

Fair Housing Act and Older Adults: Reasonable Accommodations & Modifications under the FHA

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Fair Housing Act

42 U.S.C. § 3602(b)



- Applies to “dwellings,” including:
 - Apartments
 - Including seniors-only apartments
 - Condominiums
 - Continuing Care Retirement Communities (CCRCs)
 - Assisted Living and other Residential Care Facilities (ALFs)
 - Nursing Homes
- A resident of an ALF is considered a “renter/tenant” under the provisions of the FHA.

Protected Classes under the Fair Housing Act



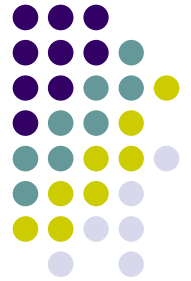
See 42 U.S.C. § 3604

- Race
- Color
- National Origin
- Religion
- Sex (*including sexual harassment*)
- Familial Status (*having children under 18 or being pregnant*)
- **Handicap/disability**

- Not age (but may be in state or local law)

Definition of Disability

42 U.S.C. § 3602(h)



- A physical or mental impairment that substantially limits one or more major life activities
 - E.g. seeing, hearing, walking, breathing, caring for oneself, learning, thinking, reading and interacting with others

Disability Protections

42 U.S.C. § 3602(h)



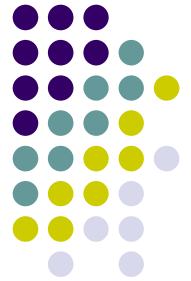
- Physical Disabilities
- Mental Disabilities
- Drug Addiction (but not current, illegal use of a controlled substance)
- Alcoholism
- Those with a record of a disability
- Those regarded as having a disability
- Those associated with a person with a disability
- A person with a disability under the Act may be a person with an age-related disability or a person who does not self-identify as having a disability.

Examples of Disability Discrimination Prohibited under the FHA in Sale or Rental of Housing



- Refusing to rent or sell
- Refusing to negotiate to sell or rent
- Making a housing unit unavailable
- Denying a dwelling
- Evicting or discharging a person because of their disability
- Setting different “terms, conditions, or privileges” for sale or rental (lease) of unit
- Asking applicants about their disabilities
- Failing to provide reasonable accommodations or modifications

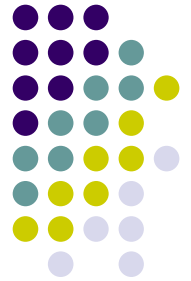
Aging and Disability



- **According to the 2006 census, 41% of the population 65 years and over have a disability, while 12.3% of the population 16 to 64 has a disability.**
- **Age itself is not considered a disability, but aging increases the chances of developing a disability.**
- **By 2030, there will be 70.3 million Americans who are 65 and older, nearly two times the 34.8 million alive today.**

Reasonable Accommodation (RA)

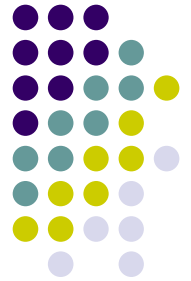
42 U.S.C. § 3604(f)



- Change, exception, or adjustment to a rule, policy, practice, or service that would permit the tenant/resident to have an ***equal opportunity to use and enjoy the dwelling***, and the request is reasonable.
- Common examples:
 - Allow service/companion animals in “no pet” building
 - Provide help filling out application form
 - Allow outside aides, e.g. hospice
 - Permitting a live-in aide

Reasonable Modification (RM)

42 U.S.C. § 3604(f)



- Physical or structural change to the premises
- Common examples:
 - Widening doorways
 - Installing grab bars
 - Lowering kitchen cabinets



Requesting a RA/RM

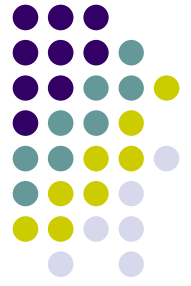
- 1) Tenant/resident has a **disability**,
- 2) Accommodation or modification may be **necessary** to use and enjoyment of dwelling,
- 3) Accommodation or modification will **help overcome effects of disability**,
- 4) Accommodation or modification is **reasonable**.



Unreasonable Requests

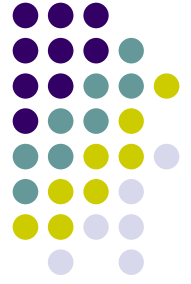
- 1) Imposes an undue financial and administrative burden, or
- 2) Require a fundamental alteration in the nature of the housing provider's operations

Reasons for Making RA/RM Requests



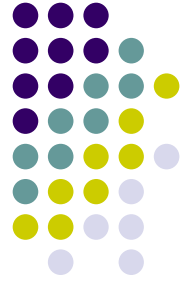
- With RAs/RMs, some clients can:
 - Gain admission to housing, when they would otherwise be rejected
 - Avoid eviction, when they would otherwise be evicted
 - Use and enjoy their current housing, when they would otherwise be unable to do so
- Important negotiation and self-advocacy tool

Case Studies



- Case Studies 1-2:
 - Using RAs/RMs to avoid evictions and secure admissions
- Case Study 3:
 - Using RAs/RMs to help clients use and enjoy their current housing

Case Study 1: **Reasonable Accommodation**



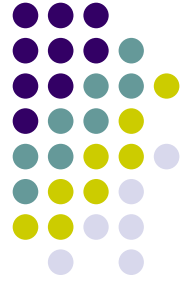
- Tenant/Resident (Betty) lives in assisted living.
- Betty received notice from administration that her behavior toward staff and other tenants/residents is unacceptable, rude, and abusive.
- Betty was told she would be evicted in 7 days if she did not correct her behaviors.

