

The
JOHN MARSHALL LAW SCHOOL

**FAIR HOUSING RIGHTS OF SENIORS WITH DISABILITIES:
WHAT SENIORS AND THEIR FAMILIES NEED TO KNOW**

A HANDBOOK

2006 Edition

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FAIR HOUSING RIGHTS OF SENIORS WITH DISABILITIES: WHAT SENIORS AND THEIR FAMILIES NEED TO KNOW

As people get older, they are likely to become disabled, either physically or mentally. Substantial numbers of the elderly are disabled to some extent, and the percentage of those who are disabled gets larger as the age level rises.

Older people often have medical problems that limit their abilities to perform their normal daily activities. These problems, in turn, may cause seniors, *some for the first time in their lives*, to face difficulties keeping their current housing or getting new housing. And these difficulties come not only from ordinary landlords. Unfortunately, even many senior living communities engage in conduct that is illegal housing discrimination.

I. The Law Prohibits Housing Discrimination Based Upon Disability.

The federal Fair Housing Act (the Act) specifically prohibits housing discrimination based upon physical or mental disability. Generally, the Act prohibits housing providers from

- discriminating against housing applicants because of their disabilities,
- discriminating against existing residents because of their disabilities, and
- treating people with disabilities worse than people without disabilities.

Additionally, the Act requires housing providers to make reasonable exceptions to rules, policies, practices and services when that is necessary to allow people with disabilities an equal opportunity to have and enjoy a home.

The Act generally requires housing providers to let residents make reasonable modifications to premises when that is necessary for a person with a disability to have an equal opportunity to enjoy a home.

The Act requires developers of new multifamily housing to meet certain design requirements so that the individual units and common areas of buildings are accessible to people with disabilities. These rules apply regardless of whether any of the residents of the building actually have disabilities.

The subject of this handbook is protections against housing discrimination based upon disability, a particular problem for many seniors, and one that many did not face when they were younger. In addition to disability, the Act prohibits housing discrimination on the basis of race, religion, national origin, gender and familial status, but this handbook does not cover these non-disability topics. Readers should also note that while the subject of this handbook is the federal Fair Housing Act, there are also state and local

laws applying to housing discrimination, and many of them are broader than the Act, for example covering discrimination based upon age or source of income.

II. What Housing Is Covered by the Act?

The Act applies to almost all housing.

- It applies to multiunit housing, except for buildings of four or fewer units where the owner lives in one of the units.
- It applies to some, but not all, single-family housing.
- It applies to housing whether or not funded or owned by the government.
- It applies not just to rental units but also to condominium or cooperative units owned by residents.

Many housing providers, even governmental ones, are not familiar with all the provisions of the Act relating to disability. Do not assume that housing providers know the law; they often do not.

Senior living communities. The Act applies to the whole range of senior living communities.

- It applies to apartments, condominiums and co-ops for seniors.
- It applies to assisted living facilities (ALFs).
- It applies to continuing care retirement communities (CCRCs).

It is important to understand that senior living communities **are not exempt** from the Act's provisions prohibiting discrimination based upon disability. Some senior living communities have at least some rules or practices that do not comply with the Act. Some providers have the very patronizing attitude that they know what is best for seniors, and they frequently justify illegal rules as part of their efforts "to help" seniors. But "good intentions" do not excuse discrimination. Senior living communities will have to change their current improper practices to comply with the law.

Religious-affiliated housing. Many housing facilities for seniors are owned or operated with some affiliation to a religious organization, and operators of some of these facilities erroneously believe that they are exempt from the Act. A very limited exemption from the Act allows qualified operators to give preference for housing to members of the same religion, but this exemption **does not allow** discrimination based upon disability. For example:

A landlord that meets the legal test to be deemed affiliated with religion X is allowed to rent only to people who are members of religion X and to refuse to rent to people who are not, but the landlord cannot refuse to rent to a member of religion X who uses a wheelchair because of that person's disability.

III. Who Is a Person with a Disability Under the Act?

The Act applies to individuals with either a physical or mental impairment that *substantially* limits one or more of the person's major life activities.

A major life activity is something of great importance to daily life.

Some examples are walking, doing manual tasks, seeing, learning, speaking, eating, breathing, hearing, caring for one's self physically (washing, dressing, etc.) and caring for one's affairs (paying bills, managing financial matters, etc.).

The Act also applies to people with a history of such a limitation.

Many health conditions of the elderly – such as stroke, Parkinson's disease, arthritis, congestive heart failure, chronic obstructive pulmonary disease, diabetes, macular degeneration, Alzheimer's disease, neurological conditions, loss of muscle strength and loss of balance – will cause limitations on a person's ability to function. And for many seniors, the limitation will be serious enough to make it a "disability" protected by the Act.

The Act also applies to people who do not, in fact, have a disabling limitation but are regarded (erroneously) by others as having such a limitation. Others often regard elderly people who are frail as being disabled. When that happens, frail elderly people are treated under the Act as people with disabilities, and they get the protections of the Act. For example:

An 85-year-old woman is frail. She can walk but is very unsteady and looks as if she will fall at any moment. A landlord could not legally refuse to rent to her because he is concerned about possible liability if she does fall. Similarly, the landlord could not legally refuse to rent to her because he doubted that she could take care of herself: feed herself, do laundry, etc.

An apartment resident who is 78 starts to use the "meals on wheels" program, and family members start to do errands for him – buy groceries and other supplies. The landlord learns of this and concludes that the resident is disabled. The landlord cannot refuse to renew the lease because of his belief.

IV. Improper Housing Ads

Housing providers often place housing advertisements that violate the law. Advertising about housing is not allowed to state outright, or even to suggest, that people with disabilities are not acceptable as residents.

A bad ad can be direct: "no people in wheelchairs," "not for the mobility impaired," or "must be ambulatory."

A bad ad can be indirect. Ads for “active seniors,” “young seniors,” or “seniors who want an active lifestyle” may, under the circumstances, be conveying an impermissible message that seniors with disabilities are not welcome.

