



LANDLORD
RESOURCE
NETWORK



Guide to Fair Housing & Reasonable
Accommodations 101
MN NAHRO
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Goals

- Make you more effective by understanding how to legally and efficiently handle common problems.
- Learn legal nuances to help avoid common pitfalls which often plague landlords.
- Understand when to ask for help.

Common Pitfalls for Landlords

- Underestimating the diligence and resources available for tenants.
- Lack of responsiveness to tenant complaints and requests, which allows problems to spiral.
- Not doing the math before making decisions with tenant issues.
- Not knowing when to ask for help.

Topics

- Overview of Fair Housing, Section 504, ADA laws
- Protected Classes
- What is a Disability
 - Reasonable Accommodations
 - Reasonable Modifications
 - Limitations and Exceptions
 - Service and Support Animals
- Penalties

Fair Housing Act



- The goal of the Fair Housing Act (FHA) is to protect buyers and renters from seller or landlord discrimination.
- Enacted as Title VIII of the Civil Rights Act of 1968.
- Enforced by the United States Department of Housing and Urban Development's (HUD) Fair Housing Housing and Equal Opportunity Office (FHEO).

Section 504 of the Rehabilitation Act of 1973

No qualified person with a disability shall be:

- Excluded from participation in a federally funded program or activity;
- Denied benefits; or
- Subject to discrimination

due to the disability.

Section 504 applicability

- Eligibility
- Application process
- Admission
- Tenancy
- Eviction
- Service delivery
- Physical accessibility of facilities
- Employment policies and practices

Americans with Disabilities Act (ADA)

- Civil rights law
- Prohibits discrimination on the basis of disability
- Programs, services and activities provided by public entities
- Housing provide by public entity
- Private entities that own, lease and operate public accommodation
- Design and construction for accessibility

Protected Classes

The Federal Fair Housing Act and the Minnesota Human Rights Act prohibit housing discrimination based on:

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



- Sexual or Affectional Orientation
- Ancestry (Minneapolis and Saint Paul)
- Marital Status
- Receipt of Public Assistance
- Age
- Creed
- Hairstyle and texture

Fair Housing Act Prohibitions

- Covers all housing transactions and services including advertising, rentals, sales, lending and insurance, as well as harassment.
- Prohibits using discriminatory advertising or any other notice that indicates a limitation or preference or intent to make any limitation, preference, or discrimination.
- Essentially covers EVERYTHING. If you treat ANYONE differently on the basis of being a member of a protected class you are violating fair housing laws.

Example

Tenant does not speak English and is unable to communicate with the property manager that repairs are needed. His attorney has requested that all notices be provided in the tenant's language.

How do you handle the situation?



Disabilities

FHA prohibits **discrimination** because of a handicap of:

- a) The person interacting with the provider
- b) A person residing in or intending to reside in that dwelling after it is rented, or
- c) Any person associated with that person.

Essentially applies to anyone associated with tenants, or prospective tenants.



Disability Discrimination

- A refusal to permit, at the expense of the disabled person, **reasonable modifications** of existing premises if such modifications may be necessary for full enjoyment of the premises
- A refusal to make **reasonable accommodations** in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling
- Design and Construction Requirements (after 1991)

What is a Disability?

- 1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
- 2) a record of having such an impairment, or
- 3) being regarded as having such an impairment.

But does not include current, illegal use of or addiction to a controlled substance.

What is a Physical or Mental Impairment?

