



ABA/ NLADA 2004 EQUAL JUSTICE CONFERENCE

**“USING HOLISTIC STRATEGIES TO ADDRESS
HOUSING PROBLEMS”**

Teresa Lynn Friend
Managing Attorney, Homeless Advocacy Project
Volunteer Legal Services Program, Bar Association of San Francisco
1360 Mission Street, Suite 201
San Francisco, CA 94103
(415)575-3130
Tfriend@sfbar.org

**Excerpt from the Disability Rights Section
of the Homeless Advocacy Project’s**

**LEGAL ADVOCATE MANUAL
2004 – Sixteenth Edition**

**HOMELESS ADVOCACY PROJECT
1360 Mission Street, 2nd Floor San Francisco, CA 94103
Telephone: (415)575-3130 Toll-free: 1-800-405-4HAP
Fax: (415)575-3132**

Program materials produced and edited by the Staff of the Homeless Advocacy Project (HAP), with the assistance of many wonderful people.

2004 HAP STAFF

Teresa Lynn Friend, *Managing Attorney*
Ramona Holguín, *Supervising Attorney*
Katie Danielson, *Supervising Attorney*
Rose Molloy, *Supervising Attorney*
Tina Cañas-Brown, *MSW, Social Services Director*
Ted Janowsky, *Staff Attorney*
Lisa Jensen, *SSI Legal Advocate*
Solvejg Rose, *SSI Legal Advocate*
Tuan Nguyen, *Legal Advocate*
Cheryl Hess, *MSW, Social Worker*
Martha García, *Project Administrator*
Carlos Martinez, *Database Operator/Data Analyst*
Rena Johnson, *Jesuit Volunteer*
Sheila McCarthy, *Jesuit Volunteer*
Margaret Goins, *Receptionist*
JoséLuis Maldonado, *Program Assistant*
Tanya Neiman is the Director of the Volunteer Legal Services Program

HAP is also grateful to our excellent temporary staff and interns, including Cathy Mosbrucker, Mike Zaugg, Judi Iranyi, Amy Hicks, Anne Job, and the many, many legal and social services volunteers – attorneys, paralegals, law students, psychiatrists, psychologists, social workers, and others – without whom our project could not exist.

Major contributions to the Disability Rights Section of the Manual were made by

Susan Mizner, Acting Director, Mayor's Office on Disability, San Francisco (formerly a staff attorney at the Homeless Advocacy Project) and by

Ken Stein, Program Administrator, Mayor's Office on Disability

DISABILITY RIGHTS

Does your client have difficulty getting along with others?

Does your client have difficulty getting to appointments on time?

Does your client have difficulty getting documents?

Does your client have difficulty following directions?

Does your client have difficulty making decisions?

Does your client have difficulty concentrating?

If you answer “yes” to one or more of these questions, you are probably dealing with a client who has a mental disability – either cognitive or psychiatric.¹ You, and your client, are also likely to encounter obstacles in getting benefits, housing, and other government services.

This Chapter is intended to provide you with some additional tools with which to combat those obstacles. Here is a roadmap of this Chapter and those tools:

- **Background** - (below) If you have time, read it. It is a good basis by which to understand the rest of the chapter.
- **Definition of Disability** – (page 487). You can skim this. If you think your client has a disability, s/he probably does. Just remember that if the problem arises because of *current* illegal drug use, your client is NOT protected, and you should read the section.
- **Reasonable Accommodations** – (page 490). If you are not already familiar with this concept, it is crucial that you read it. The examples, in particular, tend to help

¹ It is also possible that your client’s difficulties arise because of drug or alcohol use. However, very few substance users do not also have a psychiatric or cognitive disability. Please see page 487 for further information.

people understand what is involved, what counts as “reasonable,” and what does NOT. If you are already clear on this concept, skip it.

- **Housing** - (page 493). If your client is being evicted because of “nuisance” or 487 “hoarding and cluttering,” or if your client is having trouble getting into housing because of a past rental history problem, this is the section for you. It is also useful if your client is having difficulties with housing, but it has not yet risen to the level of an eviction.
- **Benefits and government services** – (page **Error! Bookmark not defined.**). Almost all HAP clients have problems with their benefits and getting government services, and almost all of them would have an easier time of it if the government benefit or service would accommodate disabilities better. You’ll be able to be a much better advocate for your client if you *Read This Section*.
- **Employment** – (page **Error! Bookmark not defined.**). If your client is having difficulty with a job, this section may be useful. However, it is more likely that the section will be of use for clients trying to get work who may need to be able to ask for accommodations in order to be successful at the job.
- **Public Accommodations** – (page **Error! Bookmark not defined.**). This is largely useful to know what your own obligations are as a legal service provider. It also provides some good tips on working with people with mental disabilities.
- **Doing the DANCE: Step-by-Step Advice to Use these Protections** – (page 504). This is another important section. No matter what the subject matter, this should help you make your arguments. Finally, it gives you contacts to call for help. Outside agencies can often assist in providing the pressure needed. Useful contacts are listed at the end of that section.

BACKGROUND

Disability -- physical or mental -- is both a cause and consequence of homelessness. For many clients, a disability was a major factor in creating the circumstances that led to their situation. For other clients, living on the streets created or exacerbated a mental or physical health problem. Whichever may be the case, it is an unfortunate fact that many of HAP's clients (more than 60%) suffer from mental or physical disabilities.

