



**Fair Housing Laws and Seniors with Disabilities**

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**Fair Housing Laws that May Apply Include:**

- **Fair Housing Act**
- Americans with Disabilities Act
- Rehabilitation Act
- State Fair Housing Laws

• Robert G. Schwemm & Michael Allen, *For the Rest of their Lives: Seniors and the Fair Housing Act*, 90 Iowa L. Rev. 121 (Oct. 2004)

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**Fair Housing Act**  
*42 U.S.C. § 3602(b)*

- Applies to “dwellings,” including:
  - Senior apartments
  - Ownership townhomes and condominiums
  - Assisted living
  - Nursing homes
  - Continuing care retirement communities

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## Protected Classes under the Fair Housing Act



See 42 U.S.C. § 3604

- Race
- Color
- National Origin
- Religion
- Sex (*including sexual harassment*)
- Familial Status (*having children under 18 or being pregnant*)
- Handicap
  
- Not age (but may be in state or local law)

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## Disability/handicap



42 U.S.C. § 3602(h)

- Individuals with:
  - A physical or mental impairment
  - That substantially limits one or more major life activities
  
- Also, those with a record of or regarded as having a disability

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## Examples of disabilities



- Physical
- Mental
- Drug addiction
  - But not current, illegal use of a controlled substance
- Alcoholism

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**Types of Disability Discrimination**



- 1) Failure to provide reasonable accommodations and modifications
- 2) Disability-based inquiries
- 3) Discriminatory evictions and admissions
- 4) Discriminatory terms and conditions

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**1) Reasonable Accommodation (RA)**

*42 U.S.C. § 3604(f)*



- Change, exception, or adjustment to a rule, policy, practice, or service
- Examples:
  - Service/companion animals in “no pet” building
  - Reserved parking space
  - Allow live-in aide

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**Reasonable Modification (RM)**

*42 U.S.C. § 3604(f)*



- Structural change to the premises
- Examples:
  - Widening doorways
  - Installing grab bars
  - Lowering kitchen cabinets

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## Proving a RA/RM



- 1) Tenant has a **disability**,
- 2) Accommodation or modification may be **necessary**,
- 3) Accommodation or modification will **help overcome effects of disability**,
- 4) Accommodation or modification is **reasonable**.

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## Unreasonable Requests



- 1) Impose an **undue financial and administrative burden**, and
- 2) Require a **fundamental alteration** in the nature of the housing provider's operations

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## Who Must Pay for a RA/RM



- RA
  - The housing provider
- RM
  - In standard rental housing, a tenant.
  - Sometimes the housing provider, if:
    - Receives federal funds, e.g. Medicaid, HUD subsidies (*Rehabilitation Act*)

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## Tenant (or associate of the tenant) must request RA/RM



- If staff hears what could be construed as a request, must respond
  - No “magic words” or particular form required
- However, RA/RM letters are highly advisable

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## Sample RA/RM Letters



- <http://www.drcme.org/publications.asp?pubid=27&secid=172>
- <http://www.drcme.org/publications.asp?pubid=27&secid=173>
- <http://www.drcme.org/publications.asp?pubid=27&secid=174>
- <http://www.drcme.org/publications.asp?pubid=27&secid=175>
- <http://www.in.gov/ipas/2647.htm>
- <http://www.oradvocacy.org/pubs/housingfacts3.htm>
- <http://sdc.workndog.org/content/node/261>

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## 2) Discriminatory Questioning



- With limited exceptions, landlord **cannot** ask disability-based questions of a prospective tenant
  - 24 C.F.R. § 100.202
  - Eric Carlson, *Using the FHA to Prevent Illegal Screening in Admissions to Nursing Homes and Assisted Living Facilities*, 21 Notre Dame J.L. Ethics & Pub. Pol'y 363 (2007)

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### 3) Discriminatory “Denial of Tenancy” (Evictions & Refusals to Admit)



- It is illegal to “**discriminate in the sale or rental, or to otherwise make unavailable or deny**, a dwelling to any buyer or renter” because of her disability

- 42 U.S.C. § 3604(f)(1)

- See upcoming *Clearinghouse Review* article, Fall 2008 (Authors: Aisha Bierma, James Wilkinson, Julie Nepveu)

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### Independent Living: Can’t deny tenancy merely because of disabilities



- “Independent living” requirements are illegal

- *Cason v. Rochester Hous. Auth.* (D.N.Y. 1990)

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### Nursing Homes: Usually discriminatory to deny tenancy due to disability



- Nursing Home Reform Law requires NHs to care for most needs

- *Involuntary Discharge or Transfer of J.S. by Ebenezer Hall* (Minn. App. 1994)

- *Wagner v. Fair Acres Geriatric Center* (3d Cir. 1995)

- Centers for Medicare and Medicaid Services, State Operations Manual, App. PP

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**Assisted Living:**  
**Denials of tenancy based on disability may be illegal**



- Advocates should consider:
  - 1) Will tenant actually demand more services **from** this facility than it provides?
    - Look at ads, promises, contract, state law
  - 2) Can a RA/RM be made?
  - 3) Is there a “conflict of laws”?