Case Study 1: **Reasonable Accommodation**



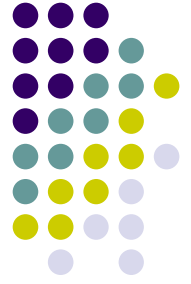
- Normally, this housing provider only provides 7 days notice before eviction and may have a policy that he evicts tenants/residents who are verbally abusive.
- However, Betty may be entitled to a delay in the eviction to put together a plan or to stay with certain RAs.

Case Study 1: Reasonable Accommodation



- To be eligible for a RA resulting in non-eviction, Betty must show:
 - 1) She has a **disability**,
 - 2) The accommodation is **necessary** for her use and enjoyment of her dwelling,
 - 3) Accommodation will **help overcome effects of her disability**,
 - 4) Accommodation is **reasonable**.

Case Study 1: **Reasonable Accommodation**

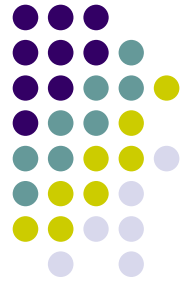


- Sample RA plan to eliminate lease or agreement violations. i.e. address her behaviors:
 - More time before eviction to develop a plan
 - Therapy and support group
 - More visits from children or volunteers
 - Increased activities
 - Expressing concerns through an intermediary
 - Different staff approaches

Case Study 1: Sample RA Letter You Could Write for Betty (example of letter at slides 32-33)



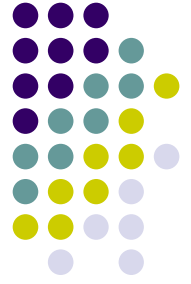
- Betty has a disability that entitles her to protection under the Fair Housing Act.
- Under the FHA, Home X must make RAs in policies and procedures to allow persons with disabilities equal use and enjoyment of their housing.
- Betty requests a RA that she be allowed to continue living at Home X.
- *Then describe plan to stop lease/agreement violations...*



If Tenant/Resident Violates Lease/Agreement Due to Disability, Can She Still Be Evicted?

- Refer to RA four-part test. What is reasonable?
- In some cases, must stop violation. *42 U.S.C. § 3604(f)(9)*
 - E.g. can't pose a "direct threat" to others or property
- However, sometimes it is reasonable to allow violations and make an adjustment to lease/agreement terms.

Recommended RA/RM Approach for Lease/Agreement Violations



- Ideally, create a plan to eliminate the lease/agreement violations.
- If violations cannot be fully eliminated...
 - Create plan to lessen them
 - Ask that expectations be adjusted as a RA
 - Consider type of facility. E.g. Alzheimer's facilities cannot demand perfect behavior

Case Study 1: Alternative RA Letter You Could Write for Betty



- *If you cannot find support to show Betty's behaviors might substantially change...*
- Include same info as in Slide 18, then:
 - “The following plan will help alleviate the concerns you have identified...”
 - “We also ask, as a RA, that your expectations of Betty's behaviors be modified. This is reasonable because...”

Case Study 2: Reasonable Accommodations & Modifications



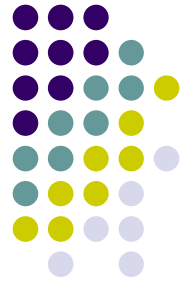
- “My mom, Jane, is being evicted from an Alzheimer’s assisted living facility because she wanders and can be aggressive.”
- It is questionable whether this eviction is legal; may be direct discrimination based on disability.
- But RA/RM requests can still be effective in negotiation and self-advocacy.

Case Study 2: Reasonable Accommodations & Modifications



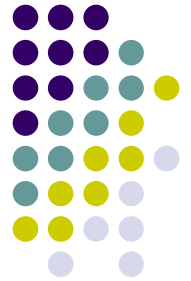
- Possible RA/RM plan for Jane to avoid eviction:
 - Adjust medications
 - New primary care doctor
 - Cognitive assessment
 - External alarms on longer delay or magnetic locks
 - Bed or door alarm
 - GPS device

Case Study 2: Reasonable Accommodations & Modifications



- Possible RA/RM plan for Jane to avoid eviction:
 - Staff training on these behaviors
 - Calming approaches like soft music
 - Paint external door in a bookcase pattern
 - Move to different room away from door
 - Extra staff time from facility
 - Family hires additional aide for night hours

Note on RAs/RMs as Applied to Admissions and Evictions



- Case Studies 1-2 could apply to threats of eviction or denials of admission.
- Just substitute, e.g.,
 - “We request a RA that Client be allowed to continue living at Home X” with
 - “We request a RA that Client be allowed to move into Home X.”