The good news is that people with disabilities² do have rights. This section of the manual will review the three Federal disability rights statutes that affect our clients most: Section 504 of the Rehabilitation Act of 1973 (Rehab Act),³ the Fair Housing Amendments Act of 1988 (FHAA),⁴ and the Americans with Disabilities Act (ADA).⁵ Note that there are also often state or local legal protections that may apply. For example, the Fair Employment and Housing Act, Cal. Gov. Code section 12900 *et seq.*, the Unruh Civil Rights Act, Civil Code sections 51 *et. Seq.* (See State Chart 1 below), San Francisco Police Code, Article 33, section 3301 *et seq.* (prohibits discrimination in employment and housing on several bases, including disability), and San Francisco Police Code, Article 38, section 3801 *et seq.* (prohibits AIDS discrimination.)⁶

The general purpose of all three Federal disability rights statutes is to end the exclusion of people with disabilities from the mainstream of society. All three statutes share a single definition of disability -- that is, of who is protected by the statutes. Finally, all three Federal disability statutes share the concept of reasonable accommodations, the obligation to facilitate access for people with disabilities.

²This manual will use the preferred term "people with disabilities" rather than "disabled people" or simply, "the disabled." This "person first" language helps to emphasize that the person with a disability comes first, and that the disability is not the defining aspect of a person.

³ 29 U.S.C. section 794 (1989).

⁴ 42 U.S.C. section 3601 (1988).

⁵ 42 U.S.C. 12101 (1990).

⁶ To make a claim under the San Francisco ordinances, start by calling the Human Rights Commission, at 252-2500.

The rest of this section will:

- (a) provide the statutes' common definition of disability;
- (b) discuss the definition and use of reasonable accommodations;
- (c) discuss how disability rights laws may protect your client in the areas of
 - government benefits and services
 - housing,
 - employment
 - public accommodations.

Please note that this review gives only a general overview of the protections under the three main disability rights statutes. The goal is largely to help you recognize potential violations, not to make you an expert. If you have questions, please feel free to consult HAP's staff attorneys, or to call the Mayor's Office on Disability at 554-6789, TTY 554-6799, email MOD@sfgov.org, for questions relating to physical or programmatic access, or to file a complaint against a City or County program.

DEFINITION OF DISABILITY

Under all three Federal Disability Rights statutes -- the Rehabilitation Act, the Fair Housing Amendments Act, and the ADA -- there are three ways in which a person may be considered to have a disability.

A person with a disability is:

- 1) A person with a physical or mental impairment that substantially limits one or more major life activities.

Under this part, a person has a disability if s/he has a physical or mental impairment that significantly affects that person's ability to do such things as walk, see, hear, speak, breathe, learn, remember, concentrate, get along with others, or work.

In a response to recent Supreme Court Decisions, the Prudence Popinck Act recently expanded the California Fair Employment and Housing Act's definition of a person with a disability. Under this new state law, "substantially" is removed from the

definition. Thus, any person with: **“a physical or mental impairment that limits one or more major life activities”** qualifies as a person with a disability under state law.

This definition applies in housing and employment for anyone who is discriminated against because of a disability, or anyone who asks for a reasonable accommodation. It is not entirely clear if this expanded definition also applies to government services. Most would argue it does. Don't sweat it. Your client's disability probably qualifies under the more strenuous federal definition above, anyway.

2) A person with a record of a disability.

This would include someone who has a history of mental illness or cancer, for example, who is hindered by people's reluctance to work with them because of their fears that the person would have a relapse. Here, it's a question of the person with a past disability being perceived as a risk because of a past condition.

3) A person who is regarded as having a disability.

This could include any of three situations:

a) a person has an impairment, but it does not impose a limitation in any major life activity.

b) a person has an impairment that is substantially limiting only because of the attitudes of others (for example, someone with a physical disfigurement).

c) a person has no impairment, but others regard him or her as having an impairment. (For example, someone may assume that a gay man is HIV+, or that a homeless person is mentally ill.)

The definition of disability in these statutes is a very broad definition. The statutes do not provide a laundry list of qualifying disabilities. The effect of an impairment (or of the perception of an impairment) on an individual is what determines whether a disability exists in the eyes of the law.

Important Exception:

People who are **currently using drugs illegally** are not protected under any of these Acts if the discrimination occurs on the basis of that drug use. The order of the words in bold type is important. It is not just the use of illegal drugs that is not protected, it is the illegal use of drugs. Thus, the drug may be legal (a prescription drug) but the use may not be (using too much or another's prescription). Furthermore, the use must be current. A person who has a history of drug addiction, but who is in a rehabilitation program or who is no longer using drugs illegally, is protected under the statutes. [See discussion in Housing section, *infra*, for more detail.]

An alcoholic is considered a person with a disability under these statutes, but has fewer protections than other people with disabilities. For example, an employer is not required to significantly modify the work schedule of an alcoholic so that she can sleep off last night's binge. However, an employer could be asked to allow a flexible work schedule so that the alcoholic could go to AA meetings.

PRACTICE TIPS

What does this mean for you? Consider two scenarios:

1. A gentleman with a vision impairment who uses heroin does not return to a shelter in time for curfew because he is too disorientated and dazed from his last hit of heroin. It does not matter that he was a disability under the ADA. It is his current illegal drugs use that is the cause of missing curfew.
2. The same gentleman is written up for smoking (cigarettes) in the wrong area of the shelter. He could not see the "no smoking" sign because of his vision impairment, and no staff explained verbally where he was allowed to smoke. He would be protected under the ADA in this situation – whether or not he was also high on drugs. The problem arose because of his disability, and that needs to be accommodated. (e.g., the write up should be discarded and he should be told orally where smoking IS allowed).

DUAL DIAGNOSES

When a client has both a psychological disability and uses drugs illegally, it is often difficult to distinguish what may be the origin of a rule violation, or the source of the need for an accommodation.

When in doubt, assume the psychiatric disability is the cause, until shown otherwise.

