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 \((\text{Rehabilitation Act})\)
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.in.gov/IPAS/2647.htm
- http://sdc.workndog.org/content/node/261
State & Local Fair Housing Enforcement Agencies and Laws

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 Modifications Under the Fair Housing Act (2008)
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](http://www.povertylaw.org/clearinghouse-review)
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