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as:

- orthopedic, visual, speech and hearing impairments,
- cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis,
- cancer, heart disease, diabetes, Human Immunodeficiency Virus infection,
- mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

“Substantially Limits”

Significant; To a large degree

“Major Life Activity”

Activities that are of central importance to daily life, such as:

Hearing

Walking

Breathing

Performing manual tasks

Caring for one's self

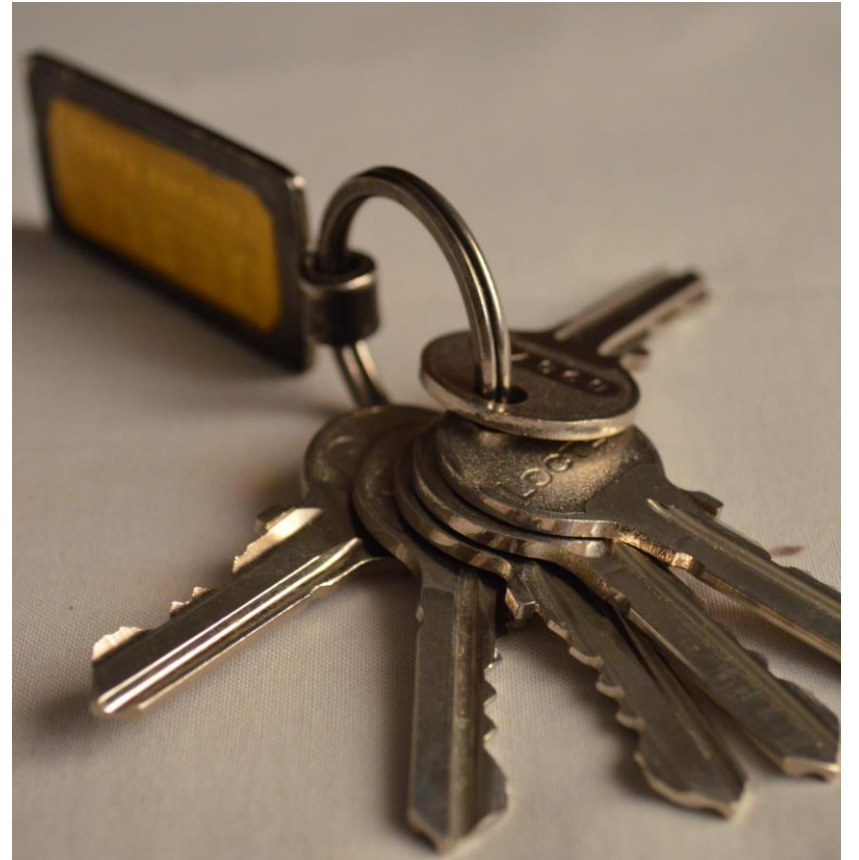
Learning

Speaking

Example

Tenant claims to have mobility issues. She asks for extra key fobs so her children can enter the apartment building and assist her with household tasks. Property manager witnesses tenant on the surveillance cameras without any mobility issues and being able to let guests into the building. Tenant's provides doctor's letter regarding her mobility issues and the need for the children to assist their mother.

How do you handle the request?



Information Requests

- A provider is entitled to obtain information to evaluate if a requested reasonable accommodation or modification may be necessary because of a disability.
- A housing provider may request reliable disability-related information that
 - 1) Is necessary to verify that the person meets the Act's definition of disability,
 - 2) Describes the needed accommodation or modification, and
 - 3) Shows the relationship between the person's disability and the need for the requested accommodation or modification.
- If disability is obvious or need is readily apparent, no further inquiries may be made.

Reasonable Accommodation: *a change in the rules, policies, practices or services*



- A change, exception, or adjustment to a rule, policy, practice, or service that may be **necessary** for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.
- To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.
- Costs associated with reasonable accommodations are typically the responsibility of the housing providers.

The Analysis

1. Has a request for a reasonable accommodation been made by tenant or on tenant's behalf?
2. Is there a disability?
3. Is there a relationship or nexus between the disability and the accommodation requested?
4. Is the request reasonable?

All yes? Must comply with request.