SUMMARY

Because the definition of disability is so broad, Advocates must adopt a correspondingly broad mindset. In other words, your client may have a disability even though she is not in a wheelchair. Your client may have a disability-related problem, even though he comes to you to talk about an eviction. Mental disabilities are often the most difficult to recognize. Though some disabilities may come in the form of clear paranoia ("The police have been broadcasting messages into my head") others may come in more subtle ways -- clients being unable to remember appointments, or being angry and difficult to work with, or being too depressed to function effectively.

Many HAP clients have mental disabilities. We mention this fact not to scare away Advocates; most such clients are a pleasure to work with. But it is also useful to recognize that certain behaviors may be symptoms of a mental disability. This kind of problem may create a spiral: if you find a client difficult or exasperating to work with, that response -- in a less polite form -- is probably one s/he will have met with many times already, and that will have exacerbated his/her difficulties in keeping his/her life stable.

HAP Advocates are not expected to be trained therapists. Advocates are responsible, however, for finding ways to provide HAP services to clients with mental, as well as physical, disabilities. HAP, itself, is covered by the ADA. (See section on Public Accommodations beginning at page **Error! Bookmark not defined.**) The HAP staff has a Social Services Director who may be able to give you guidance about these issues and you should feel free to consult with him or her. We may also be able to assign a social service volunteer to work with you and your client.

REASONABLE ACCOMMODATIONS

Common to all three federal disability statutes is the concept of reasonable accommodations. This concept is unique to disability rights statutes. Unlike other civil rights laws, which simply require an entity to stop discriminating against the protected class, disability rights statutes also impose an affirmative obligation on the entity to

facilitate access. This obligation is most commonly called "providing reasonable accommodations," or "reasonable modifications of policies, practices and procedures," and includes requirements for entities to provide "effective communication."

In general, reasonable accommodations are changes in policies, practices, procedures, equipment or the environment that enable a qualified individual with a disability to be able to work, rent or own a home, and otherwise participate in society to the same extent as non-disabled people.

For example, an employee with a visual impairment might request, as a reasonable accommodation, a reader, or a large-print program for her computer. Or, a tenant with a mental disability who has difficulty remembering to pay the rent, may ask that the landlord (or manager) come to the door and request the rent on the first of each month. Similarly, for example, if a food stamp office is not wheelchair accessible, a person in a wheelchair has a right to receive services at an accessible location or in an accessible manner. It should be noted that reasonable accommodation is a PROCESS that can involve an ongoing interaction between the entity and the client, and may be changed or refined over time.

DEFENSES

The examples above are generally considered well within the norm of reasonable accommodations. What is considered a reasonable accommodation changes with the context, however. Whether the employer, landlord or government service office provides these accommodations depends on his, her or its ability to do so: These accommodations or modifications must be, as the term indicates, "reasonable."

While in the vast majority of cases, reasonable accommodations are both safe and feasible, it is possible for covered entities to be exempt from compliance in certain instances. The usual defenses recognized under the three statutes are discussed below.

Undue Hardship

If providing the accommodations would cause significant financial or administrative burdens, or if the accommodation would fundamentally alter the nature of the entity, then the covered entity could claim the defense of "undue hardship or undue burden." Nonetheless, the covered entity would, in most instances, still be expected to

work with the individual with a disability to accommodate his/her needs to the extent possible.

For example, an employer with very few resources might find providing a full-time reader for a blind employee financially unfeasible. Nonetheless, that employer would still be obligated to provide resources up to the point that it would be unfeasible. (The employee would then have the option of supplementing those resources with her own funds.) Similarly, the Food Stamps office might be in an extremely old building that would require enormous amounts of money to make it fully wheelchair accessible. In such a case, the Food Stamp office might argue that it would not be “readily achievable” to retrofit the entire building. Nonetheless, they would still be obligated to find a way to provide services to people in wheelchairs. For example, they could serve people in wheelchairs at another, accessible location, or take the applications by mail and provide services over the phone.

Direct Threat

There is also the concept of “**direct threat**”. If a tenant or employee, even with reasonable accommodations, would pose a direct threat to the health or safety of herself or others then a landlord or employer may be justified in not accepting that tenant or employee. For example, if an applicant for a rental unit has a history of mental illness, which has manifested itself in repeatedly setting fire to the applicant's surroundings, a landlord would probably be justified in refusing to rent to the applicant because he created a direct threat to himself and other tenants.

This decision is not to be made lightly, however. A landlord or employer cannot discriminate against an individual with a disability because of mere speculation or fear that the individual could be a threat to safety. (So, simply the concern that a person with a mental disability might be a threat would be an absurd, and illegal, reason to deny that person housing.) A landlord is required to make a showing, through direct and objective evidence of current conduct or a history of overt acts, that the tenancy poses a direct threat. An employer must weigh the duration of the risk, the nature and severity of the potential harm, the likelihood of the harm, and the imminence of the harm in each and every case. (Thus, if the potential tenant had only set one fire ten years ago, before he

was on medication, and has had no further incidents, the tenant would not pose a direct threat.)

Practice Tips

In many cases, a reasonable accommodation may not be immediately obvious to either the person with a disability or the covered entity. Frequently, the individual with a disability does not know enough about the workings of the covered entity and the entity does not understand enough about the disability. However, a mutual dialogue will often uncover solutions.

For example, the owners of an old building with a beautiful stone drinking fountain were planning to rip out the fountain and build a new one that would be wheelchair accessible. A person in a wheelchair, however, pointed out that simply installing a paper cup dispenser would provide accessibility to people in wheelchairs. This solution was not only a fraction of the cost of installing a new fountain, but also allowed the building to retain a beautiful historical architectural feature.