Applicants should not be discouraged or put off by such ads. The housing policies stated or suggested in them are not legal.

Many ads for senior housing are for “independent living” facilities. These ads are ambiguous at best. If the term “independent living” means only that support services are not provided by the facility, it is a poor choice of words. If, instead, a reasonable person would understand that “independent living” in the ad means that people who use support services cannot live there, the ad is illegal. Housing providers would be better off not to use this type of advertising at all, to avoid any questions about legality.

V. Applying for Housing

An applicant for housing must not be discriminated against on the basis of disability. Some questions asked of housing applicants are illegal.

Questions that are not legal. Under the Act, housing providers are not allowed to ask (1) whether the applicant has a disability or (2) about the details of the disability.

For example, applicants cannot be asked:

- About their health or their medications.
- If they can live “independently” or without help.
- If they need help with their daily activities.
- If they can get in and out of bed by themselves.
- If they can use the toilet by themselves.

Furthermore, they cannot be asked:

- To undergo a doctor’s examination.
- To undergo evaluation by someone on the housing provider’s staff – a nurse, social worker, etc.
- To produce their medical records.
- To sign a medical record release form.
- If it is obvious that they cannot perform manual tasks, how they will take care of their personal hygiene, dressing or eating.
- A series of questions to test their mental acuity, such as to count by 7’s, who the president is, etc.

While these types of questions are not supposed to be asked, housing providers still do ask them. Under the law, applicants do not have to answer these questions:

- On an application form, they can ignore these questions.
- In an interview, they can decline to answer.
- If pressed for answers, they could say: “I do not answer questions about my private life” or “I do not want to discuss my private affairs.”

If applicants are in a wheelchair or have some other disability that is obvious, they do not need to answer questions about what arrangements they have for help. Again, this is private.

A small exception. People with a disability who apply for housing (1) that is available only for people with disabilities or with a particular type of disability or (2) for which people with disabilities are given a preference under the law can be asked if they qualify for that housing. However, they cannot be asked more questions than needed to show that they qualify. For example:

An apartment building rents only to tenants with mobility impairments. The housing provider is not allowed to ask applicants about mental impairments.

Questions that are legal. The housing provider is allowed to ask questions about the normal aspects of being a tenant. But the housing provider must routinely ask these questions of all applicants for housing and not just those who have disabilities.

- Applicants can be asked if they can pay the rent and abide by the terms of the lease.
- Applicants can be asked for references.
- Applicants can be asked if they can keep their home clean. But if they use a wheelchair, they must not be asked how they will keep their home clean if this question is not asked of all applicants.
- Applicants can be asked if they have been convicted of any crimes.
- Applicants can be asked if they would be a direct threat to the safety of others or their property.
- Some housing is legally limited to people age 55 and older or age 62 and older. For such housing, applicants can be asked their age.

Refusing to rent or sell. The Act prohibits housing providers from refusing to rent or sell housing to applicants because they have (or someone living with them has) a disability. For example:

- Many senior housing communities require that people be healthy, able to get around or able to live without help (“independently”). These requirements are **not legal**.
- A senior housing community is not allowed to refuse to rent to a person using a wheelchair or one who is blind.
- A senior living community is not allowed to refuse to rent to people with disabilities because they need part-time help that they provide or arrange for themselves.
- A senior living community normally is not allowed to refuse to rent to people with disabilities because they need a live-in helper.

Housing providers may not say that (1) they do not want their facility to look like a nursing home or have a handicapped atmosphere, or (2) they fear liability because they think that people with disabilities are more likely to be injured, or (3) they fear people with disabilities will be difficult tenants. None of these reasons give housing providers grounds to refuse to rent or sell to people with disabilities. Such reasons represent stereotypes about people with disabilities, which stereotypes are forbidden by the Act.

Illegal drug users. Current use of illegal drugs is not a disability. A housing provider does not have to rent or sell to a current user of illegal drugs.

Steering to different housing. Knowing that a person has a disability, a housing provider may try to steer that person to other housing because of the disability. This is also illegal behavior. For example, when a person with a disability could physically live in the building, it is illegal for the housing provider to try to discourage that person from living there by saying –

“You wouldn’t be comfortable here.”

“You would not fit in here.”

“You should go where they provide the kind of care you need.”

“You have to be able to live independently to live here.”

“This place is only for active adults.”

“Users of wheelchairs need to go to assisted living facilities.”

Some unsettled points. The above rules generally apply to all housing covered by the Act. However, in the senior housing area, some assisted living facilities (ALFs) and continuing care retirement communities (CCRCs), nevertheless, do require applicants and residents to provide information about disability conditions, including medical information. They assert that they need such information for their care planning activities or that state regulations require that they obtain such information.

Advocates for people with disabilities take the position that there are no exceptions to the Act’s prohibitions just because ALFs or CCRCs (in their assisted-living sections) are providing some care or supportive services or because of state regulations. These advocates say that it is illegal under the Act for ALFs or CCRCs to refuse housing to people with disabilities whom they are, in fact, able to serve. These advocates further say that collecting medical and disability information *before* the housing decision has been made by the ALF or CCRC could facilitate discrimination by these housing providers against people with certain disabilities.

To date, courts have not considered the issues of whether these information-gathering practices of ALFs and CCRCs violate the Act or whether any state laws that may require such practices are invalid, in whole or in part, because such laws conflict with the Act (which takes precedence).

In any event, in handling applicants to live at an ALF (or the assisted-living section of a CCRC), a better practice would be (1) for the housing provider to obtain medical and disability information from an applicant only *after* it has determined preliminarily to accept the person as a resident, and (2) that preliminary decision should only be overturned if the medical/disability information shows that the person is one the ALF (or CCRC’s assisted-living section) is not permitted to house due to applicable state law.

