

Judge David L.

**BAZELON CENTER**  
for Mental Health Law

**WHAT  
“FAIR HOUSING”  
MEANS  
FOR  
PEOPLE  
WITH  
DISABILITIES**



UPDATED APRIL 2011

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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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For more information about fair housing cases, see the Bazelon Center's ***Digest of Cases and Other Resources on Fair Housing for People with Disabilities***, a review and analysis of the most significant fair housing decisions in all federal circuits, also available through our online store.

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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.

**I**f 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 Act<sup>1</sup> (FHA),
- ▲ Section 504 of the Rehabilitation Act of 1973<sup>2</sup> (Section 504) and
- ▲ Title II of the Americans With Disabilities Act<sup>3</sup> (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.<sup>4</sup> The FHA and ADA also prohibit landlords and others from discriminating against people who are believed to have disabilities, but in fact do not.<sup>5</sup>

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.<sup>6</sup>  
Section 504 and the ADA also use this definition.<sup>7</sup>

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.<sup>8</sup>

### 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,<sup>9</sup> as are former drug users who have successfully completed an addiction-recovery program.<sup>10</sup> Using prescription drugs at a doctor's direction does not disqualify you from coverage.<sup>11</sup>

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."<sup>12</sup> 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.<sup>13</sup>

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

### 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

**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.<sup>19</sup> Title II applies similar requirements to housing programs funded or operated by state or local governments and their agencies, including public housing authorities.<sup>20</sup>

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.<sup>21</sup> 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,<sup>22</sup> and at least one court has suggested that the FHA protects tenants in housing operated by mental health agencies.<sup>23</sup> 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.<sup>24</sup>

### Who enforces these laws?

The United States Department of Housing and Urban Development (HUD) is responsible for enforcing the Fair Housing Act,<sup>25</sup> Section 504<sup>26</sup> and application of the ADA to housing.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> If private individuals and organizations have been subjected to discrimination they can also enforce the FHA by filing a lawsuit in federal district court.<sup>30</sup> 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.<sup>31</sup> But, while **disability status** is generally irrelevant to a person's qualification for tenancy, past or current **conduct** can justify denial of an application.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> The landlord must have objective evidence, recent enough to be credible, for such an assertion.<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup>

### 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.<sup>38</sup> **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.<sup>39</sup> For example, it is illegal for a landlord to ask if you are "capable of independent living."<sup>40</sup>

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.<sup>41</sup>
- ▲ If the housing is designated for people with a particular disability, such as mental retardation or HIV/AIDS, it is legal to ask if you qualify for such a unit.<sup>42</sup>

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 informa-

tion to show whether 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?"
- ◆ "Do you take medications?"

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.<sup>43</sup>

### 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."

### 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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup>

### 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."<sup>49</sup>

### **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.<sup>50</sup> Reasonable 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.**<sup>51</sup> 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.<sup>52</sup>

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.<sup>53</sup>

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

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.<sup>55</sup> 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.<sup>56</sup>
- ◆ A landlord notifies a tenant with multiple chemical sensitivity in advance of painting and pest treatments.<sup>57</sup>
- ◆ A landlord waives "guest fees" and parking fees for a disabled tenant's home health care aide.<sup>58</sup>
- ◆ A landlord assists an applicant with mental retardation in filling out the standard application form.<sup>59</sup>
- ◆ 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.<sup>60</sup>
- ◆ 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.<sup>61</sup>
- ◆ 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.<sup>62</sup>
- ◆ 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.<sup>63</sup>
- ◆ A tenant is permitted to move from a one- to two-bedroom apartment to have room for her live-in care provider.<sup>64</sup>

## Requesting a Reasonable Accommodation

### How do I get a reasonable accommodation?

You must request it.<sup>65</sup> 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.<sup>66</sup>

### 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.<sup>67</sup>

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.<sup>68</sup> 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.<sup>69</sup>

### **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.<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup>

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.<sup>75</sup> 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.<sup>76</sup> 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 other-

wise be considered a breach of your lease, the landlord is illegally discriminating against you.<sup>77</sup> 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.<sup>78</sup>

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.<sup>79</sup> 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.<sup>80</sup>

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.<sup>81</sup> You might ask for an opportunity to arrange for someone to help you maintain the apartment.<sup>82</sup> Or, if you are hospitalized, a landlord may have to allow early termination of your lease<sup>83</sup> or postpone the eviction hearing until after your hospitalization.<sup>84</sup>

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 43, 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.<sup>85</sup> In buildings without elevators, only the ground-floor units must be accessible.<sup>86</sup> Units on certain sites may be exempt because of the terrain or unusual characteristics of the site.<sup>87</sup>

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.<sup>88</sup>

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 43).

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 opposite 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.<sup>89</sup>

For example, the FHA only requires kitchens and bathrooms to be "usable" in a way that allows someone in a wheelchair to maneuver.<sup>93</sup> 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.<sup>94</sup>

### Requirements for new housing:

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

- ◆ an 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.<sup>90</sup>

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).<sup>91</sup>

HUD published the final Fair Housing Accessibility Guidelines on March 6, 1991.<sup>92</sup> 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 Modifications

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."<sup>95</sup> 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.<sup>96</sup> However, you do not have to undo modifications that will not interfere with the next tenant's ability to use and enjoy the unit.<sup>97</sup> 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.<sup>98</sup> However, the FHA requires that any new multi-family 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.<sup>99</sup> 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.<sup>100</sup> 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

#### **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.

manner.<sup>101</sup>The landlord may also require you to obtain any necessary building permits.<sup>102</sup>

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.<sup>103</sup> Unless the modification imposes an undue burden or fundamental alteration, a landlord does not have the right to make you even consider alternative designs.<sup>104</sup>