HOUSING

In the tight rental market of San Francisco, any excuse to evict a tenant – or to deny them housing in the first place – may be seized upon by a landlord. People with disabilities seem to suffer the consequences most frequently. Ironically, even those subsidized housing units reserved explicitly for people with disabilities do not always know, or follow, the law protecting the rights of tenants with disabilities. In this section of the Disability Rights Chapter, we will review the law, explore the most common cases we are seeing at HAP (denial for a bad reference and nuisance evictions), and provide some practical examples for negotiating with landlords and filing complaints.⁷

The Law

The Fair Housing Amendments Act of 1988 (FHAA) is the federal law most commonly employed to protect people with disabilities from discrimination in housing. However, for the many clients with disabilities who live in or apply for housing that is

⁷ Portions of this section of the Chapter draw heavily from a handbook written by Ann Anderson of the Massachusetts Housing Finance Agency, Debbie Piltch of Piltch Associates, and John Doherty, of Santa Clara County Bar Association Law Foundation, and funded by HUD.

publicly funded, Section 504 of the Rehabilitation Act of 1973 is the applicable law, and it covers those that receive federal funding. Title II of the ADA covers programs (including housing programs) of state and local governments. The chart on the following pages outlines these Federal laws and their parallel protections.

Requirements:

The FHAA has three main requirements for landlords and managers, essentially replicating the Rehabilitation Act and the ADA. **First** is the requirement of **non-discrimination**. Here, discrimination includes not only denying or limiting housing to people with disabilities, but also any practice that would segregate individuals with disabilities or otherwise limit their right to live where they please. Discrimination that is hidden under the guise of economic or safety concerns may still be discrimination. (So, "I can't afford to rent to you because my insurance will go up," or "I can't rent to you because you're deaf and you won't know when the fire alarm goes off," are both discriminatory statements.)

Second, the FHAA requires landlords and managers **to provide reasonable accommodations** in their rules, policies, practices and services when such accommodations are necessary to give a person with a disability an equal opportunity to use and enjoy a dwelling. Thus, a landlord must make an exception to the "no pets" policy for service animals. Similarly, if a tenant is having difficulty complying with the requirements of the lease because of a disability, a reasonable accommodation would be for the landlord to allow for extra time and help in order for the tenant to come into compliance with the lease. One common example of this is tenants who are "pack rats". Such tenants hoard papers, books, garbage or other things to the extent that their apartment is stacked to the ceiling, ingress and egress is impeded, and their units become a health and safety or fire hazard. This is almost always due to a mental disorder. The landlord should therefore "accommodate" the tenant by providing extra time and support for the tenant to remedy the situation. (See more about this in the Examples section.)

Finally, the FHAA has **architectural accessibility requirements for all NEW buildings**, built to be occupied after March 13, 1991. All new multi-family buildings are required to comply with ANSI 117.1 or equivalent, which establishes standards for physical accessibility. A landlord in an older building must also allow a tenant to make

modifications in the apartment so that the tenant is able to have an equal opportunity to use and enjoy the dwelling. However, those modifications must be reversible, and the tenant has to agree to put money into an escrow account to help with the cost of returning the apartment to its original state.

Modifications made at the tenant's expense which do not impair the tenancy, do not need to be removed when the tenant moves out where these modifications provide a general benefit to the public. Under Section 504 (for Federal-assisted housing) and under Title II of the ADA (for state or municipal housing), housing providers are required to make changes in facilities, including accessibility features, at the property-owner's expense, when requested by persons with disabilities.

Common Scenarios:

Clients are most likely to need advocacy when they are applying for housing or when they are in danger of losing their housing. We will review each of these scenarios next.

Application Problems -

At the **application stage**, clients are frequently denied housing – even housing specifically designated for people with disabilities – because a past housing reference is negative. When this is the case, it is important to talk with the client about what happened and explore the possibility that the problems were due, at least in part, to a disability.

For example,

- Was the bad reference because the client had *arguments with other tenants*?
- Was the bad reference because the client was *unable to pay the rent*?
- Was the bad reference because the client's room or *apartment was a health violation*?

Any or all of these problems could be due to a disability. In advocating for the client, the key issue is being able to make a simple 2-step argument.

1. The client's behavior was disability related. (e.g. The client's bi-polar disorder led them to conflicts with the other tenants; the client's substance

abuse problem left her unable to pay the rent; the client's obsessive-compulsive hoarding led to the health violation).

AND

2. One of the following things:

- The client was not receiving the right treatment for his or her disability and the present treatment will enable him or her to be a good tenant. (e.g. The client is now taking medication that better controls the bi-polar disorder; the client has been through a treatment program and is now clean and sober (which is, of course, the only way that the addiction disability gets protection under these laws); the hoarder now has an In Home Supportive Services (IHSS) worker who comes in every week to throw things out and to keep the apartment in better order.
- The bad tenancy arose because another housing manager (or landlord) did not provide the reasonable accommodation necessary for the client to be able to comply with the lease. (e.g. The client has memory problems and had asked the landlord to provide written reminders when the rent was due, but the landlord refused.)
- The client did not know that s/he had a disability, but has since gotten treatment and is capable of being a good tenant. (e.g. the client had hallucinations that made her hit the walls, scream at neighbors, and/or damage the apartment. Now that she is receiving treatment, the problem has stopped and is not likely to happen again.)

In each case, the Advocate should write a letter explaining the law and the situation, and asking that the negative reference be disregarded as a reasonable accommodation. [A sample letter is at the end of this section.]

If the client does not have other, recent tenant records that could provide positive references, it might also be useful to offer alternative references that could testify to the applicant's present ability to be a good tenant. Landlords are generally concerned with only five things – can the tenant 1) pay the rent on time, 2) take care of the apartment, 3) respect the rights of others, 4) avoid criminal activity, and 5) follow reasonable rules.

Depending on the landlord's concern, the following are some suggestions for alternative references for a client.

