

THE FAIR HOUSING ACT; THE ADA; AND ANIMALS

by Brandon M. Engblom, Esq.

Opinions or points of view expressed in this discussion represent those of the speaker and do not represent the official position or policies of the Housing and Redevelopment Authority of Duluth, Minnesota or the University of Wisconsin-Superior.



About Me: Professional History

General Counsel to the Housing and Redevelopment Authority of Duluth, MN.

- Manage the internal and external affairs of the authority.

Adjunct Professor with the University of Wisconsin Superior

- Areas of expertise include:
 - Civil Procedure,
 - Judicial Process
 - Constitutional Law.

Associate Attorney with Ledin, Olson & Cockerham S.C. in Superior, WI.

- Wide practice areas including business litigation, family law, and appellate practice.

About Me: Educational History

Attended University of St. Thomas School of Law (UST).

- Mentored under Judge Gina M. Brandt of the Fourth Judicial District.
- Competitor in the American Association for Justice Trial Advocacy Competition.
- AMTA Mock Trial Judge, Invitational, Regional, and National levels.
- Co-lecturer for the AAJ Trial Advocacy class with Hennepin County Prosecutor.

Attended University of Wisconsin Superior.

- Double majored in Legal Studies and Political Science (concentration in American Government).
- Paralegal Certificate recipient.
- Mediation and Conflict Resolution Certificate recipient.
- Executive Director and Captain to the UWS Mock Trial program (3 years).
- Vice President to the Political Science Association.

Disclaimer

I am a Lawyer;
I am not ***your*** Lawyer.

These prepared remarks are for general education purposes.
Seek individualized legal advice to review your particular situation.



Fair Housing Act vs ADA

Fair Housing Act applies to most housing providers.

Americans with Disabilities Act Title III: applies to housing providers—only in public spaces.

- Community rooms;
- Common spaces;
- Etc.

Both Fair Housing Act and ADA protect Assistance Animals

- Assistance animals = Service Animals + Support Animals

Definition of “Assistance Animals”

Animals that work, provide assistance, perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability.

Dogs and other animals can be assistance animals.

An assistance animal is not required to be trained or certified

- (but it can be)

Short ADA Note

A Houser's Obligation under the ADA is very different than the FHA.

Two Questions:

- (1) is the dog a service animal required because of a disability? and
- (2) what work or task has the dog been trained to perform?

Also permits miniature horses, sometimes.

ADA does not cover emotional support animals.

Fair Housing Act (FHA)? What Is It?

Formally known as Title 8 and 9 of the Civil Rights Act of 1968

- Follow-up legislation to the Civil Rights Act of 1964
- Passed the Senate without debate and signed into law by President Johnson

Goal:

- To stop medium and large scale discriminatory housing practices

It has been amended and improved upon over the decades.

- You may see people refer to it as FHAA or FHA.

A Product of the Civil Rights Movement



Core of the Fair Housing Act (FHA)

Prohibits discrimination against protected classes in the:

- Advertisement of Housing;
- Sale of Housing;
- Rental of Housing; and
- Financing of Housing.

Prohibits harassment and retaliation.

Mandates accommodation for disabilities.

The Seven Protected Classes

- **Disability;**
- Race;
- Sex –including gender identity and sexual orientation;
- Color;
- National Origin;
- Religion; and
- Familial Status – including pregnant persons.
- A Person's Age. No, but also Yes.



DISABILITY



RACE



SEX



COLOR



NATIONAL
ORIGIN



RELIGION



FAMILY
STATUS

Who must comply with the FHA: Part I

FHA applies in all 50 states and all U.S. territories or possessions.

Exceptions:

- Owner-occupied buildings with four or fewer units. The FHA generally isn't applicable when a building has two to four units, and the owner lives in one of them.
- Single-family homes rented without a broker. The FHA doesn't apply when a single-family house is sold or rented without a broker, so long as the owner doesn't own more than three houses.
- Religious organizations. The FHA does not apply to the limitation of occupancy or giving preferences to people of a religious organization's own religion, when the religious organization is leasing apartments.

