1991; or
 - Any building that is renovated (including reconstruction and rehabilitation)

ACCESSIBLE DESIGN: WHAT LAWS APPLY

- Architectural Barriers Act
- The Rehabilitation Act of 1974
- The Fair Housing Act
- The Americans with Disabilities Act
- Building Codes
 - National
 - State
 - Local
- Housing Providers are required to meet the more stringent requirements in their jurisdiction.

FAIR HOUSING ACT

7 PRIMARY DESIGN REQUIREMENTS

- Accessible entrance and routes (exterior/interior)
- Accessible and usable common areas
- Usable doors
- Accessible route to and through covered unit
- Accessible light switches, outlets, environmental controls
- Reinforced bathroom walls for grab bars
- Usable kitchens and bathrooms

RESOURCES



DISABILITY DISCRIMINATION RESOURCES

CONTENTS

- Basic legal resources
- Basics on disability discrimination
- Technical materials and guidance on accommodations and modifications
- Technical materials and guidance on accessible design

LEGAL RESOURCES

- Legal aid for housing providers
 - <https://vlpnet.org/landlord/>
- Massachusetts court information
 - Housing Court: <https://www.mass.gov/orgs/housing-court>
 - District Court: <https://www.mass.gov/orgs/district-court>
 - Court Service Centers: <https://www.mass.gov/info-details/learn-about-court-service-centers>

While these are tenant advocacy resources, the information contained is high quality, well organized, and useful for housing providers to understand the law and best practices.

- MassLegalHelp
 - <https://www.masslegalhelp.org/legal-tactics>
- Bazelon Guide on Fair Housing for People with Disabilities
 - https://secureservercdn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2018/05/Fair-Housing-Guide_2018-Update.pdf

BASICS ON DISABILITY DISCRIMINATION

- HUD Overview:
https://www.hud.gov/program_offices/fair_housing_equal_opportunity/disability_main
- Service provider's letters – samples to share with tenants
 - MassLegalHelp General Tips:
<https://www.masslegalhelp.org/health/sickle-cell-disease/housing-doctor-letter-article>
 - Bazelon Sample Service Provider letter:
<https://secureservercdn.net/198.71.233.111/d25.2ac.myftpupload.com/wp-content/uploads/2017/04/ESA-Sample-Letter.pdf>

TECHNICAL GUIDANCE ON ACCOMMODATIONS AND MODIFICATIONS

- HUD/DOJ Joint Statement on Reasonable Accommodations:
https://www.hud.gov/sites/documents/DOC_7502.PDF
- HUD/DOJ Joint Statement on Reasonable Modifications:
https://www.hud.gov/sites/documents/DOC_7502.PDF
- HUD FHEO Assistance Animal Guidance:
https://www.hud.gov/sites/documents/DOC_7502.PDF



TECHNICAL GUIDANCE ON ACCESSIBLE DESIGN

- HUD FHEO Accessibility Requirements for Buildings:
https://www.hud.gov/program_offices/fair_housing_equal_opportunity/disabilities/accessibilityR
- Fair Housing Act Design Manual:
<https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>
- ADA Standards for Accessible Design:
https://www.ada.gov/2010ADASTandards_index.htm

STAY CONNECTED

- Email: fairhousing@commteam.org
- Website: www.commteam.org
 - Online Request for Assistance:
<https://www.cognitofrms.com/CommunityTeamwork1/FairHousingRequestForAssistance>
 - Online Training Registration:
<https://www.cognitofrms.com/CommunityTeamwork1/FairHousingTrainingRegistration>
 - Email Listserv
 - Tenant
<https://www.cognitofrms.com/CommunityTeamwork1/FairHousingTenantMailingList>
 - Housing provider
<https://www.cognitofrms.com/CommunityTeamwork1/FairHousingHousingProvidersMailingList>

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