- Pay the rent on time - The client can show her reliability by evidence of paying other bills responsibly and on time, such as phone or utility bills, or child support payments, or any other regular payment. Sometimes the completion of a housing training program will also be acceptable to the manager.
- Take care of the apartment – The client can show this with a letter from someone who saw the client caring for his room while living with someone else, or even a space in a shelter. For those clients who have difficulty with caring for an apartment, if a chore service will do that, such as IHSS, explain that.
- Respect the rights of others – References from people who live, work, or go to school with the client.
- Avoid criminal activity – clean police record. [But if the criminal activity was due to addiction, see section on drug use below to show it is no longer an issue.]
- Follow other reasonable rules – References from job, school, shelter or other program

Eviction Proceedings

Disability rights are most commonly at issue in “nuisance” evictions – those cases in which a client is being evicted not because s/he is not paying the rent, but because his or her behavior is annoying other tenants, irritating the manager, or posing health or safety hazards. The key issue here, as with applications, is talking with the client about what has happened, discussing whether and how the disability is involved, and coming up with a plan so that future such incidents (if they are actually serious enough incidents to violate the lease), can be avoided in the future.

If the client is being evicted because she is behaving strangely, or because an ambulance has been called a number of times, or because other residents are uncomfortable around her, it is more likely that the landlord is violating Fair Housing

laws than that the client is, in fact, violating the lease. In such cases, the Advocate should send a letter to the landlord or manager explaining the law, pointing out that reasonable accommodations need to be made for people with mental disabilities (in this case, tolerating the behavior or the ambulance visits), and, if possible, offering some education for the landlord and other tenants to make them feel more comfortable

If the client is being evicted because his or her room or apartment has become so dirty or cluttered as to pose a health and safety hazard, the client may be suffering from a disorder that makes it very difficult for them to throw anything away, or may lack the necessary support to keep the apartment clean. If the client wants to stay in that housing, he will need to agree to address the problem. This can involve any of a number of steps:

There are “Hoarders and Clutterers” self-help groups offered through the Mental Health Association. If the client is willing to go to one of these groups that could be accepted as a reasonable accommodation. (Call MHA at 241-2929 to find out when the groups are meeting.)

The client will need to agree to a plan not only to get the apartment cleaned up within a reasonable amount of time, but also to KEEP it clean. Any client who is receiving SSI or SSDI benefits qualifies for In Home Support Services (IHSS). They can provide a one-time major cleaning to save the client’s housing, along with on-going maintenance. However, the client may need help persuading IHSS to provide the level of support necessary to keep the apartment clean. (See IHSS section). You may also need to work with Social Service support to convince the client that they need IHSS and to help them make arrangements for IHSS services.

A client may prefer to get help from friends or relatives in order to have the apartment cleaned and maintain it. This is fine, as long as there is a clear plan, and a back-up plan if the mess begins to get out of control again.

There are medications that can help with the disorder, and if the client is willing to work with a doctor to get treatment, that may be useful as well.

Although people with psychiatric disabilities are no more prone to violence than other segments of the population, if the client is being evicted for violent behavior (especially towards people, as opposed to property), it is important to explain to the client that this creates serious problems for everyone. The landlord will be very concerned that

if the client behaves violently again towards any of the tenants, the landlord would be liable to that tenant for not evicting the client after the first incident. (The landlord can understandably use the “Direct Threat” defense to any request for reasonable accommodations.) Nonetheless, it is often still possible to get the client another chance IF it is clear that significant steps have been taken to ensure that the client will not become violent again.⁸ What follows are some common scenarios and some possible proposals.

Had the client stopped taking important medication? Then, a monitoring plan to make sure the client takes the medication regularly would be an important component of any agreement.

Had the client been taking the wrong medication? Then, a letter from a doctor explaining how such mis-medication could lead to violent outbursts, and that the proper medication is being used now would be an important step.

Has the client not been getting the social service or therapeutic support he needs to stay in control? Then a plan for additional therapy, or extra support would be useful.

In all cases, working with a professional therapist is advisable. What if the client does not want to agree to a reasonable accommodation plan? The Advocate needs to explain to the client that, in eviction cases that involve a disability issue, there are only three choices:

1. Agree to the plan.
2. Try to negotiate a different accommodation.
3. Proceed with the eviction (or leave the housing.)

Remember, only a judge can evict a tenant, not a landlord or housing manager. (See Landlord / Tenant section, page **Error! Bookmark not defined.**)

Practice Tips

In every case in which you are asserting your client’s rights under the Fair Housing Amendments Act (or the ADA or Rehab Act), there are three basic steps you need to cover:

⁸ In Roe v. Housing Authority of the City of Boulder, 909 F. Supp. 814 (D. Colo. 1995), the tenant had struck and injured another resident, but the landlord was nonetheless required to try to accommodate the tenant’s disability before evicting.

1. Inform the landlord (or manager) that your client has a disability.

Proof: The landlord or housing manager has the right to ask for proof of a disability. However, this does not mean that s/he has the right to detailed medical information about a condition or diagnosis. The type of proof you need may vary depending on the situation. But, a letter from a doctor, or other medical professional verifying that the client has a disability and that the disability creates specific limitations, or caused certain problems, is usually sufficient. (A sample verification letter is in the Appendix at the end of this section.)

Remember: a disability may not be severe enough to qualify a client for “disabled housing” but it may still qualify under the federal guidelines for non-discrimination.

2. Explain how the problem at hand arose as a result of the disability.

If there is no connection between the disability and the reason the client is being denied housing, then there is no disability rights argument.

3. Request a reasonable accommodation.

The standard reasonable accommodation request for *applicants* is to ignore a negative housing reference.

The standard reasonable accommodation request for clients *facing an eviction* is that the eviction be rescinded because the problem will not occur any more or that the eviction should be suspended in order to give the client time to cure the problem and get additional help.

More Examples of Problems and Reasonable Accommodations in Housing:

A landlord waives the prior rent history requirement for a tenant with no recent rent history because she has been in a mental hospital for two years. Instead, the landlord gets references from the applicant's social worker or employer.

