

Housing Law Group

November 19, 2013



Reasonable Accommodations for Tenants with Disabilities





FAIR HOUSING LAWS

- **Fair Housing Act**

42 U.S.C. § 3601 et seq.

- **Section 504 of the
Rehabilitation Act of 1973**

29 U.S.C. § 701 et seq.

- **Pennsylvania Human
Relations Act**

43 Pa.C.S.A. § 951 et seq.

- **Local Ordinances**

Fair Housing Act & Pennsylvania Human Relations Act



Protected Classes:

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability
- Age (people 40 years old and older) (under Pennsylvania Human Relations Act)

42 U.S.C. § 3604; 43 Pa.C.S.A. § 953



Fair Housing Act

42 U.S.C. § 3604



The Fair Housing Act makes it illegal, in the sale and rental of housing, to take any of the following actions based on any of the protected characteristics:

- Refusing to rent or sell housing
- Refusing to negotiate for housing
- Making housing unavailable

- Setting different terms, conditions or privileges for sale or rental of a dwelling
- Providing different housing services or facilities
- Falsely denying that housing is available for inspection, sale, or rental
- For profit, persuading owners to sell or rent dwellings by suggesting that people of a particular race or other protected class have moved or are about to move into a neighborhood (called “blockbusting”).



Fair Housing Act – “Dwelling”



The Fair Housing Act covers “dwellings.”

“Dwelling’ means any building or structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale, or lease for the construction or location thereon of any such building, structure, or portion thereof.”



42 U.S.C. § 3602(b)



Fair Housing Act – “Dwelling”



Key question is whether the person “intend[s] to remain in the [house] for any significant period of time and whether they view [the house] as a place to return to.”

United States v. Columbus Country Club, 915 F.2d 877, 881 (3d Cir. 1990).



What types of housing do fair housing laws cover?

- Private housing
- Public and subsidized housing
- Manufactured home communities
- Homeless shelters
- Group homes
- Rooming or boarding houses
- Nursing homes and assisted living centers
- University housing (dorms)
- Vacant land for sale or lease for residential use.



Fair Housing Act Exemptions



- Small, owner-occupied buildings may not be covered
 - FHA: owner-occupied building with 4 units or less
 - PHRA: owner-occupied building with 2 units or less
- Single-family homes sold by a private owner without use of real estate agent/broker/etc. and without discriminatory advertising may not be covered if owner does not own more than 3 single-family homes, has not sold a house in the last 2 years, and is not in the business of selling or renting dwellings
- Other exemptions (refer to 42 U.S.C. §§ 3603, 3607)

Disability



- A person is considered disabled if he or she is an:
 - Individual with a physical or mental impairment that substantially limits one or more major life activities, or
 - Individual who is regarded as having such an impairment, or
 - Individual with a record of such an impairment



42 U.S.C. § 3602(h)

Major life activities include activities of central importance to daily life – seeing, hearing, speaking, walking, breathing, caring for self, performing manual tasks and learning. 24 C.F.R. § 100.201(b)



Equal Enjoyment

Reasonable Modifications

- Structural change to
 - Interior
 - Exterior
 - Common areas



Reasonable Accommodations

- Change, exception, or adjustment to a rule, practice, or service



Reasonable Accommodation Examples



- Housing provider allows tenant with mobility impairment to move from third floor to ground floor
- Housing provider notifies tenant with chemical sensitivities in advance of painting and exterminations
- Tenant is allowed to transfer to different unit to get away from conditions that amplify effects of disability (e.g. loud noise)
- Housing provider reserves a parking space near the ramp for a tenant who uses a wheelchair



What counts as a RA request?



- Any request asking for an accommodation because of a disability
 - E.g. Lease says tenant must pay rent in person. Tenant tells housing provider: “Sometimes I get really anxious and have trouble leaving my apartment. Can I pay my rent by mail instead?”
- Does not have to use the magic words “reasonable accommodation”
- May be oral or in writing
- Does not have to use housing provider’s request form

What information can the housing provider request?



- Can ask tenant, medical provider or social service provider to confirm tenant has a disability
- Cannot ask for tenant's diagnosis
- Cannot ask tenant for more information or medical verification if:
 - Disability is obvious, or
 - Housing provider already knows tenant has a disability and need for reasonable accommodation is clear

When can a tenant request a RA?



Tenant can request a reasonable accommodation at any time prior to actually being evicted, including:

- During application process,
- While living in unit,
- At informal hearing,
- At eviction hearing,
- On appeal.

Necessary & Nexus



- Housing provider must allow a disabled tenant to make reasonable modification or housing provider must grant reasonable accommodation if such modification or accommodation is necessary to allow the tenant full enjoyment of the unit.
- RA is necessary if identifiable relationship, or nexus, between the requested modification or accommodation and tenant's disability.
- E.g. Tenant with a mobility impairment can show a nexus between disability and RA request of additional time to clean the apartment.
- E.g. Tenant with a mental health disability cannot show a nexus between disability and RA request of a ramp.

What makes an RA request unreasonable?