### 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.<sup>105</sup>

## 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.<sup>106</sup>

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,<sup>107</sup> but you have one year to file an administrative complaint under the FHA.<sup>108</sup> 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. You can also copy and use the version of form 903.1 at the end of this booklet. 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.<sup>109</sup> 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.<sup>110</sup>

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, within 180 days of discrimination, and/or federal court, within 3 years	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 180 days, and/or lawsuit in state or federal court, within 3 years	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.<sup>111</sup> 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.<sup>112</sup>

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.<sup>113</sup> If HUD finds that there is reasonable cause, it will issue a "charge of discrimination."<sup>114</sup>

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.<sup>115</sup> If the case goes to federal court, the Department of Justice will represent you.<sup>116</sup> If you don't take the case to court, HUD attorneys will represent you in a trial before an administrative law judge.<sup>117</sup> The trial will be held within 120 days after the charge was issued.<sup>118</sup>

### 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.<sup>119</sup> You must file your complaint within two years of the date the discrimination occurred.<sup>120</sup> 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 *pro se*, or without an attorney.<sup>121</sup>

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. 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 gender 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. 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 besides housing.
- 3 42 U.S.C. § 12131. The Americans with Disabilities Act, 42 U.S.C. § 12101, 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](http://www.ada.gov).
- 4 42 U.S.C. § 3604(f)(1); 28 C.F.R. § 100.202.
- 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) and 24 C.F.R. § 100.201 (definition of "handicap").
- 6 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201 (1994).
- 7 For Section 504, see 29 U.S.C. § 706(7); 24 C.F.R. § 8.3. For the ADA, see 42 U.S.C. § 12102; 28 C.F.R. § 35.104.

- 8 See notes 6-7, above.
- 9 Alcoholism qualifies as a disability under all three laws. For the FHA, see 24 C.F.R. § 100.201(a)(2). For the ADA, see 28 C.F.R. § 35.104. For Section 504, see 29 U.S.C. § 706(7)(B) and 24 C.F.R. § 8.3.
- 10 For the FHA, see 42 U.S.C. § 3602(h)(3); 24 C.F.R. § 100.201. In *Peabody Properties, Inc. v. Sherman*, 638 N.E.2d 906 (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. In *United States v. Southern Management*, 955 F.2d 914 (4th Cir. 1992), the court held that the FHA "does not *per se* exclude...every person who could be considered a drug addict" but instead that "an individual who makes the effort to recover should not be subject to housing discrimination based on society's accumulated fears and prejudices associated with drug addiction." See *Shafer v. Preston Memorial Hosp. Corp.*, 107 F. 3d 274 (4th Cir. 1997) ("current use" can include use as recently as the past 30 days in the absence of clear evidence of abstinence or participation in a rehabilitation program). See also *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F. 3d 725 (9th Cir. 1999) (Methadone clinics). For the ADA, see 42 U.S.C. § 12210(a), (b); 28 C.F.R. §§ 35.104, 35.131. 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; 53 Fed. Reg. 20216, 20217-8 (1988). See also note 12, below.
- 11 See 42 U.S.C. § 3602(h)(3) (FHA); 42 U.S.C. § 12210(d), 28 C.F.R. § 35.104 (ADA); 24 CFR § 9.103 (Rehab Act).
- 12 42 U.S.C. § 3604(f)(9) (FHA); 24 C.F.R. § 8.3 (Rehab Act); 56 Fed. Reg. 35694, 35701 (1991), referring to 28 C.F.R. § 36.208; *School Board of Nassau County v. Arline*, 480 U.S. 273 (1967).
- 13 See, e.g., *Township of West Orange v. Whitman*, 8 F. Supp 2d 408 (D. N.J.) (court rejects "direct threat" allegation of neighbors opposing group homes). State courts hearing eviction matters have often grappled with the direct threat exception, more often than not finding evidence of a direct threat. Compare *Wirtz Realty Corp. v. Freund*, 308 Ill. App. 3d 866, 721 N.E. 2d 589 (Ill. App. 1999) and *Arnold Murray Construction, LLC v. Hicks*, 621 N.W. 2d 171 (S.D. 2001) with *Cornwell and Taylor v. Moore*, 2000 WL1887528 (Minn. App., Dec. 22, 2000).
- 14 42 U.S.C. § 3602 note (FHA); 42 U.S.C. 12208 (ADA).
- 15 42 U.S.C. § 12111.
- 16 42 U.S.C. § 3604(f)(1). See *Martin v. Constance*, 843 F. Supp. 1321 (E.D. Mo. 1994) (neighbors' enforcement of restrictive covenant to exclude group home violated FHA).

- 17 See 42 U.S.C. § 3603 (a)(1)&(2).
- 18 42 U.S.C. § 3603(b)(1)-(2) and 42 U.S.C. § 3607.
- 19 29 U.S.C. § 794. 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. 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 ([www.prac.org/LIHTC](http://www.prac.org/LIHTC)).
- 20 42 U.S.C. § 12131. 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. The *Public and Assisted Housing Occupancy Task Force Report* (April 7, 1994), is available from the Bazelon Center; send \$35 for photocopying and postage to Publications Desk, Bazelon Center, 1101 15th Street NW, Suite 1212, Washington D.C. 20005.
- 21 29 U.S.C. § 794 (Rehabilitation Act); 42 U.S.C. § 3604 (FHA); 42 U.S.C. § 12112(b) (ADA).
- 22 See *Pathways Psychosocial v. Town of Leonardtown*, 133 F. Supp. 2d 772 (D. Md 2001); *First Step, Inc. v. City of New London*, 2003 WL 678484 (D. Conn. Jan. 23, 2003). See also *Innovative Health Systems, Inc. v. City of White Plains*, 117 F. 3d 37 (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 (S.D.N.Y. 1993). 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; available from the Bazelon Center) (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. §12101 (ADA); see *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995) (holding that homeless shelter is a "dwelling" within the mean-

ing provided in the FHA). See also *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941 (9th Cir. 1996). 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. *Burnham v. City of Rohnert*, FH-FL Rptr ¶ 15,761 (N.D. Cal. 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 42 U.S.C. § 3612.