Example

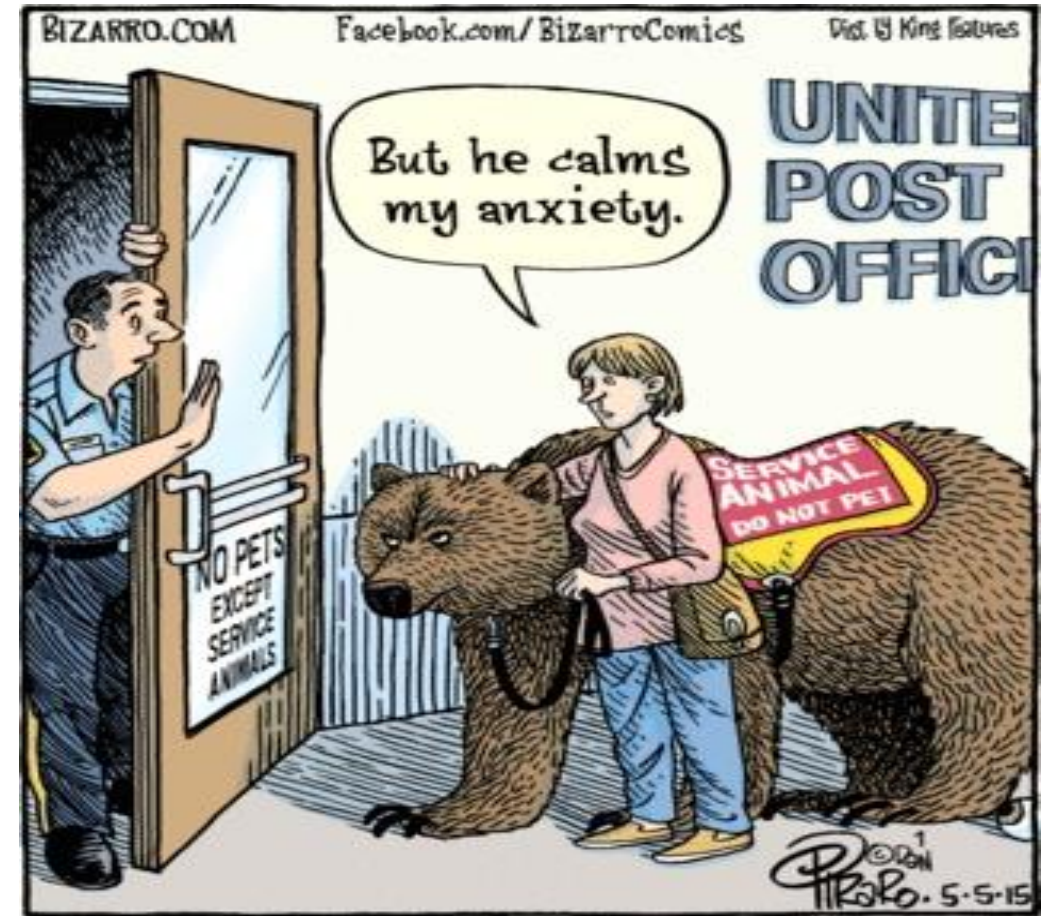
A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit.

What should the landlord do, if anything, to accommodate?



Service and Support Animals

One common type of reasonable accommodation presented to landlords is a tenant's request for an emotional support or service animal.



Service and Emotional Support Animals

Service Animals

- Dogs* that are individually trained to do work or perform tasks for people with disabilities.
- The work or task a service dog does must be directly related to the person's disability (physical, sensory, psychiatric, intellectual or mental).

Emotional Support Animals

- Provides a benefit to an individual with a mental or psychiatric disability.
- No specialized training or certifications needed.



Minnesota Pets for Disabled Tenants

- Multi-unit residential building
- Tenant of a disability accessible unit
- Tenant/unit receives subsidy
- Health/Safety/Noise
- Damage deposit
- Allowed to have:
 - 2 birds, or
 - 1 spayed/neutered dog
 - 1 spayed/neutered cat

MN Service and ESA Documentation

Landlord may require tenant to provide supporting documentation for each service animal or ESA:

- Supporting documents from a licensed professional confirming the tenant's disability and relationship between the disability and the need for a service animal or ESA
 - Except when readily apparent or already known by landlord
- No additional fee, charge or deposit
- Tenant is responsible for damages caused by service animal or ESA

Who is a Licensed Professional?

