


The Legal Center for People
with Disabilities  and Older People

Colorado's Protection & Advocacy System

**THE RIGHTS OF INDIVIDUALS WITH DISABILITIES TO FAIR
HOUSING IN COLORADO**

Prepared by the Protection & Advocacy for Individual Rights Program (PAIR), The Legal Center for People with Disabilities and Older People, Colorado. The Legal Center for People with Disabilities and Older People Distributes this Material for Information Purposes only. This document does not constitute legal advice.

Laws are subject to change--this fact sheet is intended to raise questions for the reader. The statutes listed below are only some of the many laws which may apply in a particular instance. Specific questions should be addressed to a Fair Housing advocate.

HOUSING PROTECTIONS FOR PEOPLE WITH DISABILITIES

The Fair Housing Amendments Act of 1988 ("FHAA") prohibits discrimination against tenants or buyers of single-family houses where the landlord or seller owns more than three single-family houses at any one time. It also covers tenants and buyers of rooms or units where the landlord or seller rents or sells at least four rooms or units. The Act also applies to homeowner's associations, town home and condominium associations, housing authorities, and municipal governments (e.g., zoning). The FHAA also applies to facilities where a person is planning to remain for more than a brief time and is expecting to return to. Depending on the living situation, this can mean certain group homes, hospices, nursing homes and homeless shelters. Exclusions to the protections of the FHAA include people who are deemed to be a direct threat to the other tenants unless a reasonable accommodation will allow the person to remain safely in his or her home. Such judgments must be made by using objective medical information and may not be based upon presumptions or prejudices. (42 U.S.C. § 3601, 3604).

The Colorado Civil Rights Act prohibits discrimination against most tenants and buyers in Colorado. This Act does not cover any room for rent in a single family dwelling occupied by the owner. The Act does not apply to private clubs, which are not open to the public. (Colorado Revised Statutes § 24-34-301, 501, 502, 502.2, 803).

Title II of The Americans with Disabilities Act of 1990, prohibits discrimination against individuals with disabilities using state or local government services, such as those of a county housing authority. (42 U.S.C. § 12101).

Section 504 of the Rehabilitation Act of 1973, states that no qualified individual with a disability shall be "excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance." This Act covers individuals using programs that receive federal assistance, such as project-based public housing. (29 U.S.C. § 794).

These civil rights laws prohibit discrimination against individuals with disabilities as well as persons who are regarded as disabled, have a record of disability, and individuals who are associated with a person with a disability. These laws additionally offer protection against retaliation for asserting a civil right. Generally, these laws ensure your right to be free from discrimination based on prejudice, ignorance, myths, or stereotypes. Fair Housing law attempts to ensure individuals with disabilities are included in the mainstream of American society. In some circumstances, these laws will require a builder, landlord, housing authority, or homeowner's association to take some actions and/or to incur some expense.

DEFINITION OF DISABILITY

The FHA protects persons:

- *With* a physical or mental impairment that substantially limits one or more major life activities;
- Individuals who are *regarded as* having such an impairment;
- Individuals with a *record of* such an impairment.

According to the Department of Housing and Urban Development ("HUD") and the Department of Justice ("DOJ"), "physical or mental impairment" includes, but is not limited to orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus (HIV) infection, developmental disability, emotional illness, drug addiction (other than addiction caused by current illegal use) and alcoholism.

The term "substantially limits" means the limitation is significant or to a large degree.

"Major life activity" means those activities that are of central importance to daily life functions such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning and speaking. This list is not exhaustive.

WHAT CONSTITUTES DISCRIMINATION

The Fair Housing Act prohibits discrimination in all aspects of housing including:

- sale or rental of a property;
- the use of different qualifications for people with disabilities for the sale or rental of property ;
- provision of services;
- advertising;
- banks or private institutions offering loans for houses to individuals with disabilities;
- telling a person with a disability that a property is not available when it fact it is;
- refusal of reasonable accommodation requests (see below);

- refusal of property insurance;
- harassment or retaliation against someone asserting their rights under FHAA.

REASONABLE ACCOMMODATIONS

The FHAA requires owners to make reasonable accommodations in rules or policies to afford an individual with a disability an "equal housing opportunity to use and enjoy a dwelling." Accommodations may include zoning considerations, such as variances for a group home, paying rent at a different time, having a service animal (described below) and changes in other rules, policies, practices and services. Generally, requests are considered reasonable if they do not pose financial or administrative burdens to the landlord. An inquiry into financial burden should take into account the total assets of the property owner and should not be directly tied to an individual's rent paid, homeowner dues, or the like.

The following are generally *not* valid, lawful excuses by landlords/sellers under fair housing law:

"We have a rule against that."