Case Study 3: Reasonable Accommodations & Modifications



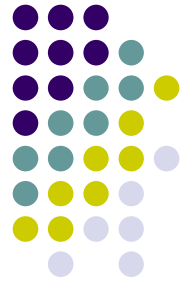
- “My ALF took away my electric wheelchair because staff says I can’t operate it safely,” Bob reports.
- It is questionable whether taking the wheelchair away is legal; may be direct discrimination based on disability.
- But RA/RM requests are still effective negotiation and self-advocacy tools.

Case Study 3: Reasonable Accommodations & Modifications



- Possible RA/RM plans for Bob to gain back w/c (*will depend on source of concerns*):
 - Identify specific “unsafe behaviors” or actions so can address specifically
 - Physical examination
 - Medication adjustments
 - Lowering speed on w/c
 - Occupational therapy

Case Study 3: Reasonable Accommodations & Modifications



- More possible RAs/RM plans for Bob:
 - Restricting w/c use to certain parts of building, on temporary basis
 - Restricting w/c use to certain hours when more staff is on duty, on temporary basis
 - Adjustments or modifications of physical space



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*)

Tenant/Resident (or Associate of the Tenant/Resident) Must Request RA/RM



- If staff hears what could be construed as a RA/RM request, must respond
- No “magic words” or particular form required
- However, RA/RM letters are highly advisable (see letter at slides 32-33)



Options for a Client who Needs a RA/RM

- 1) Call legal services, senior legal hotline, or another public or private lawyer
- 2) Write a RA/RM letter (see slides 32-33)
- 3) If RA/RM request is denied, the tenant/applicant/resident can file a complaint (on their own or with help from a lawyer)

Sample Letter Request for Reasonable Accommodation/ Modification

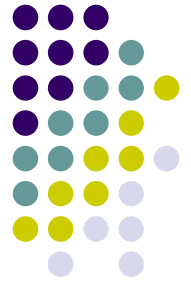


Dear Ms. Housing/Facility Manager:

I am writing to request a reasonable accommodation/ modification with regard to my disability, which substantially limits one or more of my major life activities.

Specifically, I am writing to request: *describe the specific change in rule, policy, practice or service, or physical premises that you are seeking.*

I need this accommodation so that I can live here as easily and successfully as the other residents and fully use and enjoy the premises.



Sample Letter (con't)

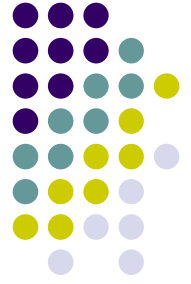
I have attached a letter from my doctor certifying that this request is necessary. (*attaching such a letter may or may not be necessary*)

As you probably know, because I have a disability, fair housing laws entitle me to reasonable accommodations/modifications.

Please respond to my request in writing within seven business days. Thank you for your assistance.

Sincerely,

Your Name



Sample RA/RM Letters

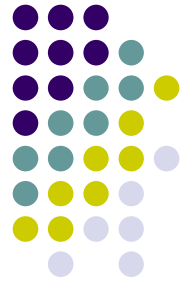
- <http://www.drcme.org/publications.asp?pubid=27&secid=172>
- <http://www.drcme.org/publications.asp?pubid=27&secid=173>
- <http://www.drcme.org/publications.asp?pubid=27&secid=174>
- <http://www.drcme.org/publications.asp?pubid=27&secid=175>
- <http://www.in.gov/ipas/2647.htm>
- <http://www.oradvocacy.org/pubs/housingfacts3.htm>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

State & Local Fair Housing Enforcement Agencies and Laws



- http://www.fairhousinglaw.org/fair_housing_laws/laws/laws.html?state

A Complaint Can Be Filed with HUD (and Other Agencies)



- **Office of Fair Housing & Equal Opportunity**
 - Department of Housing and Urban Development
 - 451 Seventh Street S.W.
 - Washington, DC 20410-2000
 - 1-800-669-9777
 - To file a complaint online (*simple form*), go here:
 - <http://www.hud.gov/offices/fheo/online-complaint.cfm>



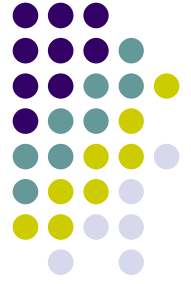
Additional Resources

- **HUD/DOJ, Reasonable Accommodations Under the Fair Housing Act (2004)**
 - 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.
- **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



Additional Resources

- **September-October 2008**
***Clearinghouse Review* Elder Law Edition**
 - Includes articles by Aisha, Holly, and others on the application of fair housing law to ALFs and other senior housing
 - <http://www.povertylaw.org/clearinghouse-review>



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