26 24 C.F.R. § 8.50

27 28 C.F.R. § 35.190(b)(4) (1991).

28 42 U.S.C. § 3614. 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. § 3601(f) (1988).

30 42 U.S.C. § 3613.

31 See, e.g., *Wright v. Rocks*, No. CCB94-3506 (D. Md. May 28, 1996) (approving settlement of \$160,000 in case in which a blind and deaf man was refused an apartment) (more information available from Equal Rights Center, 202-319-1000); *Valenti v. Salz*, FH-FL Rptr. ¶ 16,013, 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; available from the Bazelon Center) (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 *Hackett v. Commission on Human Rights and Opportunities*, 1996 WL457157 (Conn. Super. 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*, note 20, above, at 1-33 to 1-34, 1-38 to 1-44; *Giebeler v. M&B Associates*, 343 F.3d 1143 (4th Cir. 2003) (landlord must consider as a reasonable accommodation a request to use co-signer to meet income requirement). 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) (1988). See cases at note 13, above.

35 See H.R. Rep. No. 711, 100th Cong., 2d Sess. 5, reprinted in 1998 U.S. Code Cong. Admin. News 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.C. § 1437e. But see *United States v. Forest Dale*, 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 occasional reliance on supportive services); *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. Pleasant Ridge Associates, Ltd.*, No. HUD ALJ 05-94-085-8 (HUD Office of Administrative Law Judges, Oct. 25, 1996), FH-FL Rptr. ¶ 25,123 (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.
- 40 *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; available from the Bazelon Center).
- 41 24 C.F.R. § 100.200-202; 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 Lutheran Housing Center*, 815 F.2d 1343 (10th Cir. 1987) (holding landlord's policy of rejecting applicants who were not elderly or mobility impaired permitted under U.S. 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 Hospital and Training School*, 757 F. Supp. 1243, 1298-98 (D.N.M. 1990), *rev'd in part on other grounds*, 964 F.2d 980 (10th Cir. 1992) holding

that state violated Section 504 by denying institutional residents with the most severe mental disabilities access to community programs); *Plummer v. Branstad*, 731 F.2d 574, 578 (8th Cir. 1984) (severity of handicap is protected under Section 504); *Martin v. Voinovich*, 840 F. Supp. 1175, 1190-92 (S.D. Oh. 1993) (discrimination on the basis of severity or nature of disability in providing community housing actionable under Section 504 and ADA); *Garrity v. Gallen*, 522 F. Supp. 171, 214-15 (D.N.H. 1981) (state violated Section 504 by assuming that individuals with profound mental retardation could not benefit from community-based services); *Goebel v. Colorado Department of Institutions*, 764 P.2d 785 (Colo. 1988) (discrimination in the provision of community-based mental health care based on the severity of the individual's mental disability would violate Section 504). But see *People First of Tennessee v. Arlington Developmental Center*, 878 F. Supp. 97 (W.D. Tenn. 1992) (Section 504 does not apply to discrimination among similarly handicapped persons); *Williams v. Secretary of the Executive Office of Human Services*, 609 N.E.2d 447 (Mass. 1993) (upholding under the FHA the Department of Mental Health's practice of distinguishing between those with and those without active substance abuse problems in referring clients to housing services).

43 24 C.F.R. § 100.202(C).

44 See, e.g., *Secretary, HUD v. Community Homes-Western Village*, HUD ALJ 10-90-0019-1 (July 10, 1991) (holding developer's requirement that a blind applicant sign a hold-harmless agreement not required of other tenants violated the FHA). See also note 37, above.

45 42 U.S.C. § 3604(f)(2) (1988).

46 42 U.S.C. § 3617 (1988).

47 *In re the Application of 119-121 East 97th Street Corp.*, 642 N.Y.S.2d 638 (N.Y. App. Div. 1996) (harassment of tenant with AIDS violates FHA). For cases involving illegal harassment of a tenant with AIDS by a landlord, see *United States v. Short*, FH-FL Rptr. ¶ 15,838 (W.D. Pa. 1993); *Secretary, HUD v. Williams*, HUD ALJ 02-89-0459-1, FH-FL Rptr. ¶ 25,007 (ALJ 1991). For a case involving illegal harassment of a tenant with AIDS by a neighbor, see *Garnett v. Pearson*, No. 1:96CV1719, FH-FL Rptr. ¶ 16,181.1 (E.D. Ohio 1997); *Doe v. Carrollan Gardens Condo. Ass'n*, FH-FL Rptr. ¶ 18.171 (Md. Ct. Spec. App. Sept. 6, 1995).

48 See, e.g., *Valenti v. Salz*, FH-FL Rptr. ¶ 16,013, 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 Oaks*, note 37, above; *Cason v. Rochester Housing Authority* and *Murray v. New York City Housing Authority*, note 40, above.

50 42 U.S.C. § 3604(f)(3)(B), 24 C.F.R. § 100.204 (FHA); 24 C.F.R. § 8.33 (Rehab Act); 28 C.F.R. § 35.130(b)(7) (ADA).

