

BETWEEN THE LINES: A QUESTION AND ANSWER GUIDE ON LEGAL ISSUES IN SUPPORTIVE HOUSING (NATIONAL EDITION)

APPENDIX TABLE OF CONTENTS

Appendix 1: Federal and State Fair Housing Laws..... A1-1

Section A.	Federal	A1-1
Section B.	California	A1-1
Section C.	Connecticut	A1-1
Section D.	District of Columbia	A1-2
Section E.	Illinois	A1-2
Section F.	Michigan	A1-3
Section G.	Minnesota	A1-4
Section H.	New Jersey.....	A1-4
Section I.	New York.....	A1-4
Section J.	Ohio.....	A1-5
Section K.	Rhode Island	A1-5
Section L.	Texas.....	A1-5

Appendix 2: Summary of Physical Accessibility and Other Supportive Housing Laws..... A2-1

Section A.	Federal Design and Construction Accessibility Requirements.....	A2-1
Section B.	Fair Housing Act.....	A2-2
Section C.	Section 504	A2-3
Section D.	ADA	A2-3

Appendix 3: Fair Housing Laws Summary

A3-1

Appendix 4: "How the Law Thinks" – Outline of Relevant Laws

A4-1

Section A.	Landlord/Tenant Law.....	A4-1
Section B.	Fair Housing Laws.....	A4-2
Section C.	Relocation Law	A4-3
Section D.	Zoning and Planning Law	A4-4

Appendix 5(A): Joint Statement of the Department of Housing & Urban Development and the Department of Justice: Reasonable Modifications Under the Fair Housing Act..... A5(A)-1

Appendix 5(B): Joint Statement of the Department of Housing & Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act..... A5(B)-1

Appendix 6: Fair Housing Act and Regulations

A6-1

Appendix 7: List of Citations for Definitions of "Disability" and Related Terms

A7-1

BETWEEN THE LINES: A QUESTION AND ANSWER GUIDE ON LEGAL ISSUES IN SUPPORTIVE HOUSING (NATIONAL EDITION)

APPENDIX TABLE OF CONTENTS

Appendix 8: Memorandum from the Department of Housing & Urban Development regarding the medical use of marijuana in public housing	A8-1
Appendix 9: Obtaining HUD Information and Understanding Federal Law Citations	A9-1
Section A. Obtaining HUD Information.....	A9-1
Section B. Understanding Federal Law Citations.....	A9-2
Appendix 10: Glossary of Commonly Used Legal Terms	A10-1

Federal and State Fair Housing Laws

The following is a list of federal and state laws related to fair housing. The list includes major fair housing laws for each state in which the Corporation for Supportive Housing operates an office. Because the list does not incorporate all states and does not provide a comprehensive list of all laws affecting fair housing for each of the included states, and because these laws are subject to change, readers are advised to consult with local counsel to determine the precise set of state and local fair housing laws applicable to the readers' jurisdiction.

Section A. Federal (<http://www.gpoaccess.gov/legislative.html>)

- (1) U.S. Const. amend XIV, §1 (Equal Protection Clause)
- (2) 29 USC §§701, *et seq.* (Section 504 of the Rehabilitation Act)
- (3) 29 USC §12132 (Americans with Disabilities Act)
- (4) 42 USC §§3601, *et seq.*, 3631 (Fair Housing Act, Title VIII of the Civil Rights Act of 1968)
- (5) 42 USC §§6101 – 6107 (Age Discrimination Act)

Section B. California (<http://www.leginfo.ca.gov/>)

- (1) Cal. Civ. Code §§51 – 53 (Unruh Civil Rights Act)
- (2) Cal. Gov't. Code §§12955 – 12956 (Fair Employment and Housing Act)

Section C. Connecticut (<http://www.cga.ct.gov/lco/>)

- (1) Conn. Gen. Stat. §§46a-51 – 46a-81r (General Provisions, Definitions, and Discriminatory Practices in Human Rights and Opportunities)
- (2) Conn. Gen. Stat. §§46a-64b – 46a-64c (Discriminatory Housing Practices)
- (3) Conn. Gen. Stat. §46-81e (Sexual Orientation Discrimination: Housing)
- (4) Conn. Gen. Stat. §§46a-82 – 46a-96 (Discriminatory Practice Complaint Procedure)
- (5) Conn. Gen. Stat. §46a-98a (Discriminatory Housing Practice)
- (6) Conn. Gen. Stat. §1-1g (Definition of Mental Retardation)