"If I do that for you, I will have to do that for everyone."

"I have to treat everyone fairly and that means treating everyone the same."

These are not valid excuses because fair housing law requires "equal opportunity to use and enjoy." This does not mean the same treatment, or the same rule, for all tenants or buyers. Fair Housing law requires that modifications be allowed and/or that accommodations be provided so that each individual may use and enjoy his or her home fully.

Subject to the requirements of the Act, examples of reasonable accommodations include, but are not limited to:

- Changing a "no pets" policy to allow a service animal in the home without a fee, deposit, burdensome rules, liability insurance, or certification;
- Changing a rent due date to allow a person who receives SSI/SSDI disability income to pay rent on a date that allows time to credit the SSI/SSDI check (e.g., 5th of the month);
- Providing a specific, accessible parking space for the exclusive use of a tenant;
- Altering a lease termination date to allow a person to terminate a lease without penalty if the home becomes unusable (e.g., when a person loses the ability to climb stairs after moving into an apartment with a flight of stairs);
- Ceasing an eviction proceeding, in court or otherwise, when the proceeding is the result of an allegation of a "direct threat" to the health or safety of residents or the housing provider, when the person with a disability has a change in circumstances showing that he or she does not pose a "direct threat" (e.g., when a tenant with a mental illness who has allegedly posed a threat receives treatment that tends to show that they are safe). Any determination of threat must be based upon actual,

objective information, and may not be made based upon generalizations, assumptions, or stereotypes;

- Providing a flashing alert in place of a noise-making fire alarm when a tenant does not hear but can see;
- Providing a qualified and effective sign language interpreter at meetings run by the housing provider or housing association when such meetings are attended by persons who are deaf who use sign language for communication.

A request for an accommodation does not have to be made when moving into a new apartment or house. However, the request should be made as soon as it is practical for the tenant. While the law does not require the request to be in writing, it provides a good documentation of your requests. Sending the request by certified mail also ensures that the sender has proof of receipt. You should always be sure to date the accommodation request and keep a copy for verification purposes. The following items are things to consider and include in a reasonable accommodation request:

- state how the accommodation is helpful for full use and enjoyment of your home;
- describe disability-related limitations;
- describe the accommodation requested;
- if possible, inform the housing provider that you are willing to supply medical documentation regarding your disability upon request (or you may decide to attach medical documentation directly to the letter itself);
- request a reply in writing within a certain number of business days, depending on the situation;
- date the letter(s);
- sign the letter(s);
- copy the letter(s) and retain a copy for your records;
- if time allows, send the letter(s) via certified, return receipt to ensure the housing provider has received it.

Hopefully, your reasonable accommodation request will be honored by the housing provider. However, if a request is either denied or ignored, you may have a legal basis for filing a complaint of discrimination. (Please see section on “Where to File a Charge of Housing Discrimination Based on Disability” below).

REASONABLE MODIFICATIONS

Sometimes, physical modifications needed for full use and enjoyment of a dwelling may be at the expense of the tenant. These modifications can include constructing ramps for wheelchairs, moving light switches, widening doors and walkways and any other changes to make an apartment accessible for a person with a disability. In some instances, the landlord can also request that you restore the interior of your home to the way it existed before the modification, reasonable wear and tear excepted. The FHAA requires certain “design and construct” features for residential elevator buildings with four or more units

that did not have tenants before March 1991. If this is the case, the owner may have the obligation to pay for physical modifications.

Buildings and builders can comply with local or state laws as long as these state or local requirements meet the minimum requirements of the FHAA. Likewise, compliance may be met by adhering to the requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (ANSI A117.1). ("Handicapped" is the term used by the Standard).

Generally under Fair Housing law, governmental programs and services have a higher obligation to make modifications and accommodations than private landowners. Also included are landlords who fall under Section 504 or Title II of the ADA. This means these programs may have to incur more expenses on a program modification than a private landowner.

SERVICE ANIMALS

One reasonable accommodation a landlord could grant a tenant is the use of a service animal. Federal law states that a service animal is a dog or any other animal individually trained to provide assistance to an individual with a disability. While some landlords have additional deposits required for "pets", service animals are considered auxiliary aids, whether or not they are also "pets." Therefore, a landlord cannot charge any additional fees, such as deposits or increased rent. In order for a tenant to have a service animal in the home, it may be necessary to provide documentation to prove it is in fact a service animal. The animal must be needed for the person to enjoy an equal housing opportunity. It is the responsibility of the service animal's guardian to license the animal, clean up after the animal, keep the animal under control, and provide for the safety and health of the animal. It is useful to keep records of vaccinations and of training activities for the animal. A request for a reasonable accommodation to a "no pets" policy or other policy or rule prohibiting a service animal can be submitted in the same manner as any other reasonable accommodation request (see "Reasonable Accommodations", above). In addition to the steps listed there, you may also note in the request that you will be responsible for the animal and that the animal is appropriately trained.