Who must comply with the FHA: Part II

FHA applies in all 50 states and all U.S. territories or possessions.

Exceptions:

- Private clubs. The FHA does not apply to private clubs that are leasing apartments for non-commercial purposes, thereby permitting them to limit occupancy exclusively to their members.
- Senior housing. The FHA's Familial status protection does not apply to senior housing. Specifically if the property is a 55 and older or 62 and older community, or those that participate in a federal, state or local senior housing program.

HUD Guidance on Assistance Animals

1. Can't charge pet rent/fees
2. Can't charge pet security deposit
3. Can't require additional insurance
4. Can't limit where animal goes, unless undue financial or administrative burden or fundamental alteration of landlord's services

A Request for an Assistance Animal is...

A Request for a Reasonable Accommodation (RA) under the **FHA**

- Don't have to say "RA" or use special words to make the request.
 - "Has the person asked to get or keep an animal in connection with a physical or mental impairment/disability?"
- Doesn't have to be in writing.
- Others may ask on behalf of applicant/resident.
- May seek RA before or after animal is acquired.

What is a Reasonable Accommodation?

A reasonable accommodation is a modification or exception to a housing provider's rules, policies, practices, or services.

- Purpose: The purpose of a reasonable accommodation is to ensure that a person with a disability has an equal opportunity to use and enjoy their dwelling.

Types of Requests:

- Reasonable Modification = Physical Alterations: These may involve making changes to the property to improve accessibility for a person with a disability.
- Reasonable Accommodation = Policy Changes: This could involve changes in the terms and conditions of a lease or rental agreement to accommodate a person's disability-related needs.

What's the difference?

In practice, there is little difference between Accommodation and Modification.

- For that reason, I tend to just call them all accommodations (RA).

How does someone evaluate an RA request?

- Carefully.
- With everything known to you and what is presented in the request.
 - Oral;
 - Napkin;
 - Official Form;
 - Etc.

Permissible Inquiries for FHA

Does the applicant or resident have a disability?

Does the applicant or resident have a disability related need for an assistance animal?

Landlords may ask applicants or tenants who have disabilities that are not readily apparent to provide reliable documentation of a disability and a disability related need for an assistance animal.

Handouts!

- FHA and ADA

HUD Guidance FHEO 2020 01

Animals commonly kept in households are okay: dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other “small, domesticated animal traditionally kept in a home for pleasure.”

No breed / weight restrictions.

Unique animals: Reptiles (except turtles), barnyard animals, monkeys, kangaroos, and other non domesticated animals.

- Substantial burden of demonstrating need for the animal.

How fast should you respond?

Process RA request promptly.

- The urgency of the request may change how fast you need to act.

What does that mean?

- HUD recommends within 10 days of receiving documentation.

30+ days with a non-answer from the housing provider might be deemed a de facto denial of the request.

A Denial of an RA or a failure to Respond

May lead to an enforcement action under the FHA.



How is the FHA enforced?

There are two methods of enforcement.

(I) United States Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) Complaint and Investigation Process.

- Must be submitted to HUD within one year.

(II) Private Cause of Action.

- Must be filed in court within two years.

Both of these things can happen at the same time.

- HUD only loses jurisdiction if the private cause of action goes to trial.

FHEO Complaint and Investigation Process: 1

(1) Inquiry: a Tenant/Applicant/Person (complainant) make a complaint to HUD.

(2) Complaint is Perfected: HUD intake specialists reviews the material to establish jurisdiction.

(3) Complaint Established: HUD submits the completed complaint to Owner/Seller/Lender.

FHEO Complaint and Investigation Process: 2

(4) Response Period: Owner/Seller/Lender responds to the complaint – non argumentative.