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**Direct Threat**  
**42 U.S.C. § 3604(f)(9)**



- Fair housing statutes do not require a tenancy that would:
  - 1) pose a direct threat to the health or safety of other individuals, or
  - 2) result in substantial damage to the property of others.
  - *(There is no threat-to-self provision in the FHA.)*
- Consider reasonable accommodations

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**4) Discriminatory Terms and Conditions**



It is illegal to have different terms, conditions, or privileges in rental property for individuals with disabilities.

42 U.S.C. § 3604(f)(2)

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## Examples of Discriminatory Terms and Conditions



- Higher security deposits for people with disabilities
- Wheelchair restrictions:
  - Liability insurance
  - “No motorized vehicles”
  - “No wheelchairs in the dining room”
- See HUD/DOJ Guide, *HUD v. Country Manor* (2001), *Weinstein v. Cherry Oaks* (Colo.App. 1996)

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## Background



- In Summer 2007, ABA Commission on Law and Aging surveyed state assisted living laws to determine whether they **informed** residents, providers and advocates about federal Fair Housing Act rights, including the disability mandates and restrictions on disability-based inquiries.
- Answer: Resounding “No!”
- 14 states have incorporated some disability discrimination language, fair housing language or referenced fair housing law. None address disability-based inquiries.

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## Silence is Not Golden



- Fair Housing Act rights are important rights for residents of assisted living facilities
- Assisted living facilities are state-regulated
- Residents, providers, and advocates look to state laws to learn about “resident rights” and provider responsibilities
- But FHA rights aren’t listed

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### Ignorance is Not Bliss



- Result is widespread ignorance of applicability and provisions of FHA in assisted living facilities, including the value of reasonable accommodations and modifications provisions for applicants and residents of assisted living facilities

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### “Affordable Assisted Living Facility Intended for Age 65 or Older”



- Tenant (we'll call her Betty) received “Notification of Problem or Lease Violation” in April 2007
- Betty was given seven days to correct lease violation by correcting her behavior and was warned that her lease would be terminated if behaviors were not corrected
- “You are disturbing other tenant’s peaceful enjoyment ... by:

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### Notification of Problem or Lease Violation that Betty Received



- “Being verbally abusive to ... employees to the point that they are not able to affectively [sic] deliver services to other tenants”
- “Complaining and spreading rumors and misinformation about the facility that is creating a bad environment for both tenants and employees”
- “Making fun of other tenant’s [sic] clothing, what they say and how they behave to the point that you have brought them to tears”

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**Resident Rights Listed on LTCO Website**



- The Ombudsman's office is a "strong advocate of resident rights," including assisted living residents.
- Basic resident rights include the following:
  - The right of citizenship.
  - The right to dignity.
  - The right to privacy.
  - The right to personal property.
  - The right to information.
  - The right to freedom.
  - The right to care.
  - The right of residence.
  - The right of expression.

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**What's Missing from This List?**



- The Right to Request Reasonable Accommodations under State and Federal Fair Housing Laws

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**How Could It Help in This Situation?**



- Eviction may be unlawful discrimination under the FHA if Betty has a disability
- Betty may be able to request a "reasonable accommodation in rules, policies, practices or services" in order to challenge eviction and remain in her assisted living apartment
- Refusal to provide reasonable accommodation is also unlawful discrimination

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## The Missing Link



- But how would Betty learn or know about these important protections?
- A review of the state's assisted living laws and materials prepared by LTCO and advocacy organizations regarding residents rights in assisted living don't include information regarding the right to request reasonable accommodation and modifications or what a reasonable accommodation or modification may be.

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## Your Rights Under the Law



- Refusing Treatment
- Quality Care
- Communication
- Spouses
- Legal Counsel
- Roommate
- Mail
- Confidentiality
- Religion
- Information
- Restraints
- Personal Possessions
- Dignity
- Privacy and Respect
- Freedom from Abuse and Neglect
- Staffing
- Managing your Money
- Grievances and Complaints
- **Reasonable Accommodation**
- **Reasonable Modification**

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## Additional Resources



- **HUD/DOJ, Reasonable Accommodations Under the Fair Housing Act (2004)**
  - [http://www.usdoj.gov/crt/housing/joint\\_statement\\_ra.pdf](http://www.usdoj.gov/crt/housing/joint_statement_ra.pdf)
- **HUD/DOJ, Reasonable Modifications Under the Fair Housing Act (2008)**
  - [http://www.usdoj.gov/crt/housing/fairhousing/reasonable\\_modifications\\_mar08.pdf](http://www.usdoj.gov/crt/housing/fairhousing/reasonable_modifications_mar08.pdf).
- **John Marshall Fair Hous. Support Ctr., Senior Housing Research Project Final Report (2007)**
  - [http://www.jmls.edu/fairhousingcenter/commentary/Final-Report-Draft-11-06-2007%20\\_2\\_.pdf](http://www.jmls.edu/fairhousingcenter/commentary/Final-Report-Draft-11-06-2007%20_2_.pdf)

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