APPENDIX 1

- (7) Conn. Gen. Stat. §46a-42 (Definition of Mobility Impaired Persons)
- (8) Conn. Gen. Stat. §46a-44 (Guide Dog Statute)

Section D. District of Columbia

(http://ohr.dc.gov/ohr/frames.asp?doc=/ohr/lib/ohr/toc_general_provisions.pdf)

- (1) D.C. Stat. §2-1401.01-05 (Human Rights)
- (2) D.C. Stat. §2-1402.21-24 (Prohibited Acts of Discrimination in Housing and Commercial Space)
- (3) D.C. Stat. §2-1403.01-17 (Procedures)
- (4) D.C. Stat. §2-1404.01-04 (Procedures)
- (5) D.C. Stat. §2-1411.01-06 (Office of Human Rights)

Section E. Illinois (<http://www.ilga.gov/>)

- (1) Ill. Const. Art. I §§17 – 19 (1999) (Bill of Rights)
- (2) Ill. Comp. Stat. ch. 15 para. 210/01-1-210/1 (Civil and Equal Rights Enforcement Act)
- (3) Ill. Comp. Stat. ch. 20 para. 3805/13 (Housing Authority – No Discrimination)
- (4) Ill. Comp. Stat. ch. 65 para. 5/11-11.1-1 (Fair Housing in the State Municipal Code)
- (5) Ill. Comp. Stat. ch. 310 para. 10/8.15 (Housing Authorities Act)
- (6) Ill. Comp. Stat. ch. 720 para. 590/01 – 590/3 (Discrimination in Sale of Real Estate)
- (7) Ill. Comp. Stat. ch. 765 para. 605/4.1, 605/18.4 (Condominium Property Act)
- (8) Ill. Comp. Stat. ch. 775 para. 5/1-101 – 5/1-103 (Title, Policy, Definitions of Human Rights Act)
- (9) Ill. Comp. Stat. ch. 775 para. 5/3-101 – 5/3-106 (Real Estate Transactions)
- (10) Ill. Comp. Stat. ch. 775 para. 5/4-101 – 5/4-104 (Financial Credit)
- (11) Ill. Comp. Stat. ch. 775 para. 5/6-101 (Additional Civil Rights Violations)

APPENDIX 1

- (12) Ill. Comp. Stat. ch. 775 para. 5/7-101 – 5/7-112 (Department of Human Rights; Duties; Proceedings)
- (13) Ill. Comp. Stat. ch. 775 para. 5/7A-101 – 5/7A-104 (Department of Human Rights Procedures)
- (14) Ill. Comp. Stat. ch. 775 para. 5/7B-101 – 5/7B-104 (Department of Human Rights Procedures)
- (15) Ill. Comp. Stat. ch. 775 para. 5/8-101 – 5/8-112 (Human Rights Commission)
- (16) Ill. Comp. Stat. ch. 775 para. 5/8A-101 – 5/8A-104 (Human Rights Commission: Procedures)
- (17) Ill. Comp. Stat. ch. 775 para. 5/8B-101 – 5/8B-104 (Procedures and Relief)
- (18) Ill. Comp. Stat. ch. 775 para. 5/10-101 – 5/10-103 (Circuit Court Actions)

Section F. Michigan (<http://www.legislature.mi.gov/>)

- (1) Mich. Comp. Laws §§37.2101 – 37.2103 (Elliott-Larsen Civil Rights Act, General Provisions)
- (2) Mich. Comp. Laws §§37.2501 – 37.2507 (Elliott-Larsen Civil Rights Act, Definitions and Unfair Housing Practices)
- (3) Mich. Comp. Laws §§37.2601 – 37.2606 (Elliott-Larsen Civil Rights Act, Enforcement by Civil Rights Commission)
- (4) Mich. Comp. Laws §§37.2701 – 37.2705 (Elliott-Larsen Civil Rights Act, Other Unlawful Acts; Penalties)
- (5) Mich. Comp. Laws §§37.2801 – 37.2804 (Elliott-Larsen Civil Rights Act, Private Civil Action)
- (6) Mich. Comp. Laws §§37.1101 – 37.1103 (amended) (Persons with Disabilities Civil Rights Act, Title and Definitions)
- (7) Mich. Comp. Laws §§37.1501 – 37.1507 (Persons with Disabilities Civil Rights Act, Real Estate)
- (8) Mich. Comp. Laws §§37.1601 – 37.1607 (Persons with Disabilities Civil Rights Act, Administration of Act)
- (9) Mich. Comp. Laws §750.502c (Penal Code, Guide Dog Statute)