A landlord provides a designated parking space near the building for a tenant with a mobility impairment.

A tenant has a mental disability for which s/he takes psychotropic medications. These medications tend to make the tenant drowsy and out of it in the morning. A reasonable accommodation the landlord could make would be not to schedule any repairs or maintenance in the apartment in the mornings.

A tenant, whose psychiatric disability caused her to damage her apartment, is given time to get psychiatric health assistance and an additional reasonable amount of time for it to work, before the landlord proceeds with an eviction.

A landlord or manager makes an exception to the "no pets" rule for a service animal, such as a Seeing Eye dog or seizure alert dog. (A landlord or manager should also be persuaded to make an exception for companion animals, or emotional support animals, such as a cat for someone with Post Traumatic Stress Disorder who needs his pet with him to keep him calm and collected.)

A tenant with a mental disability believes ghosts exist in her walls. She hits the walls and yells to keep the ghosts away. Because the damage to the walls is negligible, the tenant and the landlord work out the following reasonable accommodations: He will soundproof the apartment, and she will only use a nerf bat to hit the walls. (Note: This type of relief – a fairly costly change – is mainly available from landlords who receive government money. The law would seldom require this of private landlords.)

A tenant is a “pack rat” and has cluttered his apartment to the point that it presents a fire hazard. The landlord serves the tenant with a three-day notice to cure the problem or leave the premises. The tenant tells the landlord that he is getting help, but it will not be possible to do so in three days. The two work out an agreement so that the landlord holds off the eviction for three to five weeks and the tenant sets up In Home Support Services, with one major service to clear out most of the clutter, and regular visits afterward to minimize new acquisitions. (The tenant should also be encouraged, when possible, and if applicable, to address the mental disability. It is often treatable with medication and cognitive therapy.)

[A Sample Letter to a landlord requesting reasonable accommodations is at the end of this chapter.]

Drug Use

Housing managers and landlords are allowed to ask prospective tenants about *current* drug use – but only if they ask all applicants that question. Housing managers are NOT allowed to ask about any *history* of alcohol or drug use. However, if the client’s history of alcohol abuse or illegal drug use led to housing problems in the past, then a

landlord might try to reject the client on this basis. It would be to the client's benefit to show that s/he does not continue to use drugs or alcohol. The client could do this with:

- A letter from a certified drug treatment counselor or administrator indicating that the client has been or is in treatment, that s/he is not presently using illegal drugs, is meeting the requirements of the program, and is unlikely to start using drugs again.
- A similar letter from Narcotics Anonymous, alcoholics anonymous or other self-help program, or from a clergy person or other spiritual leader with whom the client has been working closely.
- A letter from a probation or parole officer stating that the client has met or is meeting the terms of probation or parole with respect to drug or alcohol use.
- A letter from an employer, or social worker, or other reliable reference who can attest to the fact that the client is now able to comply with lease requirements or document that s/he is behaving responsibly in other areas of his/her life since s/he stopped using drugs.
- The client could have a voluntary drug test or a voluntary interview with a drug or alcohol counselor to see that s/he has stopped using. If you choose a drug test, it should be done at a facility that uses the National Institute of Drug Abuse Guidelines. (Do not count on a housing manager or landlord agreeing to this as “proof” of being clean and sober. Check with them first before submitting to a drug test.)

The client can use one or several of these steps to show s/he is no longer using drugs or alcohol and that problems due to that use in the past will not occur again in the future. The landlord or housing manager may not feel that any one of these steps is sufficient, depending on the amount of difficulty the client has had with drugs or alcohol in the past. In public housing, the client may appeal a denial of housing. (See Public and Subsidized Housing section, page **Error! Bookmark not defined.**)

Enforcement

A complainant need not exhaust administrative remedies before filing a civil action. Should you wish to file an affirmative suit, attorneys' fees are available under all three federal laws. The chart on the following page details federal enforcement mechanisms and possible remedies.

Filing administrative complaints is often a good way to register problems and apply extra pressure. Copies of the complaint forms for HUD and for the state Fair Employment and Housing office are also at the end of this section.

.....

Doing the DANCE: Step by Step Advice to Use these Protections:

There is an easy way to remember the analysis one needs to go through in order to be sure that you are on firm ground making a disability rights argument. This acronym was created by a wonderful group of housing advocates at the Law Foundation in San Jose.

Disability – is your client a person with a disability?

Accommodation – did you request an accommodation?

Necessary – is the accommodation necessary because of the disability? (You can also think of this as the “nexus” item. The accommodation must be connected to the disability.)

Cost – Would the accommodation be too expensive or too hard to do (based on the overall resources of the entity)?

Effect a fundamental change – Would the accommodation change the program’s purpose or goal?

Once you know that you have a good disability rights argument, you (or the client) can present your case to the housing provider, employer, or government service. Remember to do the following:

Explain the client has a disability. They may ask for documentation of this. (If the disability is obvious, ask why they need the documentation.) A letter from a doctor or therapist is best. If that is not available, then letters from family or friends may also suffice. (See sample forms in the appendix beginning on page 506.)

Ask for an Accommodation. What would work to make it possible to comply with a regulation? To do workfare? To stay in the apartment? To keep the job? What would help? (Feel free to draw on the examples in this section but also be creative and work with the client on this.)

Consider Obstacles. The accommodation needs to be related to the disability. It also needs to be “reasonable”. It will not make sense to ask for an agency to start a new service. It will also be unlikely that you will succeed if an accommodation costs 10% of an agency’s budget.

Negotiate. The other side has a duty to engage in good faith discussions of what they can offer and what alternatives are available. If the other side says they cannot provide an accommodation, they need to explain, and document, why that accommodation cannot be provided. They must also offer as much as they can provide at the time.