(5) Investigation Begins: HUD assigns an investigator to reviews and gathers evidence.

(6) Cause Determination: HUD makes its final determination in a Letter of Findings.

- No Reasonable Cause – Dismissal of the complaint.
- Determination of Reasonable Cause and a Charge of Discrimination – the fight begins.
- Trial in federal court prosecuted by the DOJ or trial to an administrative law judge.

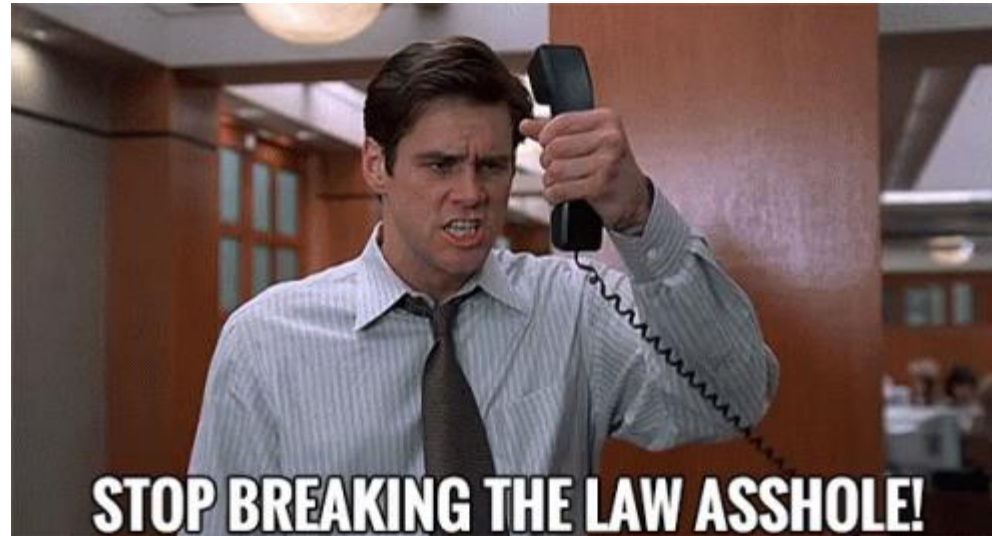


Private Cause of Action

Any “aggrieved person” who is “injured by a discriminatory housing practice” may bring suit against the person or entity who discriminated against them in either State or Federal Court.

- This is a Tort Action: a civil wrong.
- Allows for compensatory damages, including damages for emotional distress.
- Allows for injunctive relief.

How to best avoid enforcement actions?



Alright, for real this time.

How to best avoid enforcement actions?

Treat people the same; and

Provide reasonable accommodations and modifications as necessary.

Evaluating Reasonable Accommodations

Was the request was made by or on behalf of a person with a disability?

- Verification of a disability,
- Unless the disability is obvious or otherwise known.

Is there a disability-related need for the accommodation?

- Link between the disability and the accommodation sought; and
- Necessity for an equal opportunity to enjoy the program like all other participants.

Is the requested accommodation is reasonable?

- Undue financial and administrative burden;
- Fundamentally or substantially alter a policy or program; or
- Feasibility in implementing the request.

If an RA is Denied, the Legal Test is:

by a Preponderance of the Evidence ...

Requester must **prove** that the request seems reasonable on its face.

- Request is linked to their disability-related needs;
- Necessary to afford an equal opportunity to enjoy the property/lease; and
- The Request is possible to implement.



=====Burden Shifting=====

Housing Provider must **prove** either:

- Undue financial and administrative burden;
- Fundamental or substantial alteration of the lease; or
- Infeasibility in implementing the request.



Examples of Reasonable Accommodation

Renter sued their landlord for the landlords refusal to allow the family to keep a mixed-breed pit bull as emotional support animal for a disabled child.

- Viable claim against the landlord
- Plaintiff: injured OR believes they would be injured by a discriminatory practice

Questions?