APPENDIX 1

- (10) Mich. Comp. Laws §339.2518 (No Cause of Action Against Real Estate Agent Due to Failure to Disclose that Purchaser or Lessee Has Disability)
- (11) Mich. Comp. Laws §445.357 (Discrimination in Advertising Real Property)

Section G. Minnesota (<http://www.revisor.mn.gov/pubs/>)

- (1) Minn. Stat. §§363A.001 – 363A.41 (Human Rights)
- (2) Minn. Stat. §469.020 (Discrimination Prohibited, Displaced Families)
- (3) Minn. Stat. §469.029 (Housing, Redevelopment, Discrimination and Disposal of Property)
- (4) Minn. Stat. §504B.315 (Restrictions on Evictions Due to Familial Status)
- (5) Minn. Stat. §507.18 (Prohibited Restrictions)

Section H. New Jersey (<http://www.njleg.state.nj.us/legislativepub/sitemap.asp>)

- (1) N.J. Rev. Stat. §§2A:42-109 (Rights of Persons with Disabilities)
- (2) N.J. Rev. Stat. §§10:5-1 – 29.10 (Civil Rights, Law Against Discrimination)
- (3) N.J. Rev. Stat. §§52:31-31 (Discrimination in Rental of State-Owned Housing)
- (4) N.J. Rev. Stat. §§52:27D-301 – 27:D-329.19 (Fair Housing Act)
- (5) N.J. Rev. Stat. §§55:14C-7.1 (Naval Defense Housing Projects, Discrimination)
- (6) N.J. Rev. Stat. §§55:14K-44 (Discrimination, in Loans and Housing Assistance)

Section I. New York (<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>)

- (1) N.Y. Exec. Law §§290 – 301 (Human Rights Law)
- (2) N.Y. Exec. Law §63 (Department of Law, General Enforcement Duties of Attorney General)
- (3) N.Y. Civ. Rights Law §§18a – 18e (Equal Rights to Publicly Aided Housing)
- (4) N.Y. Civ. Rights Law §§19a – b (Equal Rights to Publicly Aided Housing)
- (5) N.Y. Civ. Rights Law §§40c – d (Discrimination, Penalty for Violation)

APPENDIX 1

- (6) N.Y. Civ. Rights Law §§47, 47b, c (Rights of Persons with a Disability Accompanied by Guide Dogs)
- (7) N.Y. Real Prop. §§236 – 237 (Discrimination Against Children in Dwelling Houses)
- (8) N.Y. Pub. Hous. §§223, 223a, 223b (Discrimination, Public Housing)
- (9) N.Y. Gen. Mun. §§ 239-O – 239-T (Commission on Human Rights)

Section J. Ohio (<http://codes.ohio.gov/orc>)

- (1) Ohio Rev. Code Ann. §§4112.01 – 4112.11, 4112.99 (Civil Rights Commission)
- (2) Ohio Rev. Code Ann. §4735.13 (Real Estate Brokers)
- (3) Ohio Rev. Code Ann. §4735.16 (Statement of Non-Discrimination)

Section K. Rhode Island (<http://www.rilin.state.ri.us/Statutes/Statutes.html>)

- (1) R.I. Gen. Laws ch. 11-24 (Discrimination in Hotels and Public Places)
- (2) R.I. Gen. Laws ch. 28-5-8 et seq. (Commission for Human Rights)
- (3) R.I. Gen. Laws ch. 34-37 (Fair Housing Practices Act)
- (4) R.I. Gen. Laws ch. 42-87 (Civil Rights of People with Disabilities)

Section L. Texas (<http://www.statutes.legis.state.tx.us/Download.aspx>)

- (1) Tex. Prop. Code. Ann. ch. 301 (Fair Housing Act)

Summary of Physical Accessibility and Other Supportive Housing Laws

Section A. Federal Design and Construction Accessibility Requirements

The Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), and state and local statutes, ordinances and building codes all include design and construction accessibility requirements. Affordable housing project sponsors, who usually seek multiple sources of financing and fulfill social service components, must harmonize federal and state accessibility requirements. The type of project, whether the project involves new construction or rehabilitation, and the funding the project is receiving all dictate which laws apply. Accessible design requirements for new construction and rehabilitation are described below. Accessibility requirements for project operations are discussed as part of the "reasonable modifications" addressed in Chapter Five, Section B, Question Two.