No luck? Here are possible places to refer the client for help:

Housing – Private - Mental Health Association, phone (415) 882-6237.

Housing - Public - the Mayor’s Office on Disability, (415) 554-6789; TTY: 554-6799; email: MOD@sfgov.org.

Eviction Defense – Eviction Defense Collaborative, phone (415) 986-9586.

Public Accommodations (or any private law suit) – Disability Rights and Education Defense Fund, phone: (510) 644-2555 or Disability Rights Advocates – class actions only - (510) 451-8644

Work Issues – Employment Law Center, phone (415) 864-8208

Public Benefits or Services – Mayor’s Office on Disability, phone: (415) 554-6789

San Francisco Bar Association Lawyer Referral and Information Service (415) 989-1616.

Bay Area Legal Aid (low income clients) (415) 982-1300.

Medical Professional's Verification for Reasonable Accommodation Request

[Landlord or Manager
San Francisco, CA]
August 18, 2004

Dear [Manager or Landlord]:

This is to verify that my patient, [applicant or tenant], does have a disability that “substantially limits one or more major life activities.” As a direct result of this disability, [applicant or tenant] [a] requires the following reasonable accommodations to the rules and/or policies of your building.

OR

[b] had the tenancy problem of

That problem is not likely to happen again because [something] has changed. [Describe.]
OR, that problem is not likely to recur if the following reasonable accommodation is provided. [short explanation of accommodation and the doctor's reasoning.]

If you have any questions, please feel free to call me at: [phone]

Sincerely,
Signature
Title of Physician or Professional

Sample Letter “A” for Accommodation in Application Process

Landlord or Property Manager
Address
San Francisco, CA

[date]

Dear [Landlord],

I am writing to ask that you disregard an unfavorable landlord reference for an applicant to your housing as a reasonable accommodation to his mental health disability.

CLIENT listed the Maria Manor as one of his previous landlords. During his stay there, he was being treated for his mental health with inappropriate medications which made his mood disorder worse and led to a couple of incidents in which he argued in the lobby with other tenants. The most severe of these incidents merely involved pointing at a person with his cane and talking in a loud manner. At no time did he commit any violent action or damage any property. Nonetheless, the Maria Manor has since said that it cannot give a positive reference for him. Since that time, CLIENT has a new doctor and new medications. His disorder is well under control. Consequently, we are writing to request that, as a reasonable accommodation under the Fair Housing Amendments Act, you disregard the landlord reference from the Maria Manor.

The Federal Fair Housing Amendments Act (FHAA) contains sweeping prohibitions against discrimination on the basis of disability or handicap. The FHAA makes it unlawful to discriminate against individuals with physical or mental disabilities. Discrimination against persons with disabilities is specifically defined to include a “refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. section 3604 (f)(3)(B). Accordingly, persons with disabilities are not simply entitled to equal treatment; rather, Congress has singled them out for special treatment in the form of reasonable accommodations.

A housing provider has a duty to make reasonable efforts to accommodate a tenant with a disability in considering a tenant as an applicant. We believe disregarding CLIENT’S unfavorable reference from Maria Manor is reasonable, as it was based on a nonviolent offense triggered by wrong medications for his disability which are no longer prescribed for him.

Please provide an answer to this request, in writing, within the next two weeks. In the meantime, you should feel free to contact me at [PHONE] if you have any questions.

Thank you in advance for your understanding and willingness to resolve this matter.

Sincerely,

Sample Letter “B” for Accommodation in Application Process

Landlord or Property Manager
Address
San Francisco, CA

[date]

Dear [Landlord],

I am writing on behalf of an applicant to your housing, CLIENT. CLIENT has been diagnosed with bipolar affective disorder, which was previously referred to as manic-depressive syndrome. Bipolar affective disorder, if left untreated, is characterized by hyperactive manic episodes alternating with severe depression. Fortunately, many people with bipolar affective disorder, including CLIENT, can be effectively treated with regular medication.

CLIENT listed the Maria Manor as one of his previous landlords. During his stay there, he was being treated for his bipolar disorder with inappropriate medications. As a result, he was more volatile than at present and had a couple of incidents in which he argued in the lobby with other tenants. The most severe of these incidents merely involved pointing at a person with his cane and talking in a loud manner. At no time did he commit any violent action or damage any property. Nonetheless, the Maria Manor has since said that it cannot give a positive reference for him. Since that time, CLIENT has a new doctor and new medications. His disorder is well under control. Consequently, we are writing to request that, as a reasonable accommodation under the Fair Housing Amendments Act, you disregard the landlord reference from the Maria Manor.

The Federal Fair Housing Amendments Act (FHAA) contains sweeping prohibitions against discrimination on the basis of disability or handicap. The FHAA makes it unlawful to discriminate against individuals with physical or mental disabilities. Discrimination against persons with disabilities is specifically defined to include a “refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. section 3604 (f)(3)(B).

A housing provider has a duty to make reasonable efforts to accommodate a tenant with a disability in considering a tenant as an applicant.

Please provide an answer to this request, in writing, within the next two weeks. In the meantime, you should feel free to contact me at [PHONE] if you have any questions.

Thank you in advance for your understanding and willingness to resolve this matter.

Sincerely,

Sample Letter in Response to Eviction Notice

Landlord
Address
San Francisco, CA

[DATE].

Dear [NAME]:

I am writing on behalf of my client, [NAME], to request that you reasonably accommodate his/her disability by reinstating his/her tenancy. [This letter confirms my oral request for reasonable accommodation that I made on your telephone voice mail/in our telephone conversation on [DATE].]

As you have stated to me, CLIENT is being evicted because [pick one or more]:

Your staff believe that he/she has too many belongings on the premises.

He/she behaved violently and inappropriately in the lobby;

[FILL IN.]