EVICITION

Sometimes a landlord attempts to evict an individual with a disability, asserting that the individual threatens the safety of other residents. A landlord may not evict a tenant if a reasonable accommodation would allow the tenant to continue living in his or her home without constituting a danger to others. Even if eviction proceedings commence, it is not too late to request an accommodation.

In Colorado, a landlord can normally only evict you if you have failed to follow the terms of your lease, you have not paid rent, have committed a substantial violation or there is no longer a lease and there is a no cause eviction. For failure to follow the terms of your lease, a landlord must give you the choice of either following the terms of the lease or

leave the premises in three days. Generally, for failure to pay rent, either you must pay the rent or leave in three days. If you do not "cure" the leave violation or non-payment, you may then be served with an eviction notice called a summons and complaint. This is a lawsuit against you for the breach of lease.

For a no cause eviction, a landlord must inform you of your eviction in writing and in a minimum number of days before the end of the lease. Although Colorado follows a highly structured eviction process, notice provisions may be different if you live in federally subsidized housing.

For more information on these Landlord/Tenant matters, please see the Colorado Legal Services Housing website at: www.coloradolegalservices.org, or by contacting them directly (see "Resources" below).

WHERE TO FILE A CHARGE OF HOUSING DISCRIMINATION BASED ON DISABILITY

Remedies for violations of Fair Housing law may be pursued through a state administrative process, a federal administrative process, or in state or federal court. The laws applicable to the circumstance control what forum - state or federal - may be used. Administrative complaints must be filed within one year of the discrimination under the FHAA, and within 180 days under Title II of the ADA or Section 504 of the Rehabilitation Act of 1973. Exceptions to these timeframes may apply. A lawsuit must be filed in federal court within two years. The Department of Justice will investigate a claim of discrimination based on a "pattern of practice" against someone for repeated offenses.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1670 Broadway, 23rd Floor

Denver, CO 80202

303-672-5437 voice

1-800-877-7353 voice

303-672-5248 TTY

303-672-5026 Fax

Web: www.hud.gov

Complaint form: <http://www.hud.gov/complaints/housediscrim.cfm>

Joint Statement on Reasonable Accommodations, HUD/DOJ:

<http://www.hud.gov/offices/theo/library/huddojstatement.pdf>

COLORADO CIVIL RIGHTS DIVISION

1560 Broadway, Suite 1050

Denver CO, 80202

303-894-2997 voice

1-800-262-4845 voice

303-866-3010 TTY

303-894-7830 Fax

Web: www.dora.state.co.us/civil-rights/index.htm
Email: ccrd@dora.state.co.us

REMEDIES

Fair Housing law is structured to prevent future discrimination as well as to remove any lingering effects of past discrimination. Non-monetary relief sought under Fair Housing law must be tailored in each instance to the needs of the particular situation. This means that relief must be *effective* in each circumstance, and often will require flexibility by a landlord, housing authority, or homeowner's association, rather than strict adherence to rules. For example, a landlord may be required to designate and reserve a specific parking space for an individual with mobility impairments, and the landlord may be required to pay for the parking space, as well as for signs designating the space. A landlord may be required to post a Fair Housing Rights poster in a conspicuous place, and to create a uniform and fair procedure for requesting a reserved space. These requirements of a landlord operate regardless of the landlord's internal 'rule' against making exceptions to the provision for parking. A variety of monetary damages may also be available depending on the circumstances of the discriminatory act.

RESOURCES

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Email: ccrd@dora.state.co.us

ADA HOTLINE (function of the U.S. Department of Justice)

1-800-514-0301

1-800-514-0383 TTY

<http://www.ada.gov/>

U.S. Department of Justice

Disability Rights Section
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section - NYAV
Washington, D.C. 20530
202-307-1198 fax

THE BAZELON CENTER FOR MENTAL HEALTH LAW

1101 15th Street, NW, Suite 1212
Washington, DC 20005
202-467-5730 voice
202-467-4232 TTY
202-223-0409 fax
<http://www.bazelon.org/>
info@bazelon.org

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1905 Sherman, Ste. 400
Denver, CO 80203
303.837.1313 voice
303.866.9382 fax
www.coloradolegalservices.org
(offices statewide)

455 Sherman Street—Suite 130—Denver, CO. 80203-4403 (303) 722-0300 1(800) 288-1376 FAX (303) 722-0700 TDD for Hearing Impaired
2829 North Avenue—Suite 205 -Grand Junction, CO. 81501-1501 (970) 241-6371 FAX (970) 241-5324