- 51 See, e.g., *Woodside Village v. Hertzmark*, 1993 WL268293(Conn. Super June 22, 1993) (holding that it was not illegal to evict a tenant who could not confine his service animal to designated areas and was not able to clean up after the dog).
- 52 Congress intended to rely upon regulations and case law interpreting the Rehab Act and other statutes protecting against disability discrimination when it included the concept of reasonable accommodation in the 1988 amendments to the Fair Housing Act. H.R. Rep. No. 100-711, *reprinted in* 1988 U.S. Code Cong. & Admin. News 2173, 2186. The fundamental alteration and undue burden exceptions derive from a Rehabilitation Act employment-discrimination case, *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). See also 28 C.F.R. § 35.130(f)(7) (ADA); 24 C.F.R. § 8.33 (Rehab Act); 24 C.F.R. § 100.204 (FHA).
- 53 See *United States v. California Mobile Home Park*, 29 F.3d 1413, 1416-17 (9th Cir. 1993) for an application of undue burden analysis in a housing case, and a description of the legislative and case law history of the concept. See also *Giebeler*, note 33.
- 54 See note 52. For a (we believe) wrongly decided 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) (allowing a landlord to refuse Section 8 subsidies from tenants with disabilities, despite the fact that the landlord already had tenants with Section 8 certificates). But more recent decisions have held that landlords must accept Section 8 rental payments from current tenants. See, e.g., *Freeland v. Sisao LLC*, 2008 WL 906746 (E.D. N.Y. 2008) and *Tapia v. Successful Management Corp.*, 2009 WL 2163595 (Sup. Cit. N.Y. 2009).
- 55 See *United States v. California Mobile Home Park*, note 53, above. For the ADA, see 28 C.F.R. § 35.130(f).
- 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 *Secretary, HUD v. Jankowski Lee & Associates*, 91 F. 3d 891 (7th Cir. 1996) (landlord required to reserve a number of handicapped spaces or to designate a reserved parking place for a disabled tenant); *Gittleman v. Woodhaven Condo. Assoc., Inc.*, 972 F. Supp. 984 (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 Management v. Pennsylvania Human Relations Commission*, 143 Pa. Commw. Ct. 54, 598 A. 2d 594 (Pa. 1991). But see *Temple v. Gunsalus*, No. 95-3175, FH-FL Rptr. ¶ 16,116, 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 *United States v. California Mobile Home Park*, 29 F. 2d 143 (9th Cir. 1993)



(holding that housing provider was required to waive \$1.50 per day guest fee and \$25 per month parking fee for tenant's home health aide and emphasizing that reasonable accommodation inquiry is highly fact-specific). But see *United States v. California 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 See *Shavrnock v. Lawrence*, No. 93-CH-55536-5 (Mich. Cir. Ct. Saginaw County, Oct. 24, 1995; available from the Bazelon Center) (consent decree requiring state housing development authority to allow mental health case workers to assist people with mental disabilities in applying for Section 8 subsidies).
- 60 *Roseborough v. Cottonwood Apartments*, FH-FL Rptr. ¶ 16,089 (N.D. Ill. June 4, 1996). In a previous opinion, FH-FL Rptr. ¶ 15,954, 1994 WL 530835 (N.D. Ill. Sept. 29, 1994), the court held that the tenant was not entitled under the FHA to be released from her lease.
- 61 24 C.F.R. § 100.204(b). For a good explanation of the difference between pets and service or therapeutic animals, see HUD's "Pet Ownership for the Elderly and Persons with Disabilities" rule, 10/27/2008 ([www.hud.gov/offices/FHEO/Pet\\_Ownership](http://www.hud.gov/offices/FHEO/Pet_Ownership)). 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. Housing Authority of Clackamas County*, 994 F. Supp. 1253 (D. Ore. 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; 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. Village of Shadyside Condominium Assoc.*, No. 96-1825 (W.D. Pa. Nov. 20, 1998; available from the Bazelon Center) (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 companionship of the cat); *Kalsrud v. Joseph and Edna Pell Revocable Trust*, No. C-95-2967 CAL ENE (N.D. Cal. July 24, 1996) (consent decree) (woman diagnosed with panic disorder obtained a \$100,265 settlement after not having been permitted to keep her dog as a companion); *Crossroads Apartments v. LeBoo*, FH-FL Rptr. ¶ 18,100 (City Court of Rochester, N.Y. 1990) (summary judgment denied where mentally handicapped defendant raises discrimination in defense to eviction and there are factual issues regarding

his need for a therapeutic animal); *HUD v. River Gardens* (Durand Evan, Intervenor), HUD ALJ 09-93-1753-8 (Nov. 12, 1996) (holding that managers should have known to let disabled tenant keep the cat after receiving verification letters from tenant's counselor and doctor and ordering a civil penalty of \$5,000); *HUD v. Riverbay*, FH-FL Rptr. ¶ 25,080 (HUD Office of ALJs 1994) (landlord violated FHA by refusing to allow mentally disabled tenant to keep her dog, which was necessary to ease the effects of her recurrent depression); *Secretary, HUD v. Purkett*, HUD ALJ 09-89-1495-1 (July 31, 1990) (consent decree) (enjoining manager and owner from harassing disabled tenant and charging her a "pet deposit"). For unfavorable decisions, see *In re Kenna Homes Cooperative Corp.*, 210 W. Va. 380, 557 S.E. 2d 787 (W. Va. 2001)(person requesting an emotional support animal must show that an animal has been specifically trained to provide assistance with the disability in question). See also *Housing Authority of New London v. Toni Tarrant*, No. 12480, 1997 Conn. Super. LEXIS 120 (Conn. Super. Ct. Jan. 14, 1997; available from the Bazelon Center), 1997 WL 30320 (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*, FH-FL Rptr. ¶ 18,197 (Mass. Super. Ct., Middlesex Co. May 6, 1996) (no nexus established between disabled tenant's need to maintain cat despite a doctor's affidavit saying that removal of cat would result in "increased symptoms of depression, weakness, spasticity and fatigue"); *Woodside Village v. Hertzmark*, No. SPH9204-65092, FH-FL Rptr. ¶ 18,129, 4 N.D.L.R. P104 (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 and use a pooper-scooper after numerous attempts to accommodate him had been made).