- Licensed by Board of Medical Practice
- Physician
- Nurse
- Psychologist
- Licensed mental health professional
- Social worker
- Other licensed professional





Example

In a "no pets" apartment building, the tenant demands to know why some other tenants are allowed to have pets and he is not.

What can you tell the tenant?

Example

While performing repairs in a unit, a maintenance tech sees a turtle in the unit. The tenant receives a violation notice for the unauthorized pet. A tenant asks for a reasonable accommodation to allow his turtle in the unit. Can the landlord deny the request based solely on the species?

What if the local ordinance has a restriction on this animal being a pet?





Example

The father of the tenant's children qualifies for the use of an emotional support animal, however, the tenant does not. The father takes care of the children in the unit.

Is the landlord required to permit this ESA in the unit?

What can you require of the Tenant?

- License, if required by local law
- Vaccination
- Control of Animal
- Care of Animal
- Responsibility for damages
- Responsibility for injuries

Where Does it End?



Where Does it End?



START NOW!

[Home](#)

[How ESA Letters Work](#)

[ESA Pricing Plan](#)

[Get Started Here](#)

[Helpful Information](#)

[FAQs](#)

[Contact Us](#)



**No Pets Policy? High pet
deposit? ESAs are exempt!
Get your letter today!**

Get Started Now!

Direct Threats

FHA does not apply to "**direct threats**" to the health or safety of other individuals or result in substantial physical damage to the property of others.

The FHA does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general.

Must consider:

- 1) the nature, duration, and severity of the risk of injury;
- 2) the probability that injury will actually occur; and
- 3) whether there are any reasonable accommodations that will eliminate the direct threat.

Example

On a tenant's application to rent an apartment, a woman notes that she currently resides in property known to the landlord as drug rehabilitation center.

Can the landlord reject the applicant because of a fear that alcoholics have a tendency to be a nuisance and cause damage to the property?



When Can I Say “NO”?

- If the request was not made by or on behalf of a person with a disability,
- If there is no disability-related need for the accommodation, or
- A request for a reasonable accommodation may be denied if providing the accommodation is not **reasonable**.
- Remember FHA does not apply to Direct Threats.
- If you are unsure, ask for help!



Example

As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection.

The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster.

Must the landlord comply with such a request?

Determining if a Request is Reasonable

- Impose an undue financial and administrative burden on the housing provider, or
- Fundamentally alter the nature of the provider's operations.
- Factors to consider:
 - 1) cost of the requested accommodation,
 - 2) the financial resources of the provider,
 - 3) the benefits that the accommodation would provide to the requester, and
 - 4) the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

REASONABLE



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Example

A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability.

Must the landlord comply?



