

*Jeffrey L. Driscoll, Esq.*  
*P.O. Box 112*  
*Somerset, MA 02726*  
*tel. 508-674-0020*  
*fax 508-673-3821*  
[attyjld@aol.com](mailto:attyjld@aol.com)

## **PHADA CONFERENCE 1/05 FAIR HOUSING AND PUBLIC HOUSING**

### **The Fair Housing Act 42 U.S.C. ss 3601 – 3619**

Fair Housing Act – prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status,<sup>1</sup> and disability.<sup>2</sup>

### **WHAT HOUSING IS COVERED**

The Fair Housing Act covers most housing. In some circumstances the Act exempts the following:

- Owner-occupied buildings with no more than four (4) units;
- Single family housing sold or rented without use of a broker;
- Housing operated by organizations and private clubs that limit occupancy to members.

### **WHAT IS PROHIBITED**

In the Sale and Rental of Housing: No one may take any of the following actions based upon race, color, national origin, religion, sex, familial status of handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions of privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing

### **FAIR HOUSING ACTS ALSO PROHIBITS**

- Disparate treatment in mortgage lending
- Threatening or coercing someone exercising fair housing rights
- Advertisements or statements that include a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

### **REASONABLE ACCOMMODATION**

- 1) Reasonable structural modifications to units and public/common areas in a dwelling;
- 2) Change, exception, or adjustment to a rule, policy, practice or service that may be necessary for a

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<sup>1</sup> Including children under the age of 18 years living with parents or legal custodians; pregnant women and people securing custody of children under 18 years.

<sup>2</sup> The Fair Housing Act uses the term “handicap” instead of the term “disability”. Both terms have been determined by the Court, based upon the Fair Housing Amendments Act of 1988, to have the same meaning.

person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

**Practice Tip:** 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.

### **WHO MUST COMPLY WITH A FAIR HOUSING ACT'S REASONABLE ACCOMMODATION REQUIREMENTS**

Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts, more importantly, have also applied the Act to state and local governments.

### **WHO QUALIFIES AS A PERSON WITH A DISABILITY UNDER THE ACT**

The Act defines a person with a disability to include:

- (1) individuals with a physical or mental impairment that substantially<sup>3</sup> limits one or more major life activities<sup>4</sup>;
- (2) individuals who are regarded as having such an impairment; and
- (3) individuals with a record of such an impairment.

Physical or mental impairment include, but are 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, HIV, mental retardation, drug addiction (other than addiction caused by current, illegal use of controlled substance and alcoholism).

### **INDIVIDUALS EXCLUDED**

Juvenile offenders/Sex Offenders

Persons currently engaged in the current illegal use of controlled substances<sup>5</sup>

Persons who constitute a direct threat to the health or safety of other individuals

Persons who cause substantial physical damage to the property

Direct Threat – must be assessed considering:

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

Assessment shall be based upon reliable objective evidence, i.e., current conduct, recent history of overt acts.

**Practice Tip:** PHA's may request that the individual document how, if any, circumstances have changed so that the individual no longer poses a direct threat. PHA's may also obtain satisfactory assurances that the individual will not pose a direct threat.

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<sup>3</sup> The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

<sup>4</sup> Major life activity means, but is not limited to, those activities that are of a central importance to daily life such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.

<sup>5</sup>By contrast, individuals are protected under the Act if they are recovering from substance abuse.

## **DENIAL OF REASONABLE ACCOMMODATION**

A request for reasonable accommodation may be denied if providing the accommodation is not reasonable - i.e. if it would impose an undue financial and administrative burden on the PHA or it would fundamentally alter<sup>6</sup> the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case by case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

The PHA should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability related needs without a fundamental alteration to the provider's operation and without imposing undue financial and administrative burden. If there is an alternative accommodation that would effectively meet the requester's need and is reasonable, the PHA must grant it.

## **COSTS TO THE PHA**

Courts have ruled that the Act may require a PHA to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations.

## **WHEN AND HOW SHOULD AN INDIVIDUAL REQUEST AN ACCOMMODATION**

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever he/she makes clear to the PHA that he/she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless he/she requests one. Reasonable accommodations can be made orally or in writing. It is useful if it is in writing so that this will reduce the chance of misunderstanding.

## **PHA FORMAL PROCEDURE**

The Act does not require that a PHA adopt any formal procedures for reasonable accommodation requests.

## **FAILURE TO ACT PROMPTLY**

A PHA has an obligation to provide a prompt response to a request for reasonable accommodation. Any failure to respond promptly will be interpreted as a denial of the request.

## **QUESTIONS THAT MAY BE AND MAY NOT BE ASKED**

PHA's may not (1) ask an if an applicant has a disability or intends to reside with anyone who has a disability or (2) ask about the nature or severity of such person's disabilities.

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<sup>6</sup> Fundamental alteration – Modification that alters the essential nature of a provider's operations.

PHA's may make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet 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.

A PHA may obtain information that is necessary to evaluate if a requested accommodation may be necessary because of a disability. If the disability is obvious or is otherwise known to the PHA, then the provider may not request any additional information.

A PHA 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 and (3) shows the relationship between the person's disability and the need for the requested accommodation.

Once the PHA has established that a person meets the Act's definition of disability, the PHA request for documentation should seek information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information is confidential.