- 62 *Citywide Associates v. Penfield*, 564 N.E. 2d 1003 (Mass. 1991) (requiring landlord to absorb minor costs due to tenant's auditory hallucinations causing her to strike the wall, and to give tenant time to secure services before proceeding with an eviction).
- 63 *Andrews v. Springfield Housing Authority*, No. 91-CV-0106 (Mass. Trial Ct., Housing Ct., Hampden Div. 1991; available from the Bazelon Center (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, despite the rule prohibiting such mobility).
- 64 *Armbruster v. Monument 3: Realty Fund VII, Ltd.*, FH-FL Rptr. ¶ 16,182, 1997 WL 241805 (N.D. Col. April 3, 1997) (refusal to allow elderly woman to move from 1- to 3-bedroom unit to allow a live-in attendant could constitute discrimination).
- 65 It is illegal for landlords to inquire or determine whether a person has a

disability, 24 C.F.R. § 100.202(c), or to offer or impose different terms or conditions upon a tenant because of disability, 24 C.F.R. § 100.202(b). 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. Housing Authority of Clackamas County*, note 61, above.

- 66 Proper documentation of a disability and the necessity of an accommodation is becoming more and more important. Recognizing this need, the Bazelon Center has produced a number of Fair Housing Information Sheets, available from [www.bazelon.org/Where-We-Stand/Community-Integration/Housing.aspx](http://www.bazelon.org/Where-We-Stand/Community-Integration/Housing.aspx). See also U.S. Department of Justice and U.S. Department of Housing and Urban Development, *Joint Statement of Reasonable Accommodation Under the Fair Housing Act* (May 2004), available at [www.hud.gov/offices/fhec/library/huddojstatement.pdf](http://www.hud.gov/offices/fhec/library/huddojstatement.pdf).
- 67 *Secretary, HUD, v. Jankowski Lee & Associates*, note 56, above (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). See also *Radecki v. Joura*, 114 F. 3d 115 (8th Cir. 1997) (landlords who learned of tenants' disabilities during eviction proceedings are still required to provide accommodation).
- 68 See, e.g., *Green v. Housing Authority of Clackamas County*, note 61, above. But see *Housing Authority of New London v. Toni Tarrant*, note 61, above. See also Fair Housing Information Sheet #6, at [www.bazelon.org/Where-We-Stand/Community-Integration/Housing/Fair-Housing-Fact-Sheets.aspx](http://www.bazelon.org/Where-We-Stand/Community-Integration/Housing/Fair-Housing-Fact-Sheets.aspx). See generally, *Grubbs v. Housing Authority of Joliet*, FH-FL Rptr. ¶ 16,190, 1997 U.S. Dist. LEXIS 7294 (N.D. Ill. May 20, 1997) (dismissing complaint where tenant failed to show proof of disability or need for the accommodation he requested).
- 69 *Giebeler*, note 33 above (landlord must consider as a reasonable accommodation a request to use co-signer to meet income requirement); and *Housing Occupancy Task Force Report*, note 20, above, at 1-39 to 1-40, 1-42 to 1-44. But see *Schanz v. The Village Apartments*, 998 F. Supp. 784, 791-92 (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 *Id.*, *Housing Occupancy Task Force Report*.
- 71 *Joint Statement*, note 66, above. See also *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109 (DC 2005) (holding that tenant may request accommodation so long as she is still in physical possession of the premises, even if an eviction case has been filed); *Samuelson v. Mid-Atlantic Realty Co.*, 947 F. Supp. 756 (D. Del. 1996) (tenant's condition worsened soon after he rented an apartment, and court held that landlord was required to al-

- low early termination of his lease with no penalties); *Fulciniti v. Village of Shadyside Condominium Ass'n.*, note 61 above (woman with depression and multiple sclerosis got a dog to provide emotional support and companionship once her children left home).
- 72 See *Green v. Housing Authority of Clackamas County*, note 61, above.
- 73 See discussion, above, p. 12: "Is a landlord always required to grant a request for reasonable accommodation?"
- 74 *Joint Statement*, note 66, above (Question 18 says that the evidence need not come from a physician; the opinion of "a peer-support group, a non-medical service provider, or a reliable third party" may be sufficient). See also *Lincoln Realty Management*, note 57 above, for an example of the difficulty in establishing disability when the disability (in this case, multiple chemical sensitivity) is not fully recognized or easily identifiable by medical professionals.
- 75 *Green v. Housing Authority of Clackamas County*, note 61 above; *California Mobile Home Park*, note 53, above.
- 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 Resources, Ltd. v. Parish of Jefferson*, 52 FD. Supp 2d 721 (E.D. La. 1999). See also *Douglas*, note 71, above.
- 77 *Waterbury Housing Authority v. Lebel*, 2 N.D.L.R. 53 (Conn. Super. Ct. 1991; available from the Bazelon Center) (tenant with neurological disorder and legal blindness fell frequently, causing noise and physical damage to the apartment; court held landlord could not evict because the damage and noise were not material breaches of the lease).
- 78 *Citywide Associates 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); *Worcester Housing Authority v. Santis*, No. 89-SP-0471 (Mass. Trial Ct., Housing Ct., Worcester Cty. Div. Dec. 5, 1989; available from the Bazelon Center) (landlord not allowed to evict elderly woman whose daughter caused disruptions and who was unable to maintain condition of her apartment, until court was satisfied that no accommodation could allow tenant to continue her tenancy).
- 79 *Roe v. Housing Authority*, 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 Assoc.*, 729 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); *Peabody Properties v. Jeffries*, No. 88-SP-7613-S (Mass. Trial Ct., Housing Ct., Hampden Div. Feb. 13, 1989) (ordering landlord to make reasonable accommodations for deaf tenant and ordering tenant to cease causing harm to property or other tenants).

