



TENANTS' RIGHTS UNDER THE FEDERAL FAIR HOUSING LAWS

LIVE WHERE YOU CHOOSE

In 1988, Congress extended the federal Fair Housing Act to protect people with disabilities against housing-related discrimination. This fact sheet provides an overview of the rights afforded by the Fair Housing Act to people with disabilities when they are renting a dwelling.

Who is protected by the Fair Housing Act?

The Fair Housing Act prohibits discrimination against people with disabilities. A person is considered to have a disability if he/she has a physical or mental disability that substantially limits one or more major life activities such as seeing, hearing, walking, breathing, and learning. People with histories of having a disability or who are regarded as having a disability also are protected by the Fair Housing Act. The Fair Housing Act also protects people who live with or are associated with people with disabilities.

Those who are recovering from substance abuse are considered to have a disability under the Fair Housing Act. However, individuals currently

engaged in illegal use of or addiction to controlled substances are not protected by the Fair Housing Act. The Fair Housing Act does not require that housing be made available to people who constitute a “direct threat” to the health or safety of others or whose tenancy would result in substantial physical damage to the property of others.

Who must comply with the Fair Housing Act?

The Fair Housing Act covers most types of housing, including single-family houses and rental properties. Property owners, homeowner’s associations, most landlords, real estate agents and others involved in the sale, lease, or management of housing and apartments must comply with the Fair Housing Act’s requirements. Zoning boards, municipalities and other governmental entities that engage in restrictive zoning could also be found to be violating the Fair Housing Act.

What kind of housing is not covered by the Fair Housing Act?

Owner-occupied buildings with four or less units, single-family housing sold or rented without a broker, and housing operated by religious organizations and private clubs are not covered entities.

What is intentional discrimination?

Intentional Discrimination: Refusal to rent to or to otherwise make unavailable or deny a dwelling to any renter because of a disability or to discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling or in the provision of services or facilities in connection with such dwelling, because of a disability. A person does not have to

show that the landlord was motivated by a dislike for or an animosity towards persons with disabilities. Discrimination can also result from false and over-protective assumptions about the needs of people with disabilities or from unfounded beliefs that difficulties or problems will arise due to the person's disability.

Illegal Inquiries: Inquiries regarding whether an individual has a disability or the severity of a disability are prohibited, as well as any questions that would require the tenant to waive confidentiality of a medical condition. For example, an inquiry into a person's medical history to determine whether the person can live independently would violate the Fair Housing Act.

Note that if a person with a disability requests an accommodation or modification, the landlord may require enough information about a person's disability to determine that the accommodation/modification is related to the person's disability.

Imposition of Additional Criteria: The Fair Housing Act prohibits imposition on persons with disabilities of application criteria, qualification criteria, security deposits, rental charges, rental standards or other requirements different from those required of other tenants. For example, requiring a tenant who is HIV-positive to provide a "certification" that it is safe for workmen to enter his apartment is a violation of the Fair Housing Act.

What is the reasonable accommodation requirement?

A landlord has an affirmative obligation to change or waive rules, policies, practices or services if necessary to allow a person with a disability to have full use and enjoyment of the property. It is not necessary to prove that the landlord's failure to provide a reasonable accommodation was motivated by discriminatory animus. Failure to make a reasonable accommodation constitutes discrimination and is a violation of the Fair Housing Act.

A. Examples of Reasonable Accommodation:

Example 1: A landlord with a first come-first served parking policy must make an exception by creating a reserved parking space for a tenant who uses a wheelchair and needs to park close to the building.

Example 2: The landlord must allow a tenant with mental illness to terminate his lease early because he could not continue to live safely in his apartment due to his disability.

Example 3: A building that has a no-pets policy must waive that rule for a person who uses a service animal.

Example 4: The owner of an apartment building must provide a reasonable accommodation for a tenant using a wheelchair in the form of more frequent, prompt or thorough shoveling of snow from the sidewalk than ordinarily provided.

Example 5: A third floor tenant's request for an accommodation from the landlord to move to a first-floor apartment which was available was reasonable under the Fair Housing Act where the landlord was aware of the tenant's disability and resulting need for a first-floor apartment.

What is the reasonable modification requirement?

Tenants have a right to modify the premises (interior or exterior of a building or unit, including common areas), at their own expense, if such modifications are necessary to afford such person the full enjoyment of the premises.

A tenant who makes reasonable modifications to the premises may be required to restore the premises to their original condition when it is reasonable to do so with the exception of exterior common-use areas. It will be considered reasonable to require restoration only if the modifications will interfere with the landlord's or next tenant's use and enjoyment of the premises. An interest-bearing escrow account may be negotiated with the tenant if necessary to ensure, with reasonable certainty, that funds will be available to pay for restoration.

A. Examples of Reasonable Modifications:

Example 1: A tenant who uses a wheelchair wishes to lower the cabinets in the kitchen to make them accessible. The landlord must permit the modifications and may require the cabinets to be restored to their original position because the lower cabinets might interfere with the next tenant's full

enjoyment. If the cost of restoration were relatively great, the landlord could require that an escrow account be established to ensure the availability of funds for restoration.

Example 2: A tenant who uses a wheelchair wishes to put grab bars in the bathroom and to widen the doorways in her apartment. It would not be reasonable to require restoration of either of these modifications because wide doorways and grab bars would not interfere with the next tenant's use.

When can a landlord reject or evict a tenant?