If the ALF (or CCRC) tries to get extraneous medical/disability information before making a preliminary decision to accept an applicant as a resident, the applicant could

ask the housing provider to wait to get that information until after the preliminary decision has been made. However, it is unclear at this time whether the housing provider must comply with such a request.

Regarding CCRCs, advocates for people with disabilities assert that applicants for the ordinary housing section clearly should not be asked or required to provide disability or medical information. A CCRC is not providing support services to residents of the ordinary housing section. The ordinary housing section of a CCRC is the same as any multiunit ordinary housing for seniors.

People with disabilities or their advocates should be smart and informed customers of housing. Before going into a senior housing community, applicants should assess their needs and expectations to determine for themselves whether the particular housing is right for them. They should ask all their questions and try to understand their alternatives. The choice of housing is theirs. They should not be denied their choice because the housing provider discriminates against them on the basis of some actual or perceived disability.

VI. Discrimination Against Residents

Residents must not be discriminated against on the basis of disability.

Residents cannot be evicted or refused a renewal of their leases because they develop a disability during their tenancy, so long as they can fulfill the normal and lawful conditions of residency.

Independent living. Housing providers often want to require that residents be able to live “independently,” meaning without help. Generally, the purpose or effect of an “independent living” requirement is to improperly force people with disabilities to move out of the housing facility, and as so applied, the requirement is illegal. Residents who have disabilities that prevent them from providing for their own needs or maintaining their units must be allowed to use outside resources to do so. It does not matter that a person has signed a lease with an “independent living” requirement. If a resident is or becomes disabled, a landlord cannot use such a provision to make a resident give up his or her rights protected by the Fair Housing Act. **The housing provider cannot enforce an “independent living” requirement against a person with a disability.** For example:

- A landlord must not refuse to renew a lease because a tenant becomes unable to walk and starts using a wheelchair.
- A landlord must not evict people with disabilities because they use assistance that they themselves arrange.
- The lease says that tenants agree to move if they cannot live independently or need help (that the landlord is not obligated to supply) with their daily living activities. If the tenants start to need such help, they cannot be required to move.

- A landlord must not evict people with disabilities because they are unable to evacuate the building on their own in an emergency.
- A landlord must not refuse to renew a lease because a tenant becomes frail and the landlord fears possible liability from renting to that person.

Unless a tenant has a contract with the housing provider that requires the provider to give services related to the tenant's care or the maintenance of the unit, the housing provider is ordinarily not obligated to provide assistance in these respects. In this situation, should the tenant need assistance, it is the tenant's responsibility to make suitable arrangements with outside resources to obtain any necessary assistance.

Moves within a CCRC. If a resident lives in the ordinary housing section of a continuing care retirement community (CCRC) and develops a disability, the CCRC might tell the resident that he or she has to move to the assisted-living section of the facility. If the resident wants to move, the resident can go ahead and do so. But if the resident does not want to make that move, the resident may not have to. The CCRC should not force a move until after consultation with the resident or the resident's representatives and then only if necessary because the resident cannot be accommodated in his or her present housing. [See discussion of Reasonable Accommodations, below.] Residents do not have to rely on the CCRC's doctor in the consultation; they are allowed to use their own doctor.

If a disability does not require any extra support services provided by the CCRC, the CCRC could not require the resident to move to the assisted-living section. For example, if a resident starts using a walker or wheelchair but does not need assistance, that resident cannot be forced to move out of his or her present housing. Similarly, if a disability does require extra support services but the resident provides those services from other sources (not the CCRC) in order to stay in the ordinary housing section, the resident should be able to stay there.

If a resident requires the CCRC to provide support services due to his or her disability and the CCRC provides those services only in its assisted-living section, the resident might be required to move to there. The answer to whether a move would be required in this situation would be based upon the facts of each case. First: The resident might be entitled under the reasonable accommodation rules to have certain services provided by the CCRC in his or her present housing if it is reasonable to do so. Second: Since a policy under the Act is to allow people with disabilities to be integrated into regular community life as much as possible, avoiding segregation based upon disability, the CCRC's practice of providing certain support services only in the assisted-living section might not even be legal under the Act. Mere historical practice and administrative convenience of the CCRC are not likely to justify use of separate assisted-living sections when the services could reasonably be provided in a general housing setting at the facility without undue administrative or financial burden on the CCRC.

Moves from ALFs. Some state laws governing assisted living facilities (which includes the assisted-living sections of CCRCs) require that residents be moved out of the ALF if

they develop certain specified conditions. Advocates for people with disabilities say that in certain situations, these state law requirements should not be valid. But there have been no court cases yet on these issues. For example:

If tenants themselves provide extra support services (not asking the ALF to provide those extras) in order to stay in the ALF, normally those tenants should be able to stay in their units. This would be a type of reasonable accommodation. But if a state has a conflicting legal requirement, this situation would be unclear at this time.

The law of State X says that anyone needing two people to assist the person with transfers (from or to bed, chair or toilet) has to leave the ALF, except for people with MS. Advocates for people with disabilities would say that a person with a disability other than MS who needs help from two people for transfers should be allowed to stay in the ALF and that the state law unreasonably singles out a particular disability. But the result of such a challenge is unclear at this time.

Improper medical/disability questions. A housing provider must not ask a resident in ordinary housing (including ordinary housing for seniors) about any existing or developing disability condition, including details of the condition. Similarly, the housing provider cannot require medical information from residents. For example:

- Residents do not have to answer questions about seeing a doctor.
- Residents do not have to answer questions about their medications or whether they are undergoing therapy.
- If a resident uses a wheelchair or cannot do manual tasks, the resident must not be asked how he keeps the apartment clean or maintains it. Nor should the tenant be asked about how he handles his personal hygiene. While these questions are not to be asked, the resident is not excused from the normal obligation of a tenant to maintain sanitary premises.

These rules should apply to the ordinary housing sections of CCRCs.

