

Fair Housing Laws and Seniors with Disabilities

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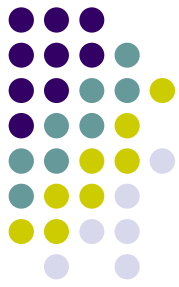
Fair Housing Laws that May Apply Include:



- Fair Housing Act
 - Americans with Disabilities Act
 - Rehabilitation Act
 - State Fair Housing Laws
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- Robert G. Schwemm & Michael Allen, *For the Rest of their Lives: Seniors and the Fair Housing Act*, 90 Iowa L. Rev. 121 (Oct. 2004)

Fair Housing Act

42 U.S.C. § 3602(b)



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

Protected Classes under the Fair Housing Act

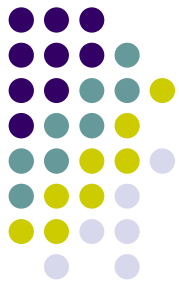


See 42 U.S.C. § 3604

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Handicap

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

Examples of disabilities



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

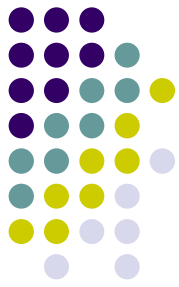
Types of Disability Discrimination



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

1) Reasonable Accommodation (RA)

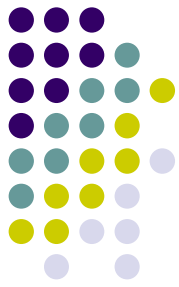
42 U.S.C. § 3604(f)



- 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

Reasonable Modification (RM)

42 U.S.C. § 3604(f)



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



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**.

When is a Request Unreasonable?



- 1) Imposes an undue financial and administrative burden
- 2) Requires a fundamental alteration in the nature of the housing provider's operations

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*)

How must a tenant request a RA/RM?



- If staff hears what could be construed as a request, need to respond.

2) Discriminatory Questioning

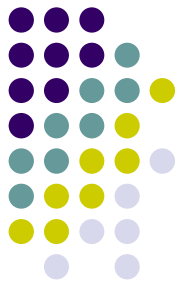


- With limited exceptions, landlord **cannot** ask disability-based questions of a prospective tenant
 - *24 C.F.R. § 100.202*
 - Eric Carlson, “Fair Housing is Good Medicine” (2006), <http://law.bepress.com/expresso/eps/1086/>

Exceptions – Can make inquiries to determine if the applicant:



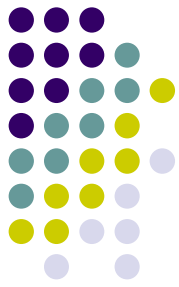
- 1) Can meet the requirements of tenancy;
- 2) Is a current illegal abuser or addict of a controlled substance;
- 3) Qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability;
- **4) Qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.**
- *24 C.F.R. § 100.202*



Inquiries: Seniors' "Independent Living"

- No questions about ability to "live independently," i.e. without support

Inquiries: Nursing Homes, Assisted Living



- 1) No inquiries, or
- 2) Limited inquiries
 - Questions about services demanded from the facility
- Not entitled to entire medical file

3) Discriminatory Evictions and Admissions

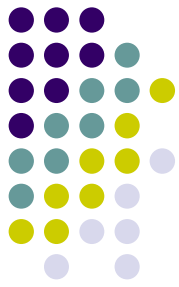


- It is illegal to “discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter” because of her disability
 - *42 U.S.C. § 3604(f)(1)*
 - See upcoming *Clearinghouse Review* article, Fall 2008 (Authors: Aisha Bierma, James Wilkinson, Julie Nepveu)

Independent Living: Can't evict or refuse admission merely because of disabilities



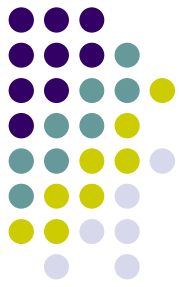
- “Independent living” requirements are illegal
 - *Cason v. Rochester Hous. Auth.* (D.N.Y. 1990)
- Continuing care retirement communities can't require automatic transfers out of “independent living” due to increased disability



Nursing Homes: Must be able to care for most residents with disabilities

- Refer to Nursing Home Reform Law
 - *Involuntary Discharge or Transfer of J.S. by Ebenezer Hall* (Minn. App. 1994)
 - *Wagner v. Fair Acres Geriatric Center* (3d Cir. 1995)

Assisted Living: Eviction/admission based on disability may be illegal



- Advocates should consider:
 - 1) Is this a qualified tenant?
 - 2) Can a RA/RM be made?
 - 3) Is there a “conflict of laws”?

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.
- Consider reasonable accommodations

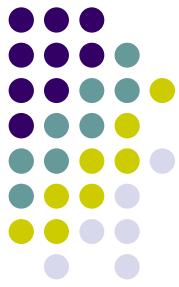
4) Discriminatory Terms and Conditions



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

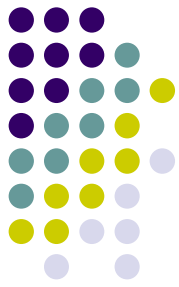
42 U.S.C. § 3604(f)(2)

Examples of Discriminatory Terms and Conditions



- Higher security deposits for the disabled
- 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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