Direct Threat or Property Damage. A landlord may refuse to rent to, or may evict, a person with a disability if their tenancy constitutes a direct threat to the health and safety of others or results in substantial physical damage to the property of others. A landlord must have a sound and reasonable basis (i.e., current conduct or history of overt acts) for rejection or eviction based on direct threat. The conclusion that a tentative or prospective tenant constitutes a "direct threat" cannot be based on unsubstantiated inferences drawn from the fact that a person has a disability or has been treated for a disability.

A landlord can use property damage to justify a "direct threat" rejection of tenancy or eviction only if there is damage to the property of others.

Damage to the tenant's or prospective tenant's own property is irrelevant.

Moreover, the property damage must be substantial; normal wear and tear is not substantial damage.

Before a landlord rejects a prospective tenant or evicts an existing tenant based on a conclusion that he or she is a "direct threat," the landlord must attempt to provide the individual with a reasonable accommodation.

Example 1: A paraplegic with a drug addiction could be evicted notwithstanding his disabilities because of criminal conduct.

Example 2: A tenant with a neurological impairment who had frequent falls which caused minor damage to his apartment could not be evicted.

Example 3: A landlord cannot evict a tenant with mental illness who had caused minor damage and made some noise which disturbed her neighbors, but rather, had to delay eviction proceedings as a reasonable accommodation to give tenant time to seek counseling to help her control her behavior.

Inability to Meet Tenancy Requirements. A landlord is permitted to ask any prospective tenant whether he/she can meet tenancy requirements (e.g., ability to pay rent, willingness to comply with rules) provided that the landlord asks the same questions of all other applicants. If a person with a disability is unable to meet the landlord's tenancy requirements, the landlord may reject his or her application.

If an apartment in which a person with a disability seeks housing is limited to people with disabilities or particular types of disability, the landlord may ask the applicant:

- a. whether he or she qualifies for the housing based on disability or particular type of disability; and
- b. whether he or she qualifies for any available priority for persons with disabilities or to persons with a particular disability.

All applicants, whether or not they have disabilities, may be asked whether they are currently illegal drug abusers or addicts or have been convicted of the illegal manufacture or distribution of a controlled substance.

A tenant must meet the requirements that other tenants have to meet, such as cleaning up after a service animal, paying rent on time, or keeping noise to a minimum during certain hours. If a tenant with disabilities is unable to meet the requirement due to her disability, she should consider requesting a reasonable accommodation to the rule or policy.

Enforcement of the Fair Housing Act

Who Can Complain of Fair Housing Act Violations?

Persons with disabilities are not the only ones who can complain of Fair Housing Act violations. The Act permits any "aggrieved party" to complain of violations. This obviously includes individuals with disabilities who live in or would live in the housing. It also includes individuals who do not have disabilities but who live with those who do as well as entities that provide services to people with disabilities. In order to assert a claim, a person or entity must show only that (1) there has been an actual or threatened injury;

(2) there is a causal connection between the injury and the conduct complained of; and (3) the injury can be redressed by the requested relief.

Are there means of relief short of going to court?

Yes. An "aggrieved party" who has been the victim of housing discrimination may file an administrative complaint with the United States Department of Housing and Urban Development ("HUD"). An administrative complaint must be filed within one year of the discriminatory act. HUD can send you a complaint form (a copy also is attached at the end of this booklet). If you do not use HUD's complaint form, you should include in your letter: (1) your name, address, and phone number; (2) the name and address of the person or entity who your complaint is against; (3) the address of the dwelling that is the subject of your complaint; and (4) a description of the violation, including the date or dates when important actions occurred. For more information or for assistance in filing a HUD complaint, you can contact:

Regional Office of Fair Housing and Equal Opportunity
Department of Housing and Urban Development
Pennsylvania State Office
The Wanamaker Building
Philadelphia, PA 19107-3380
(215) 656-0647 (800) 669-9777

Within 100 days after you file a complaint with HUD, the agency should conduct an investigation and make a determination as to whether

reasonable cause exists to believe a discriminatory housing practice has occurred. In addition, HUD may seek to resolve the matter through "conciliation." If conciliation is unsuccessful, and HUD determines that reasonable cause exists to believe that a discriminatory housing practice has occurred, HUD will prosecute the action, either administratively or in court, and pay all litigation expenses that may be incurred.

In addition to formal methods of enforcing the Fair Housing Act, bringing to the attention of local officials the requirements of the Act and the many examples of successful enforcement in Pennsylvania will often succeed in resolving the zoning problems.

What if you want to file a lawsuit?

If you believe that you have a claim of housing discrimination, you may file a complaint in state or federal court under the Act within two years of the date of the discriminatory practice. You do not need to file a complaint with HUD before filing suit. Since the Fair Housing Act allows the court to appoint a lawyer to represent persons who are unable to afford counsel, it may be best for persons who are indigent to proceed directly to court.

For more information on your rights or assistance in enforcing your rights under the Fair Housing Act, you can contact Disability Rights Pennsylvania.

Contact Information

If you need more information or need help, please contact Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The

email address is: intake@disabilityrightspa.org.

The mission of Disability Rights Pennsylvania is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, Disability Rights Pennsylvania cannot provide individual services to every person with advocacy and legal issues. Disability Rights Pennsylvania prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

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PLEASE NOTE: For information in alternative formats or a language other than English, contact Disability Rights Pennsylvania at 800-692-7443, Ext. 400, TDD: 877-375-7139 or intake@disabilityrightspa.org.