There are state laws requiring ALFs (including the assisted-living sections of CCRCs) to obtain some medical information from residents, and some states require annual medical evaluations of each ALF resident. At this time, it is unclear whether any of these laws are invalid, in whole or in part, because they conflict with the Act, since no court cases have dealt with this issue. However, ALFs should be careful not to inquire into medical or disability issues beyond what is clearly required by the applicable state statute. Some advocates for people with disabilities would assert that an inquiry by an ALF beyond what is required by state law would be a violation of the Act.

Most normal obligations of residency apply. Having a disability does not excuse a resident from meeting the normal requirements of residency. Such requirements include paying the rent on time, maintaining sanitary premises, not disturbing the peace, complying with legal rules, not damaging the premises. For example:

- If a resident with a disability pays her rent late consistently, the landlord can evict the tenant under most state laws. Having a disability does not excuse late payment. However, if the delays in paying the rent are caused by disability, the tenant can ask

for a reasonable accommodation if one would solve the late-payment problem. For a memory problem, the landlord could send a monthly reminder notice to the tenant if requested, even though that is not done for all residents. [See discussion of Reasonable Accommodations, below.]

- If a resident with a disability starts having fires in the kitchen from cooking, the resident can be evicted. However, the resident might ask for a reasonable accommodation, such as disconnecting the stove and installing a microwave oven, that might solve the danger presented and preclude eviction.
- If a resident with a disability does not maintain sanitary premises – really bad odors come from the apartment or pests breed there, having a disability does not excuse that failure. However, the landlord must not insist upon unreasonably high housekeeping standards or deny a reasonable accommodation that would remedy the problem.

Equal treatment required. Housing providers interact with residents in many ways. A housing provider must not treat residents with disabilities worse or differently than it treats residents who do not have disabilities.

Residents with disabilities must not be subjected to different rental terms than other residents. Their rent must not be higher for the same apartment. They must not be forced to pay special fees or be subjected to special requirements that are not applied to residents without disabilities. For example:

- The rent for Apartment X is normally \$800 per month. A landlord is not allowed to charge a person using a wheelchair \$850 per month, even though the landlord asserts that the person will cause more damage to the apartment than a person without a disability.
- A senior using a motorized wheelchair must not be made to carry insurance or to deposit extra security not required of all residents.
- A senior with a mobility problem must not be required to release the landlord of potential liability for injuries he might incur living in the building if such a release is not required of all residents.
- A senior with a disability must not be required to give the housing provider a “hold harmless” commitment.
- A senior with a support animal must not be charged special fees for having the animal.
- The text of a lease for a senior with a disability must not be different from the normal lease used for all other tenants.

Residents with disabilities must not be denied access to the services and amenities of the facility. For example:

- A senior using a wheelchair must not be refused use of a resident dining room.
- A senior using a wheelchair must not be required to transfer out of the wheelchair into a regular dining-room chair.
- A senior using a walker or wheelchair must not be refused use of the grounds, such as access to gardens or an ornamental pond.

- A senior who needs help while eating must not be refused use of the resident dining room with her helper.
- Seniors using wheelchairs must not be segregated to one floor in a multistory building that has an elevator.
- Seniors with disabilities must not be required to use a separate dining room.
- Use of walkers, canes and wheelchairs in common areas must not be barred.
- A senior using a wheelchair must not be refused use of the swimming pool.
- Wheelchair users must not be denied use of the front entrance to the building; they must not be forced to use only side or back entrances.

No limits on having help. A housing provider is not allowed to limit the amount of outside assistance that a senior with a disability provides for herself. A senior with a disability can use the type and amount of outside assistance – part-time, full time, or even live-in - that she determines fits her needs. For example:

- A landlord is not allowed to refuse to renew a lease because the tenant started to use the “meals on wheels” program services because the tenant could no longer handle meal planning, grocery shopping and cooking.
- A housing provider is not allowed to evict a tenant who started to have daily help for 10 hours a day because the tenant needed help bathing, dressing, cooking, etc.
- A housing provider is not allowed to refuse to renew a lease or to evict a tenant with early Alzheimer’s because the tenant needs to have live-in help.

However, if the housing provider has some general policy that would limit such assistance, the resident with a disability may have to request a reasonable accommodation, that is, an individual waiver of the policy due to the resident’s disability. Ordinarily, such a request should be granted. [See discussion of Reasonable Accommodations, below.] For example:

Often, senior communities have rules limiting how long a resident can have a guest. A live-in helper needed due to a disability ordinarily would not be regarded as a guest, so that policy should not even apply to a live-in helper. However, if a housing provider did regard a helper as a guest, a waiver of the rule should be requested. While a guest policy may have to be waived for a person with a disability who needs a live-in helper, the policy would not have to be waived for a resident who does not have a disability but wants to have a live-in maid.

It is specious for a senior retirement community offering ordinary housing (that is, not assisted living) to refuse to let residents arrange their own assistance on the grounds that allowing that would require the community to be licensed as an assisted living facility or nursing home.

In a senior living community that is legally restricted predominantly to residents 55 or 62 years of age or older, the helper is not counted in meeting those tests and thus can be younger.

A housing provider might have some rules about helpers. For example:

- A regular helper with a car might be required to register the car with the housing provider.
- Helpers might be required to sign in when at the building.
- A housing provider might require criminal background checks of live-in helpers.

The validity of such rules about helpers has not yet been tested in court cases. Some rules would seem to be reasonable and not burdensome to the person with a disability and therefore acceptable - such as registering a helper's car or having a helper sign in. Some rules would seem to be arbitrary and unduly burdensome and therefore not acceptable - such as requiring all helpers to come from registered caregiver agencies. Some rules could even be designed to have the effect of discriminating against people with disabilities: forcing them to move from the building by making it unnecessarily difficult to stay in their homes.

A provider of ordinary senior housing (and a CCRC in relation to the ordinary housing section of its community) has no role or duty to provide care for its residents, so it should not have rules about helpers brought in by the residents that intrude into the delivery or management of care or the selection of the caregiver. Even ALFs, which do provide some care for residents, need to be careful about hindering residents' ability to bring in additional help for themselves as long as such help does not improperly interfere with the services the ALF is providing.