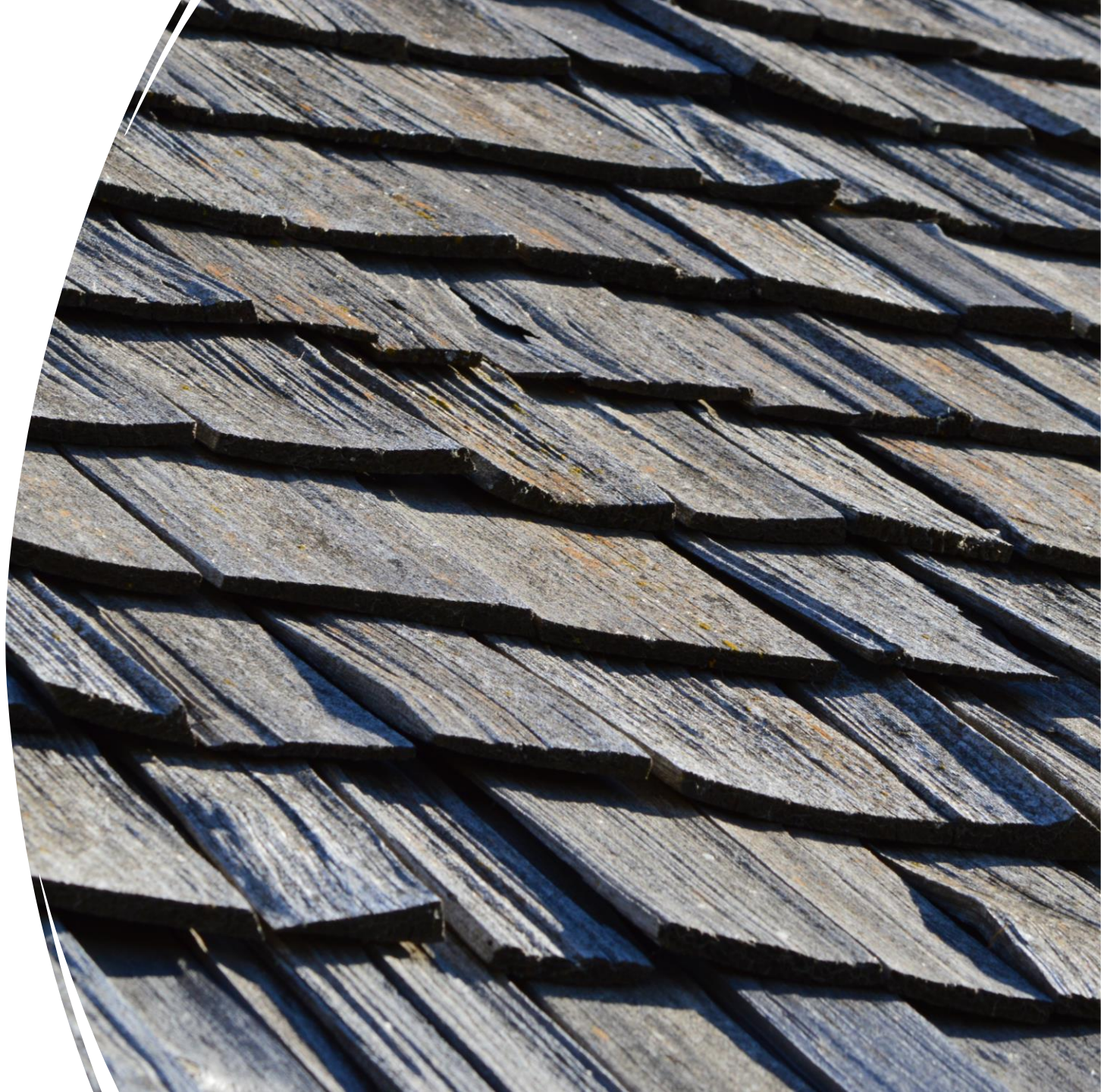
Reasonable Modifications: *a structural change*

- A reasonable structural change made to existing premises in order to afford a person with a disability full enjoyment of the premises.
- Can include structural changes to interiors and exteriors of dwellings and to common and public use areas.
- There must be an identifiable relationship, or nexus, between the requested modification and the individual's disability.
- Except in certain subsidized and affordable housing, tenant is responsible for paying for modification.

Example

A tenant with a mobility disability asks the property owner to permit him to change his roofing on the home from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire.

Is this a reasonable modification?



Who is responsible for upkeep and maintenance expenses associated with a reasonable modification?

Who uses the modification?



Restoring the Premises

- The tenant must restore the **interior** only where “it is reasonable to do so” and where the housing provider has requested the restoration.
- The tenant is not responsible for expenses associated with reasonable wear and tear.
- If the modifications do not affect the subsequent use or enjoyment of the premises, the tenant cannot be required to restore.
- A housing provider may choose to keep the modifications in place at the end of the tenancy.

Can Landlord Suggest an Alternative?

- Generally, no alternatives if the tenant complies with the requirements for reasonable modifications.
- If the modification is one that would not have to be restored, and imposes no additional costs and still meets the tenant's needs, then yes.
- If the landlord proposes a more costly design, to satisfy aesthetic standards, etc., the tenant is not responsible for additional costs.