[Inform Landlord of Client's Disability and availability of Proof]

CLIENT has been diagnosed with a mental health disability that qualifies him/her for services from [NAME OF ENTITY]. In this case, CLIENT receives both direct mental health services and housing assistance from [FILL IN NAME OF AGENCY.]

[Background Law]

The Federal Fair Housing Amendments Act (FHAA) contains sweeping prohibitions against discrimination on the basis of disability or handicap. The FHAA makes it unlawful to discriminate against individuals with physical or mental disabilities. Discrimination against persons with disabilities is specifically defined to include "a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling." 42 U.S.C. §3604(f)(3)(B).

[Landlord's Obligations]

[*Use with Option A*] All housing providers have a duty to make reasonable efforts to accommodate a tenant's disability before the provider evicts the tenant, according to the FHAA. In Schuett Investment Co. v. Anderson, a tenant with a back injury was being evicted for storing excess boxes in her apartment, thereby creating a fire hazard. 386 N.W.2d 249, 250 (Minn. App. 1986). The court held that the landlord should have given the tenant more time and assistance as a reasonable accommodation of her disability

under the Rehabilitation Act of 1973. *Id.* at 253. Although the present case does not involve a physical disability, mental health disabilities can create as many barriers to prompt lease compliance as physical barriers.

[*Use with Option B*] A housing provider has a duty to make reasonable efforts to accommodate a tenant's mental disability before the provider evicts the tenant. Roe v. Housing Authority of the City of Boulder, 909 F.Supp. 814 (D. Colo. 1995); Roe v. Sugar River Mills Assoc., 820 F.Supp. 6363 (D.N.H. 1993). In Roe v. Sugar River, the tenant had used obscene and offensive language and had threatened physical violence. Yet, the court held that the landlord must first make reasonable accommodations to minimize or eliminate the impact of the tenant's disability before evicting the tenant. In Roe v. Housing Authority, the tenant had actually struck and injured another resident, but again the landlord was required first to try to accommodate the tenant's disability. In this case, CLIENT has lived peacefully at [NAME] for over [FILL IN LENGTH OF TIME]. Unfortunately, CLIENT's mental condition severely decompensated beginning in [WHEN], which ultimately resulted in [FILL IN e.g. her hospitalization last month]. The incidents alleged in the 60-day termination notice occurred as a direct result of the [FILL IN e.g. psychotic symptoms] CLIENT experienced during the period of his/her mental decompensation. Now that CLIENT's condition is stabilizing, he/she is anxious for his/her living situation to normalize.

[The Proposal to Prevent Recurrence]

[*Example of response plan for #1*] To prevent similar incidents from occurring in the future, CLIENT is willing to work together with [NAME] property management to create a response system in the event that CLIENT experiences [FILL IN e.g. psychotic] symptoms that affect other tenants. The system would allow property management to immediately contact mental health professionals at [FILL IN NAME OF ORGANIZATION] after becoming aware of CLIENT's actions resulting from his/her disability. The mental health professionals will then take action to address the situation. Moreover, CLIENT's mental health case manager and psychiatrist agree to increase their number of appointments with CLIENT to assist him/her in achieving goals that will allow his/her condition to remain stable.

[*Example of response plan for #2*] I would like to propose a plan that would both alleviate your concern about CLIENT's behavior toward the neighbors and allow CLIENT a second chance to stay in stable housing.

CLIENT was receiving psychiatric services through the [NAME OF AGENCY]. However, because of his/her previous stability, [NAME OF AGENCY] staff only saw CLIENT once every month or two months. CLIENT stopped taking his/her medication regularly in [WHEN]. As a result, he/she began [FILL IN e.g. a manic episode resulting in strange and hyperactive behavior]. More recently, [NAME OF AGENCY] staff has intervened and CLIENT has resumed taking his/her medication and has been stabilized.

We propose that you rescind the eviction, conditioned on the following treatment plan as a reasonable accommodation for CLIENT's disability:

CLIENT agrees to take his/her psychiatric medication as prescribed.

The staff at [NAME OF AGENCY] agrees to check regularly to ensure that CLIENT complies with his/her medication plan.

CLIENT agrees to see his/her therapist or case manager once or twice per week for at least six months.

CLIENT will allow the management of [NAME] to contact his/her case manager at [NAME OF AGENCY] in the event that CLIENT starts to act differently or strangely. The staff at [NAME OF AGENCY] will follow up within 48 hours in response to a call from [NAME] management. Staff will evaluate CLIENT's condition and take any necessary steps to ensure that CLIENT receives appropriate treatment.

CLIENT agrees to participate in any programs prescribed by his/her service team at the [NAME OF AGENCY].

Based on our experiences with other tenants, this intensive treatment and medication monitoring plan effectively addresses inappropriate behavior caused by a tenant's disability.

I understand from our telephone conversation that you are also concerned that the neighbors will be fearful of CLIENT even after a treatment plan is in place. Although neighbors' stereotypes and fears cannot be the basis for refusing a reasonable accommodation, I appreciate your concern. I am willing to discuss with CLIENT whether he/she would feel comfortable if a voluntary informational session regarding mental health disabilities was offered to the tenants of [NAME]. I am envisioning information regarding the cyclical nature of mental illness, the availability of treatment for many conditions, and the very small percentage of people with mental illnesses who are ever violent. If you believe such a session would be helpful, I would be happy to ask CLIENT if he/she would consent.

Based on the above, I request that you reinstate CLIENT's tenancy. If you have any suggestions about other changes that would accommodate CLIENT's disability, I would be happy to discuss them with you. Please contact me directly at [TELEPHONE NUMBER] regarding this request for reasonable accommodation. Thank you for your understanding and willingness to resolve this matter.

Sincerely,

Amazing Advocate