No limits on assistive devices. A housing provider must not limit or restrict the use of appropriate assistive devices by a person with a disability. Seniors may use canes, walkers and wheelchairs (motorized or not), just as they may use eyeglasses and hearing aids. For example:

- A senior living community must not have a rule that no wheelchairs are allowed in the dining room.
- A housing provider must not have a rule that no motorized wheelchairs are allowed on the premises even if other residents are generally fearful of motorized wheelchairs.

Safety exception. An exception applies if it can be shown that the use of the assistive device by a specific person presents a real and serious safety problem. Each case depends on its own facts. The safety problem cannot be shown just from general fears or speculation about safety. For example:

- A person at a senior community operates a motorized wheelchair. He operates safely in the halls when the halls are not crowded. But at mealtimes when the halls are crowded, he operates the wheelchair recklessly and has almost run into several other people. That person could be refused the right to operate the wheelchair in the halls during mealtimes. But he should be able to use the wheelchair at other times. However, if he continues to use the wheelchair during mealtimes in spite of the restriction, he could be denied use of the motorized wheelchair outside of his apartment at any time. Then, if he still will not follow the restrictions, he could be evicted.

- The fact that one resident operates a motorized wheelchair recklessly does not allow the housing provider to ban all motorized wheelchairs.
- If a resident has one accident while learning to use a motorized wheelchair, it could be small enough that nothing happens. If the accident is serious, he might be required to have training on how to use the wheelchair and be supervised when using it until he learns how to properly and safely use the wheelchair. If he cannot learn to operate it safely, he could be denied use of the motorized wheelchair.

VII. Reasonable Accommodations

The Act specifically gives people with disabilities some special rights about housing that other people do not have. Every apartment house, condominium and senior living community has rules, policies, practices and services. Often people with disabilities will find some rule or policy hard to comply with because of their disability. This can actually make it hard for them to keep their homes or to get a new home. Housing providers **must make exceptions to rules, policies, practices and services** if that is needed for a person with a disability to use and enjoy his or her home. Such exceptions are called “reasonable accommodations.” The duty to make these exceptions applies not only to people with disabilities who are existing residents but also to people with disabilities who are applicants seeking housing. For example:

- A housing provider has a “no pets” policy. One resident has a mental condition and needs a support animal. That resident can have a support animal.
- A housing provider has a policy of not allowing residents to have live-in help. An applicant for an apartment has mobility problems and needs someone to assist with transfers to the toilet and in and out of bed and chairs. The applicant can have a live-in helper in spite of the rule.
- A resident has memory problems and does not remember to send the rent in on the first of each month. The housing provider is asked to send monthly reminders about the rent payment to this resident. The housing provider does not routinely send reminders to all residents. The housing provider would have to send reminders to this particular resident.
- A resident has live-in help. The housing provider has a policy that only residents may use the laundry facilities. The housing provider would have to let the helper do the resident’s laundry, as well as the helper’s own laundry. If the helper only works part-time, the housing provider would have to let the helper do the resident’s laundry, but not the helper’s own laundry.

It is important to note that granting a reasonable accommodation to a person with a disability does not require the housing provider to grant a similar accommodation to another tenant who does not have a disability. For example, a landlord with a “no pets” policy waives the policy for a person with a disability needing a cat as an emotional support animal, but the landlord does not then have to let a tenant who has no disability but wants a pet to have pet. Reasonable accommodations are exceptions, so they will result in some lack of uniformity in the application of rules and practices by a housing

provider. Residents without disabilities may complain that this is not fair, but it is the law.

How to ask for a reasonable accommodation. To get a reasonable accommodation, the person with a disability must request it. Without a request, the housing provider does not have to offer an accommodation.

The person with a disability may ask for as many accommodations as the person needs and is not limited to just one. If a person with a disability has received an accommodation and it needs to be modified, a request for a modified accommodation can be made. The person may ask for accommodations at different times as circumstances change. However, when a person knows that he or she will require multiple accommodations, that person should request all known accommodations at the same time, since submitting requests one at a time might give the housing provider grounds to deny some as presenting an undue administrative burden.

There are no time limits for making a request for an accommodation, but it is better not to delay making the request, since undue delay might suggest to the housing provider, and be used as evidence, that an accommodation is not really necessary.

If the housing provider is trying to evict a person with a disability because of that person's failure to comply with the lease, the person may request an accommodation even during the eviction proceedings.

The request may be oral or written. However, many housing providers do not want to grant these requests. If a request is oral, it is easier for a housing provider to deny that any request was ever made. So it is always better that the request be made in writing and that the resident KEEP A COPY. Then the resident has a clear record of the request.

If the housing provider has a form for accommodation requests, it may be helpful to use that form, but failure to use the housing provider's form does NOT itself nullify a request made in some other manner. If the housing provider's form is being used, care is required, since the housing provider might be asking for information that it is not entitled to get and that the resident does NOT have to give.

In making the request, the resident should make it clear that he or she is seeking a change or exception to a rule, policy or practice because of disability. The request should explain what accommodation is being sought. The need for the accommodation may be obvious, but if the need for the accommodation is not readily apparent, the request should explain the connection between the requested accommodation and the disability.

The accommodation requested must be related to the disability that the tenant has. For example:

- Parking spaces for an apartment building are not assigned to specific residents. A resident has severe difficulty walking. She asks for an assigned parking space close to her unit. The request should be granted.

- A deaf resident uses a dog as an assistance animal to alert him to sounds (such as knocks at the door, the smoke detector signal, and the telephone ringing). He should be granted a waiver of the landlord's "no pets" policy. Note that there is no requirement that assistance and support animals be certified by some formal group. However, the animal for which a waiver is requested should be able to perform the relevant functions. In this example, if the deaf resident requested the waiver to have a hamster rather than a dog, the request could be denied.
- A deaf resident asks for an assigned parking space close to his unit. The apartment building's parking spaces are not assigned. The resident would not be entitled to receive the requested accommodation, since it is not related to his disability.
- A resident with vision problems for which eyeglasses are not sufficient might request that notices from the landlord be sent to her in a large-print version.