- 80 *Peabody Properties*, note 79, above. See also *Worcester Housing Authority v. Santis*, note 78, above
- 81 See *Cordrey v. Town of Holyoke Housing Authority*, No. 80-C-881 (D. Colo. Dec. 3, 1980; available from the Bazelon Center).
- 82 *Id.*; *Worcester Housing Authority*, note 78, above.
- 83 *Samuelson v. Mid-Atlantic Realty Co.*, note 71, above.
- 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). "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). HUD has developed a website and training program for stakeholders interested in this issue. See [www.fairhousingfirst.com](http://www.fairhousingfirst.com).
- 86 *Id.*
- 87 24 C.F.R. § 100.205(a) and (b).
- 88 28 C.F.R. § 35.150-35.151 (ADA); 24 C.F.R. § 8.20-8.24 (Rehab Act). The Architectural Barriers Act of 1968 also imposes accessibility requirements, 42 U.S.C. §§ 4151-4157; 24 C.F.R. Part 40, as do the 2010 ADA regulations for housing built with public funds, 28 C.F.R. § 35.150, 35.151 (9/15/2010).
- 89 56 Fed. Reg. 9495-6 (March 6, 1991) (HUD Final Fair Housing Accessibility Guidelines).
- 90 42 U.S.C. § 3604(f)(3)(C).
- 91 42 U.S.C. § 3604(f)(4).
- 92 56 Fed. Reg. 9497-9514 (March 6, 1991). More information from HUD is available by searching for "accessibility requirements for buildings" at [www.hud.gov](http://www.hud.gov)
- 93 42 U.S.C. § 3604(f)(3)(C)(iii)(IV).
- 94 42 U.S.C. § 3610(e).
- 95 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203. See, e.g., *United States v. Country Club Garden Owners Assoc.*, 159 F.R.D. 400 (E.D.N.Y. 1995) (consent decree required homeowners association to pay \$90,000 in damages and pay for modifications she needed); *HUD 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 a ramp or wheelchair lift); *HUD v. Twinbrook Village Apartments*, FH-FL Rptr. ¶ 25,157 (Nov. 9, 2001), also available at [www.hud.gov/alj/pdf/twinbk.pdf](http://www.hud.gov/alj/pdf/twinbk.pdf).
- 96 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203.
- 97 24 C.F.R. § 100.203(c).



- 98 42 U.S.C. § 3604(f)(3)(A).
- 99 24 C.F.R. § 8.24 (Rehab Act); 28 C.F.R. § 35.150 (ADA).
- 100 See note 97, above.
- 101 24 C.F.R. § 100.203(b).
- 102 *Id.*
- 103 See *Hunter v. Trenton Housing Authority*, 304 N.J. Super. 70, 698 A. 2d 25 (N.J. App. 1997) (tenant was entitled to build ramp and did not have to accept landlord's offer to move to a different, accessible unit).
- 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.
- 106 See *Waterbury v. Lebel*, note 77, above.
- 107 24 C.F.R. § 8.56(C)(3)-(4) (Rehab Act); 28 C.F.R. § 35.170(b) (ADA).
- 108 42 U.S.C. § 3610(a); 24 C.F.R. § 103.15.
- 109 42 U.S.C. § 3610(a). But see *Reconstructing Fair Housing* by the National Council on Disability (November 2001), [www.ncd.gov/newsroom/publications/2001/pdf/fairhousing.pdf](http://www.ncd.gov/newsroom/publications/2001/pdf/fairhousing.pdf) (finding 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); 24 C.F.R. § 103.100.
- 111 See note 109, above.
- 112 42 U.S.C. § 3610(b); 24 C.F.R. § 103.330 and § 103.325.
- 113 42 U.S.C. § 3610(b)(5)(A); 24 C.F.R. § 103.230.
- 114 42 U.S.C. § 3610(g). See *Reconstructing Fair Housing*, note 109, above (finding in FY 2000 that HUD issued very few charges of discrimination).
- 115 42 U.S.C. § 3612(a).
- 116 42 U.S.C. § 3612(o).
- 117 42 U.S.C. § 3612(b)-(g).
- 118 42 U.S.C. § 3612(g).
- 119 42 U.S.C. § 3613(a).
- 120 *Id.*
- 121 42 U.S.C. § 3613(b).

## 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](http://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](http://www.usdoj.gov).
- ▲ The Bazelon Center for Mental Health Law: (202) 467-5730; [www.bazelon.org/Where-We-Stand/Community-Integration/Housing.aspx](http://www.bazelon.org/Where-We-Stand/Community-Integration/Housing.aspx)
- ▲ 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](http://portal.hud.gov/portal/page/portal/HUD/topics/housing_discrimination).

### For assistance:

- ▲ Your state Disability Rights Office (formerly protection and advocacy. To locate your local office, call 202-408-9514 or 202-408-9521 (TDD) or search on [www.ndrn.org](http://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](http://www.lsc.gov).
- ▲ The National Fair Housing Advocate On-Line website, [www.fairhousing.com](http://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.
- ▲ [www.hudclips.org/download/HUD-903.1](http://www.hudclips.org/download/HUD-903.1) —the downloadable information form adapted at the end of this publication.

## National Fair Housing Advocate Online

You can visit [www.fairhousing.com](http://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 landlord-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.



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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](http://www.justice.gov/crt/about/hce/final8_1.php)

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### **Fair Housing Information Sheets**

All are available at [www.bazelon.org/Where-We-Stand/Community-Integration/Housing/Fair-Housing-Fact-Sheets.aspx](http://www.bazelon.org/Where-We-Stand/Community-Integration/Housing/Fair-Housing-Fact-Sheets.aspx) )

- #1 Early Termination of a Lease
- #2 Structural Modifications in Public and Section 8 Housing
- #3 Neighbors Buying Property to Prevent the Establishment of a Group Home
- #4 Using Reasonable Accommodations to Prevent Eviction
- #5 Disability Discrimination in the Housing Application and Screening Process
- #6 Right to Emotional Support Animals in "No Pet" Housing
- #7 Using Reasonable Accommodations to Eliminate Financial Barriers in Housing Applications
- #8 Using Reasonable Accommodations for Tenant Posing a "Direct Threat" to Others
- #9 Allocating the Burden of Proof in Disability Cases Under the Fair Housing Act

- #10 Handling Fair Housing Act Disability Claims in the Context of an Imminent or Pending Eviction Action
- #11 The Illegality of "Independent Living" Requirements in Rental Housing, Assisted Living Centers and Continuing Care Retirement Communities
- #12 Just Like Where You and I Live—Integrated Housing Options for People with Mental Illnesses
- #13 Live-In Aides as Reasonable Accommodation Under the Fair Housing Act and Related Laws
- #14: Increasing the Usability of Housing Choice Vouchers for People with Disabilities, published in Housing Law Bulletin, a publication of the National Housing Law Project.