- RA request is reasonable unless:
 - Undue financial burden on housing provider,
 - Undue administrative burden on housing provider, or
 - Fundamental alteration of housing provider's operations.
- E.g. Asking housing provider to notify tenant of all cleaning supplies used in entire building is unreasonable
- E.g. Asking housing provider to provide tenant ride to doctor or grocery store due to tenant's mobility impairment is unreasonable

Other reasons for denying RA request



- Accommodation not required if:
 - Tenant poses a direct threat to the health or safety of other residents or housing provider's staff
 - Tenant would cause substantial physical damage to another person's property

Open a Dialogue



- Tenant's RA request should open a dialogue between the housing provider and the tenant about the tenant's needs
- If housing provider refuses tenant's request, housing provider should suggest an alternative RA
- If housing provider does not respond to the tenant for an extended time or does not respond to tenant's request at all, housing provider may be found to be in violation of FHA
- Plan to follow up with housing provider if you have not received a response within 2 weeks, sooner if RA need is urgent

Advice on Requesting RA



- Be specific about the request, including the tenant's limitations due to tenant's disability
 - E.g. "Tenant has trouble going up and down stairs."
 - E.g. "Tenant is unsteady on his feet and prone to falling."
 - E.g. "Tenant's disability causes her to demonstrate poor judgment at times."
- Don't be afraid to reject housing provider's proposed RA if the RA will not work for the tenant
 - E.g. Housing provider's proposal to move tenant to another unit may not be best accommodation for tenant
- Have alternative RA ready if housing provider rejects tenant's proposed RA

Reasonable Accommodation Example – Poor Housekeeping or Hoarding

- Tenant being evicted for failure to maintain unit to housekeeping standards
- Tenant with a disability related to hoarding or poor housekeeping can request reasonable accommodation of stay of eviction action and additional time to clean apartment or get help cleaning apartment.
- Tenant's disability may be physical (difficult walking, bending, etc.), a cognitive impairment (difficulty comprehending housekeeping rules or extermination preparation notice), or related to mental health (need to keep items, difficulty discarding items without anxiety, etc.)
- Landlord must grant reasonable accommodation unless an exception applies such as fundamental alteration of housing provider's operations (if tenant is requesting housing provider's staff cleans the apartment) or tenant poses a direct threat to health and safety of other tenants (because apartment is serious fire hazard).



Tenant Raising FHA as Defense to Eviction Action



A tenant may defend herself against an eviction by raising a reasonable accommodation defense under the FHA.

5 Elements of a Reasonable Accommodation Defense:

- 1) Tenant is disabled,
- 2) Landlord knew or should have known of tenant's disability,
- 3) Accommodation of tenant's disability "may be necessary to afford the tenant an equal opportunity to use and enjoy her apartment,"
- 4) Tenant requested a reasonable accommodation, and
- 5) Landlord refused to grant a reasonable accommodation.

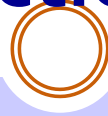
Lebanon County Housing Authority v. Landeck, 967 A.2d 1009, 1012 (Pa. Super. 2009).

Practical Considerations in Assessing/Pursuing RA Claims



- What does the client want?
- Do the facts support the request?
- Does the law support the request?
- Other factors?

Using Denial of RA Request in Defending Evictions



- Assert as Affirmative Defense/Counterclaim
- Preparing and presenting the case

Service & Emotional Support Animals



- Service and assistance (emotional support) animals are not “pets”
- Person with disability may request accommodation for service or assistance animal, if can show relationship to disability
- Housing provider cannot charge pet deposit or extra monthly rent for service & assistance animals
- HUD guidelines allow all dogs to be service and assistance animals, even if breed is considered dangerous or prohibited in jurisdiction



Emotional Support Animals (ESAs)



- ESAs can be any type of animal, not just a dog
- ESAs do not need to have special training
- Person with disability must show relationship to disability
 - E.g. Wheelchair bound tenant who does not need service animal must show ESA assists him with mental health disability, not physical disability
 - E.g. Tenant with PTSD must show ESA calms him



Emotional Support Animals (ESAs)



- Most likely will need letter from doctor or therapist to support request for ESA
 - Have letter ready before making request
- Need to show support for each ESA
 - Requesting multiple animals for one person can be complicated
- If tenant had animal prior to onset of disability, it may be difficult to prove animal is an ESA



Service Animals under FHA vs. ADA



- Fair Housing Act (FHA) & Section 504 of the Rehabilitation Act have different rules about service animals than the Americans with Disabilities Act (ADA)
- FHA applies in all housing, Section 504 applies in federally-assisted housing, ADA applies in public accommodations (including rental offices)
- FHA & Section 504 allow any and all animals to be service animals; ADA only allows dogs and miniature horses to be service animals
- FHA & Section 504 do not require certificate of training for service animals, ADA does require certificate of training

Reasonable Modification Examples



- Individual with mobility issues may install a ramp or stair glide
- Resident with hearing disability may install a peep hole in door
- Resident who is sensitive to loud or persistent noise may install acoustic tiles to reduce noise
- Individual who cannot remember to turn off water may install automatic faucet



Reasonable Modification - Costs



- Private housing: Tenant is responsible for paying for modification, unless structural changes should have been included in the unit or public or common area because multi-family dwelling constructed after 1991.
 - When reasonable, the private landlord may require the tenant to restore the interior of the unit to the pre-modification condition before moving out.



Reasonable Modification - Costs



- Federally-funded housing provider: Housing provider responsible for the costs associated with a reasonable modification, unless:
 - Undue financial or administrative burden,
 - Fundamental alteration of the program, or
 - Housing provider can accommodate the individual's needs through other means.

Refer to HUD's Section 504 FAQs for more information



How the Fair Housing Act is Enforced



- Tenant Raising a Defense in Eviction Action
- Complaint Filed with:
 - Dept. of Housing & Urban Development (HUD): 1 year
 - PA Human Relations Commission (PHRC): 180 days
 - City Human Relations Commission: varies
- Lawsuit Filed in State or Federal Court: 2 years

Violation of Fair Housing Laws - Consequences



Types of Relief Ordered by Courts:

- Money Damages to Victims
- Fines
- Injunctive Relief
- Mandatory Fair Housing Training for Housing Provider, Landlord, Management Company or Realty Company
- Attorney's Fees