Information a housing provider is allowed to get. A housing provider is allowed to obtain information that is necessary to evaluate whether a requested accommodation is necessary because of a disability, but the housing provider is not allowed to obtain information beyond that. Making a request for an accommodation does not make it open season for the housing provider to make detailed inquiry into a person's medical matters or other private matters. For example:

His doctor tells a resident with a mental condition that he should have an animal for emotional support. The resident asks for waiver of a "no pets" policy to have a cat. The housing provider could ask for a letter from the doctor, which confirms that the animal is indeed needed in connection with the mental condition. The housing provider is not allowed to ask for information about the resident's medications or other medical conditions. The housing provider is not even allowed to ask to see all the files on the mental condition or to get a detailed report from the doctor about the condition.

If a person's disability and the need for the requested accommodation are readily apparent or known to the housing provider, then the housing provider may NOT request any additional information about the resident's disability or disability-related need for the accommodation. For example:

A resident with an obvious mobility impairment who regularly uses a walker to move around asks to have a parking space near the entrance to the building assigned to her rather than a space located at the back of the parking lot. The physical disability (the difficulty walking) and the related need for the accommodation are both readily apparent. So the housing provider may not ask for additional information about the disability or the need for the requested accommodation.

If a person's disability is known or readily apparent to the housing provider but the need for the accommodation is not, the housing provider may request additional information, but ONLY information that is necessary to evaluate the disability-related need for the accommodation. For example:

A rental applicant who uses a wheelchair tells a landlord that he wishes to keep an assistance dog in his unit even though there is a "no pets" policy. The disability is

readily apparent but the need for an assistance animal is not obvious. The landlord may ask for information about the disability-related need for the dog.

If a person's disability is not obvious or known, a housing provider may request information to verify that the person meets the Act's definition of disability and shows the relationship between the person's disability and the need for the requested accommodation. For example:

A rental applicant has a mental condition that is not obvious and requests permission to have an emotional support animal (a cat). Since the mental condition is not obvious, the landlord may ask for information to verify that the applicant has a disability. Furthermore, since in this instance verification of a mental disability does not demonstrate the need for an emotional support animal, the landlord may also ask for information to show the disability-related need for the cat.

A housing provider may not set artificial or excessive requirements on what information it will accept to verify a person's disability. In most cases, neither an individual's medical records nor detailed information about the nature of a person's disability is necessary for the evaluation of an accommodation request.

- Usually, a doctor's report is not necessary.
- Often, the person or her family can furnish the information verifying her disability.
- A non-medical service agency or peer support group may be sufficient.
- Any third party who is in a position to know about the person's disability may be able to verify disability.
- If provided, a report from the person's doctor should be enough. Such a report must not be rejected because this is the person's own doctor.
- A housing provider is NOT allowed to require examination by medical personnel of its own choosing.
- There is NO requirement that the person with a disability be examined by an "independent" or second doctor.

The housing provider must consider requests promptly. The housing provider must consider each request for an accommodation. It is illegal for a housing provider to ignore a request or refuse to consider it. The law requires that appropriate exceptions to rules, procedures and practices be made in favor of people with disabilities. It is illegal for a housing provider to say: "We have a rule and we do not make any exceptions to it."

A housing provider must consider and act on each request for an accommodation within a reasonable period of time. A housing provider violates the law if it unnecessarily delays acting upon the request or improperly sets preconditions to handling or granting a request. For example:

- A condominium association violates the law if its management says it will not act on a request until its board meets 90 days later.
- A housing provider violates the law when it refuses to process a request that is not made on its preprinted form.

No special fees. A housing provider is not allowed to charge a fee or require additional security deposits as conditions to granting requests for reasonable accommodations. For example:

A person with a disability who is granted a reasonable accommodation and allowed to have a dog in spite of a “no pets” policy must not be required to put up a security deposit for possible damage by the dog. However, if the dog actually causes some damage to the premises, the tenant can be charged for repair of the damage. But this is true only if the housing provider routinely charges all tenants for damage they cause; the housing provider must not just charge people with disabilities (or those who get reasonable accommodations) for damage they cause.

The housing provider is allowed to refuse some requests. A housing provider does not have to grant a request for an accommodation if it would impose an undue financial or administrative burden on the housing provider. Each case must be decided on its individual facts and circumstances. Consideration can be given to the cost, if any, of the accommodation, the financial resources of the housing provider and the benefits of the accommodation to the person with a disability. For example:

- A housing provider must not refuse requests to avoid having administrative staff spend the time needed to consider the requests.
- A housing provider must not refuse requests because it does not want to make exceptions to its rules, procedures, practices or services.
- In some circumstances, an accommodation might properly impose minor costs on the housing provider. For example, a person with memory problems could ask that the housing provider send monthly reminders for the rent payment. The housing provider should do so even though it involves some minor expense.
- If the costs of a requested accommodation are substantial in relation to the resources of the particular housing provider, then the accommodation can be denied. For example, a person with a disability is applying for funding from a third party to cover his living expenses, including his rent. No grant has yet been made and the process will take six months before the third party makes a decision. The landlord is asked to wait for six months before getting any rent from this person. The request could be denied as unreasonable and financially burdensome, since there is no assurance that the grant will be made and, in any event, a six-month delay to get the rent is too long.

A housing provider does not have to grant a request for an accommodation if it would fundamentally change the nature of its operations. For example:

- A resident has a severe mobility problem. She lives in senior retirement community that does not provide any transportation or personal shopping services for residents. She asks the housing provider to provide transportation to a grocery store and help in buying her groceries. This request can be denied because granting it would require a fundamental change in the housing provider’s operations.
- The resident then asks the housing provider to arrange for meals to be delivered to her apartment from an outside meal-delivery service. The housing provider does not furnish meal service at the retirement community. This request can also be

denied because granting it would require a fundamental change in the housing provider's operations.