### 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](http://www.tacinc.org/publications_.php)
- ▲ *Section 8 Made Simple*, available at [www.tacinc.org/downloads/Sect8\\_2ndEd.pdf](http://www.tacinc.org/downloads/Sect8_2ndEd.pdf)

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

## HUD Form for Housing Discrimination Information

The following pages include the form downloaded from [www.hud.gov](http://www.hud.gov). You may also get it via [www.hudclips.org/download/HUD-903.1](http://www.hudclips.org/download/HUD-903.1)

# Are You a Victim of Housing Discrimination?

Fair Housing is Your Right!

If you have been denied your housing rights...you may have experienced unlawful discrimination.



U.S. Department of Housing and Urban Development

## ARE YOU A VICTIM OF HOUSING DISCRIMINATION?

"The American Dream of having a safe and decent place to call 'home' reflects our shared belief that in this nation, opportunity and success are within everyone's reach.

Under our Fair Housing laws, every citizen is assured the opportunity to build a better life in the home or apartment of their choice — regardless of their race, color, religion, sex, national origin, family status or disability."

Alphonso Jackson  
Secretary

## HOW DO YOU RECOGNIZE HOUSING DISCRIMINATION?

### Under the Fair Housing Act, it is Against the Law to:

- Refuse to rent to you or sell you housing
- Tell you housing is unavailable when in fact it is available
- Show you apartments or homes only in certain neighborhoods
- Set different terms, conditions, or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Advertise housing to preferred groups of people only
- Refuse to provide you with information regarding mortgage loans, deny you a mortgage loan, or impose different terms or conditions on a mortgage loan
- Deny you property insurance
- Conduct property appraisals in a discriminatory manner
- Refuse to make reasonable accommodations for persons with a disability if the accommodation may be necessary to afford such person a reasonable and equal opportunity to use and enjoy a dwelling.
- Fail to design and construct housing in an accessible manner
- Harass, coerce, intimidate, or interfere with anyone exercising or assisting someone else with his/her fair housing rights

# HOUSING DISCRIMINATION INFORMATION

Departamento de Vivienda y Desarrollo Urbano    Oficina de Derecho Equitativo a la Vivienda  
U.S. Department of Housing and Urban Development    Office of Fair Housing and Equal Opportunity

**Instructions:** (Please type or print) Read this form carefully. Try to answer all questions. If you do not know the answer or a question does not apply to you, leave the space blank. You have one year from the date of the alleged discrimination to file a complaint. Your form should be signed and dated.

Your Name		
Your Address		
City	State	Zip Code
Best time to call	Your Daytime Phone No	Evening Phone No

## Who else can we call if we cannot reach you?

Contact's Name	Best Time to call
Daytime Phone No	Evening Phone No
Contact's Name	Best Time to call
Daytime Phone No	Evening Phone No

## 1 What happened to you?

How were you discriminated against?

For example: were you refused an opportunity to rent or buy housing? Denied a loan? Told that housing was not available when in fact it was? Treated differently from others seeking housing?

State briefly what happened.

# HOUSING DISCRIMINATION INFORMATION

Departamento de Vivienda y Desarrollo Urbano    Oficina de Derecho Equitativo a la Vivienda  
U.S. Department of Housing and Urban Development    Office of Fair Housing and Equal Opportunity

## 2 Why do you think you are a victim of housing discrimination?

Is it because of your:

· race · color · religion · sex · national origin · familial status (families with children under 18) · disability?

For example: were you denied housing because of your race? Were you denied a mortgage loan because of your religion? Or turned down for an apartment because you have children?

Briefly explain why you think your housing rights were denied and circle the factor(s) listed above that you believe apply.

## 3 Who do you believe discriminated against you?

For example: was it a landlord, owner, bank, real estate agent, broker, company, or organization?

Identify who you believe discriminated against you.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

## 4 Where did the alleged act of discrimination occur?

For example: Was it at a rental unit? Single family home? Public or Assisted Housing? A Mobile Home?

Did it occur at a bank or other lending institution?

Provide the address.

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

## 5 When did the last act of discrimination occur?

Enter the date

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

Is the alleged discrimination continuing or ongoing?

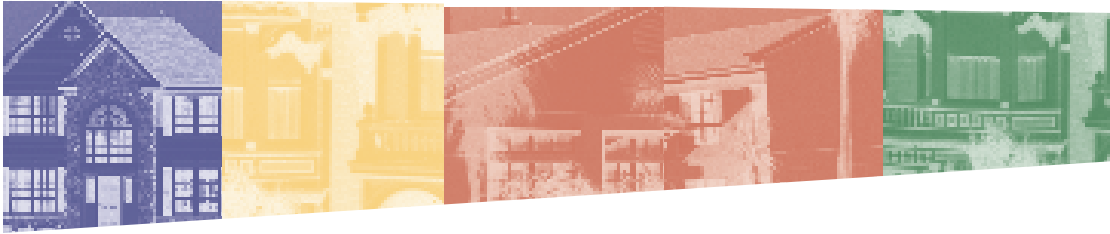
Yes No

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Send this form to HUD or to the fair housing agency nearest you. If you are unable to complete this form, you may call that office directly. See address and telephone listings on back page.