Additional Charges

- No additional charges for reasonable accommodations or modifications.
- No additional security deposits
- No required insurance

When and How to Request Accommodation/Modification

- Can be made at any time*
- Must make it clear to the housing provider that he or she is requesting an exception
- Does not have to be in writing – but it should be!
- Does not have to specifically say “accommodation” or “modification”

Example

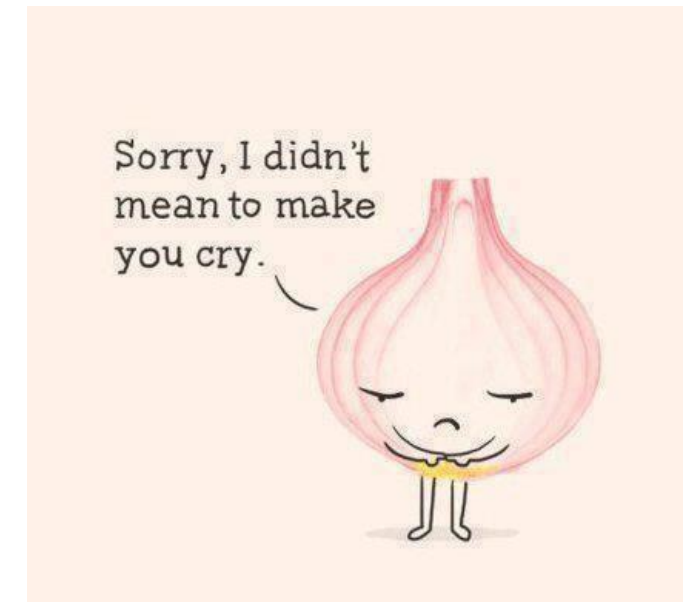
When maintenance enters a tenant's unit for repairs, they discover that the unit is filled with excess paper and belongings that walking through it is difficult and even unsafe. After the violation notice is given to the tenant, the tenant request a reasonable accommodation insisting that they have been diagnosed with a disability. Is the tenant entitled to a RA?



Disparate Treatment vs. Disparate Impact

It is clear that the FHA makes discrimination related to a protected class based on discriminatory **intent or motive** unlawful and actionable (Disparate Treatment). But what if you did not mean to discriminate?

In June 2015, the United States Supreme Court issued a decision permitting the application of the disparate impact theory in the Fair Housing Act.



Advertising

Examples of discriminatory statements in advertisement include:

- “I prefer tenants who speak Spanish.”
- “Young professionals only.”
- “Not accessible for the disabled”
- “Not ideal for children.”
- “I’m only looking to rent to one person or a couple.”
- “Proof of two years of steady employment required.”
- “Students only.”
- “I am a Christian and want to rent to someone with similar values. It is against my religion to rent to anyone who is gay.”

Advertising Tips

- Don't describe the type of tenant you think would be happy living in the property.
- Talk about the property's amenities, nearby services, minimum rental qualifications and the cost to rent the unit in the advertisement.
- If you do include requirements for the kind of applicant you are looking for, be sure to use criteria that anyone within a protected class can meet, such as "long-term tenant" or "tenant with a good credit history."

Forbidden Applicant Inquiries

It is usually unlawful for a housing provider to:

- 1) Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or
- 2) Ask about the nature or severity of such persons' disabilities.

Permissive Applicant Inquiries

The following inquiries are permitted, provided they are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Possible Consequences of Fair Housing Violation

- Compensate tenant for actual damages, including out-of-pocket expenses and emotional distress damages
- Provide permanent injunctive relief.
- Provide appropriate equitable relief (for example, make the housing available to tenant).
- Pay tenant's reasonable attorney's fees.
- Pay a civil penalty to HUD to vindicate the public interest. The maximum civil penalties are: \$16,000, for a first violation of the Act; \$37,500 if a previous violation has occurred within the preceding five-year period; and \$65,000 if two or more previous violations have occurred within the preceding seven-year period.

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QUESTIONS