- A deaf resident who needs a dog as a support animal asks for a waiver of a housing provider's "no pets" policy and also asks that the housing provider have the janitor walk the dog because the resident has arthritis and finds that difficult to do. While the housing provider would have to waive the policy and allow the resident to have the dog, it would not have to have the janitor walk the dog. It remains the resident's responsibility to walk the dog or arrange for a service to do so. Requiring pet services from the housing provider would be a fundamental change in its operation.

But the housing provider should consider alternatives to denying the request. If a housing provider is denying a requested accommodation because of either (1) an undue financial or administrative burden or (2) a fundamental change in operations, the housing provider should discuss with the resident whether there is some other accommodation that would be helpful and reasonable. For example:

A resident has a severe mobility problem. The housing provider could properly deny a request to provide the resident with transportation to a grocery store and help in shopping for groceries. But it would be appropriate for the housing provider to suggest that the resident find a volunteer to pick her up and take her shopping, and to offer to designate a loading zone near the resident's apartment to make it easier for the resident and her volunteer to get in and out.

However, the housing provider should not be raising alternative accommodations until it is properly rejecting the one requested. The person with the disability knows best what accommodation will work for him and does not have to accept an alternative that does not really work for him. For example:

A blind person chooses to have a seeing-eye dog rather than use a cane. The housing provider could not legally refuse a request of a waiver of a "no pets" policy, saying that the person could use a cane instead.

Reasonable accommodations do not excuse a resident from other rules. Having a disability and obtaining an accommodation does not excuse a resident from following other rules of the housing facility. For example:

A resident with a memory problem requests a monthly reminder notice for the rent. The housing provider sends the notices. The resident is not excused from the obligation to pay rent on time each month. If timely payments are not made (and some other mechanism cannot be adopted to solve the problem) such that there is a material breach of the lease, the resident could be evicted or the housing provider could properly choose not to renew the lease.

If a deaf person has been granted a waiver of a "no pets" rule and has a dog, the resident is responsible for maintaining the dog and the premises. If the resident does not walk the dog sufficiently to avoid dog waste accidents in the common areas of the building or if the resident's apartment becomes unsanitary from dog waste, resulting in offensive odors and pests, the resident could be evicted. If the dog barks continuously at all hours or acts out aggressively against other residents (snapping or

biting), the housing provider can require that the resident promptly get a different dog - one that behaves appropriately – and if the resident refuses, the housing provider could evict him.

VIII. Direct Threat to Safety of Others or of Damage to Property

A housing provider does not have to rent or sell to any person who would present a direct threat either (1) to the health or safety of others or (2) of doing substantial physical damage to the property of others. Note, however, that granting a reasonable accommodation could remedy the threat and make the person an appropriate resident. But if a reasonable accommodation would not solve the threat, the housing provider does not have to grant the accommodation. Note also that the housing provider cannot deny housing to a person with a disability because of fears that the person's own safety might be at risk.

In determining whether a current or potential resident presents danger to others, the housing provider must make an assessment of the specific individual involved. The housing provider must act only upon reliable, objective evidence, and this evidence must be recent and concrete. Overt acts must exist. Rarely would evidence of facts that happened a long time ago be acceptable for use by the housing provider in making the assessment. The law does NOT allow the housing provider to act on the basis of fears or assumptions about people with disabilities, not even on unfounded fears of the other residents. The housing provider must consider (1) the nature, duration and severity of the risk of injury or damage and (2) the probability that injury or damage will actually occur. For example:

- An 82-year-old applicant when meeting the housing provider appears to be a little vague. This causes the housing provider to fear that the person would present a fire hazard when cooking. This unsubstantiated fear does not permit the housing provider not to rent or sell to this person.
- An applicant states on the rental application that she had a kitchen fire 20 years ago. When asked if she has had any other kitchen fires, she says no. When checking with her prior landlords, no evidence is developed that she has had any fires, other than the one 20 years ago. The housing provider does not have adequate safety concerns to refuse to sell or rent to the woman.
- A housing provider would not have to rent to a senior with Alzheimer's disease who lives alone and has had three kitchen fires in the last two years.

Would a reasonable accommodation work? If a person with a disability presents a real safety problem, a reasonable accommodation might eliminate or sufficiently reduce the danger initially presented (that is, that with the accommodation there is no longer a significant risk of substantial harm). Such an accommodation could be requested, and the housing provider would have to grant it. The housing provider would be entitled to obtain reasonable assurances that the person will not pose a direct threat from the particular safety condition during residency. For example:

A housing provider would have to rent to a senior with Alzheimer's disease who, when living alone, has had kitchen fires, but who now has 24-hour assistance and has had no fires since this 24-hour assistance was instituted. The housing provider would be entitled to get reasonable assurances that the resident will continue to have 24-hour assistance or that other measures will be taken so that the resident will not pose a fire hazard during tenancy.

Accidents. There is no simple rule that by having one accident, a person with a disability is a safety problem and can be denied housing or be evicted. Accidents do happen - both to people with disabilities and people without disabilities. Careful evaluation of all the facts and circumstances surrounding an accident would be necessary before any conclusion could be reached that a single accident establishes that a person with a disability presents a serious safety problem and can be denied or evicted from housing. Obviously, a series of serious accidents could establish that a person with a disability presents a significant safety problem.

IX. Reasonable Modifications

Sometimes, a person with a disability will need to make modifications or changes to the home so he or she can live in it. For example, a person using a wheelchair may need to install a ramp to get in the front door of a townhouse that has steps leading up to it. The person with a disability must request the modification in advance of making the alteration. Under the law, a housing provider must allow the person with a disability to make reasonable physical changes to the home (these are called reasonable modifications) in order to have full use and enjoyment of the home. This right to make these changes applies to both current residents and applicants for housing. Of course, any work needs to be done in a workmanlike manner and comply with any building codes. For example:

- A person using a wheelchair should be allowed to remove the cabinets under counters in the kitchen or bathroom.
- Grab bars in the bathroom are frequently appropriate.
- Replacing doorknobs with lever handles may be appropriate.