## It is Unlawful to Discriminate in Housing Based on These Factors...

- Race
- Color
- National origin
- Religion
- Sex
- Familial status (families with children under the age of 18, or who are expecting a child)
- Handicap (if you or someone close to you has a disability)

## If You Believe Your Rights Have Been Violated...

- HUD or a State or local fair housing agency is ready to help you file a complaint.
- After your information is received, HUD or a State or local fair housing agency will contact you to discuss the concerns you raise.

Detach here. Fold and close with glue or tape (no staples)

Keep this information for your records.

Date you mailed your information to HUD: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Address to which you sent the information:

Office \_\_\_\_\_

Telephone \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

If you have not heard from HUD or a State or local fair housing agency within three weeks from the date you mailed this form, you may call to inquire about the status of your complaint. See address and telephone listings on back page.

## WHERE TO MAIL YOUR FORM OR INQUIRE ABOUT YOUR CLAIM

**For Connecticut, Maine, Massachusetts,  
New Hampshire, Rhode Island, and Vermont:  
NEW ENGLAND OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Room 321  
Boston, MA 02222-1092  
Telephone (617) 994-8320 or 1-800-827-5005  
Fax (617) 565-7313 • TTY (617) 565-5453  
E-mail: [Complaints\\_office\\_01@hud.gov](mailto:Complaints_office_01@hud.gov)

**For New Jersey and New York:  
NEW YORK/NEW JERSEY OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
26 Federal Plaza, Room 3532  
New York, NY 10278-0068  
Telephone (212) 264-1290 or 1-800-496-4294  
Fax (212) 264-9829 • TTY (212) 264-0927  
E-mail: [Complaints\\_office\\_02@hud.gov](mailto:Complaints_office_02@hud.gov)

**For Delaware, District of Columbia, Maryland,  
Pennsylvania, Virginia, and West Virginia:  
MID-ATLANTIC OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
The Wanamaker Building  
100 Penn Square East  
Philadelphia, PA 19107  
Telephone (215) 656-0663 or 1-888-799-2085  
Fax (215) 656-3419 • TTY (215) 656-3450  
E-mail: [Complaints\\_office\\_03@hud.gov](mailto:Complaints_office_03@hud.gov)

**For Alabama, the Caribbean, Florida, Georgia, Kentucky, Missis-  
sippi, North Carolina, South Carolina, and Tennessee:  
SOUTHEAST/CARIBBEAN OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
Five Points Plaza  
40 Marietta Street, 16th Floor  
Atlanta, GA 30303-2808  
Telephone (404) 331-5140 or 1-800-440-8091  
Fax (404) 331-1021 • TTY (404) 730-2654  
E-mail: [Complaints\\_office\\_04@hud.gov](mailto:Complaints_office_04@hud.gov)

**For Illinois, Indiana, Michigan, Minnesota,  
Ohio, and Wisconsin:  
MIDWEST OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
Ralph H. Metcalfe Federal Building  
77 West Jackson Boulevard, Room 2101  
Chicago, IL 60604-3507  
Telephone (312) 353-7776 or 1-800-765-9372  
Fax (312) 886-2837 • TTY (312) 353-7143  
E-mail: [Complaints\\_office\\_05@hud.gov](mailto:Complaints_office_05@hud.gov)

**For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:  
SOUTHWEST OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
801 North Cherry, 27th Floor  
Fort Worth, TX 76102  
Telephone (817) 978-5900 or 1-888-560-8913  
Fax (817) 978-5876 or 5851 • TTY (817) 978-5595  
E-mail: [Complaints\\_office\\_06@hud.gov](mailto:Complaints_office_06@hud.gov)

**For Iowa, Kansas, Missouri and Nebraska:  
GREAT PLAINS OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
Gateway Tower II  
400 State Avenue, Room 200, 4th Floor  
Kansas City, KS 66101-2406  
Telephone (913) 551-6958 or 1-800-743-5323  
Fax (913) 551-6856 • TTY (913) 551-6972  
E-mail: [Complaints\\_office\\_07@hud.gov](mailto:Complaints_office_07@hud.gov)

**For Colorado, Montana, North Dakota, South Dakota,  
Utah, and Wyoming:  
ROCKY MOUNTAINS OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
1670 Broadway  
Denver, CO 80202-4801  
Telephone (303) 672-5437 or 1-800-877-7353  
Fax (303) 672-5026 • TTY (303) 672-5248  
E-mail: [Complaints\\_office\\_08@hud.gov](mailto:Complaints_office_08@hud.gov)

**For Arizona, California, Hawaii, and Nevada:  
PACIFIC/HAWAII OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
600 Harrison Street, Third Floor  
San Francisco, CA 94107-1300  
Telephone (415) 489-6524 or 1-800-347-3739  
Fax (415) 489-6558 • TTY (415) 436-6594  
E-mail: [Complaints\\_office\\_09@hud.gov](mailto:Complaints_office_09@hud.gov)

**For Alaska, Idaho, Oregon, and Washington:  
NORTHWEST/ALASKA OFFICE**

Fair Housing Hub  
U.S. Dept. of Housing and Urban Development  
Seattle Federal Office Building  
909 First Avenue, Room 205  
Seattle, WA 98104-1000  
Telephone (206) 220-5170 or 1-800-877-0246  
Fax (206) 220-5447 • TTY (206) 220-5185  
E-mail: [Complaints\\_office\\_10@hud.gov](mailto:Complaints_office_10@hud.gov)

***If after contacting the local office nearest you, you still have ques-  
tions – you may contact HUD further at:***

U.S. Dept. of Housing and Urban Development  
Office of Fair Housing and Equal Opportunity  
451 7th Street, S.W., Room 5204  
Washington, DC 20410-2000  
Telephone (202) 708-0836 or 1-800-669-9777  
Fax (202) 708-1425 • TTY 1-800-927-9275

To file electronically, visit: [www.hud.gov](http://www.hud.gov)