It is important to recognize that people who are not disabled do not have a similar right to make alterations to their units.

Unless some exception applies, the modifications to the home are typically made at the expense of the resident, not the housing provider. However, if the modifications are to

common areas, such as a wheelchair ramp at the building's front entrance, the housing provider might well be willing to make the modification at its expense; so the resident might be wise to go ahead and ask the housing provider to do the modification before volunteering to pay for the common-area modification. Also, in some instances, a common-area modification may be required of the landlord as a reasonable accommodation.

Upon termination of tenancy, the tenant is responsible for the expense of restoring the home to an acceptable condition for people who do not need the modifications, but only if it is reasonable to do so. For instance, having removed cabinets below counters, the tenant may be required to put these cabinets back when she moves out. However, having widened doorways to accommodate a wheelchair, the resident would not have to make them narrow again. And having changed doorknobs to lever handles, the resident would not have to change them back.

Federal subsidies. If the housing provider receives housing subsidies from the federal government, the law imposes on the housing provider the obligation to pay for reasonable modifications to units and common areas unless to do so would impose a significant financial or administrative hardship.

Rules of applicable local governments might also apply and shift to the housing provider the cost of modifications, such as for common-area modifications.

X. Accessible New Multifamily Housing

Under the Fair Housing Act, “new” multifamily buildings – those built for first occupancy after March 31, 1991 – are required to have all public and common areas accessible to people with disabilities, as well as to comply with certain design requirements for accessibility. For instance, doors have to be wide enough for wheelchairs to get through, kitchen and bathroom floor spaces have to be big enough for wheelchairs to use, and common areas and entries have to be accessible for wheelchairs. If the building was not built according to these specifications, the developer (or possibly the building's architect) may be responsible for the costs of retrofitting the building.

In such “new” buildings, for the common areas, it would be unlikely that any modifications for accessibility would be necessary. However, if some common-area modification is appropriate, there may be an argument that the cost is the housing provider's. For individual units, even though the law's accessibility design requirements have been met, there might well be additional modifications that a person with a disability would want, and those would be handled under the rules for reasonable modifications discussed above.

XI. Harassment and Retaliation

Under the Act, people with disabilities are entitled to live peacefully in their homes without being hassled because of their disabilities. They are protected from harassment coming from either the housing provider or other residents.

The housing provider itself must not harass residents with disabilities. Furthermore, the housing provider must also protect people with disabilities from harassment from other residents if the housing provider knows or has notice that such conduct is occurring. If other residents engage in harassment of people with disabilities, those residents may themselves be violating the Fair Housing Act.

In addition, the housing provider must not retaliate against residents with disabilities for exercising their fair housing rights.

The protection from harassment and retaliation applies not only to the person with a disability, but also to that person's friends, helpers and supporters.

If a resident is subjected to any harassment, the resident should be sure to keep records of the events that occur. They will be important to prove that the harassment happened and who did it.

If a resident brings harassment by others to the attention of the housing provider, the resident should normally give only copies of pertinent written items to the housing provider and keep the original records.

Examples of harassment and retaliation include:

- The landlord encourages other tenants to shun a tenant because of the tenant's disability.
- The landlord refuses to provide routine maintenance on a resident's unit that is provided to other tenants because the tenant has asserted rights under the Fair Housing Act.
- The landlord routinely accepts late rent checks from tenants but refuses to accept tenant X's late rent check because tenant X has assisted another tenant in asserting his or her Fair Housing rights.

XII. Enforcement

If seniors with disabilities are experiencing housing discrimination, there are several things they can do to enforce their rights.

As more people learn about their housing rights and more enforcement actions are brought against housing providers, more and more housing providers will see the benefits of complying with the law.

Many options are open to seniors whose rights under the Fair Housing Act have been violated:

- They or a family member can attempt to negotiate a resolution with the housing provider.
- They can hire a lawyer and have the lawyer attempt to negotiate a resolution with the housing provider.
- They can file a complaint with HUD: the U.S. Department of Housing and Urban Development. A simple complaint form must be filled out. A person does not need a lawyer in order to file a complaint with HUD. If a complaint is filed with HUD, HUD is required to attempt to settle the dispute with the housing provider through conciliation.
- After receiving the filed complaint, HUD will have the matter investigated. If HUD's investigation causes it to conclude that it is likely that there has been a violation of the Fair Housing Act, either party can elect to proceed with the matter before a HUD administrative law judge (where the complaint is handled by a HUD lawyer) or a federal court (where the complaint is handled by a lawyer from the United States Department of Justice). The senior can also intervene and directly participate before the ALJ or court through his or her own attorney.
- Seniors who believe that their rights have been violated can also bypass HUD and go directly into state or federal court.
- Seniors can complain to the United States Department of Justice (DOJ) if the violation affects a number of persons. DOJ in its discretion can bring a "pattern and practice" case to remedy the violation.

Prompt action is needed to protect and assert rights under the Fair Housing Act. There are strict time limits on filing a complaint with HUD (generally one year) or a court (generally two years).

States and local governments also have fair housing laws. They provide additional forums for pursuing fair housing disputes. For instance, Illinois has the Illinois Human Rights Commission, Cook County has the Cook County Commission on Human Rights, and the City of Chicago has the Chicago Commission on Human Relations. As mentioned, some of these laws against housing discrimination cover additional matters not covered by the Fair Housing Act, such as discrimination on the basis of age or source of income. Again, there are time limits for taking action under these laws.

If an injured person cannot afford to hire his or her own lawyer, that person may be able to obtain representation from a legal services or fair housing organization.

This handbook is just a summary of some important provisions of the Fair Housing Act. It is not to be understood as legal advice. For specific legal advice, please talk to an attorney.