(1) Federal accessibility-related laws that apply to new construction or rehabilitation.

The Fair Housing Act imposes design and construction accessibility requirements for housing (a) first occupied after March 13, 1991, and (b) that is a "covered multifamily dwelling" unit. A covered multifamily dwelling is every unit in a building with at least four units if such building has one or more elevators, and every ground floor unit in a building with at least four units if such building does not have an elevator. Covered multifamily dwelling units can be either rental or ownership units, but do not include detached single family homes. Although, in general, multistory units are not considered covered multifamily dwelling units, the primary entry level of a multistory unit in a building with an elevator is covered by the Fair Housing Act. The Fair Housing Act accessibility requirements not only apply to the design of the units, but also to the design of the project site including public and common use spaces and access routes throughout the site. The requirements are intended to be modest requirements, with the focus on visitability¹ rather than full accessibility.² Rehabilitation activities generally do not trigger the Fair Housing Act design and accessibility requirements, but housing providers should not rehabilitate a covered multifamily dwelling unit in any way that conflicts with the Fair Housing Act design and accessibility requirements.

Title III of the ADA imposes design and construction accessibility requirements if a building or space is a "place of public accommodation" or a commercial facility. Housing is considered neither a place of public accommodation nor a commercial facility under the ADA, but certain components of a residential building, such as a rental office, social service center, or a day care center, may be subject to Title III requirements depending on whether members of the general public are expected to visit and use those facilities. Homeless shelters and substance abuse treatment centers are considered social service facilities that are

¹ Various HUD Notices describe 'visitability' as a basic level of accessibility that enables persons with a variety of abilities to visit friends and neighbors in their community. HUD Notices indicate visitability may be achieved through providing a 32" clear opening in all bathrooms and interior doorways and providing at least one accessible means of egress/ingress to each unit.

² House Report No. 711, 100th Congress 2nd Session at pages 25 and 18.

APPENDIX 2

places of public accommodation, and are therefore subject to Title III. Title III imposes requirements on existing buildings, new construction, and alterations.³

- (2) Federal Accessibility-related laws that apply to new construction or rehabilitation when the government is involved.

All of the requirements described above continue to apply when a government entity is providing financing for the project. In addition, Section 504 of the Rehabilitation Act imposes accessible design and construction requirements if the federal government is providing any funding (including state or local "pass-through" funding under federal programs such as HOME or CDBG, though excluding federal tax-related funding such as low-income housing tax credits or tax-exempt bonds). Each federal agency has developed regulations implementing Section 504. The project sponsor should consult the regulations of the particular federal agency providing financing to determine the scope of accessibility required under Section 504. The HUD Section 504 requirements, for example, apply to existing, newly constructed and rehabilitated housing—ownership and rental—as well as non-housing facilities, like community rooms and laundry facilities located on the project site.

Title II of the ADA, which applies to public entities (e.g., state and local governments) may also apply to private entities to the extent that government involvement transforms a particular privately owned facility into part of a public program. The Title II requirements apply to existing buildings, new construction, and alterations. Some state statutes require Title II compliance for state funded programs, so a review of applicable state laws is a necessary part of the Title II accessibility analysis. In California, for example, Government Code Section 11135 requires Title II compliance for any program or activity that receives financial assistance from the State.

- (3) Requirements of each accessibility-related law applicable to new construction or rehabilitation.

In implementing accessibility requirements in the design and construction of a project, a housing provider should consult an architect to provide a thorough analysis of all applicable laws. Below is a general summary of some of the accessibility requirements imposed by the laws discussed above.

Section B. Fair Housing Act

The Fair Housing Act has the following general requirements:

- a. A building must have an entrance to an accessible route, except where compliance is impractical due to terrain or unusual characteristics of the site.
- b. A building's public and common use areas must be readily accessible to and usable by people with disabilities.
- c. Doors in accessible units must be usable by mobility-impaired persons.

³ 28 CFR § 36.101 et seq.

APPENDIX 2

- d. The project must include an accessible route into and through an accessible unit.
- e. Light switches, electrical outlets, thermostats, and other environmental controls must be placed in accessible locations.
- f. Bathroom walls in accessible units must be reinforced to allow installation of grab bars.
- g. Kitchens and bathrooms in accessible units must have sufficient space to allow people in wheelchairs to maneuver.

To comply with the Fair Housing Act construction and design requirements, providers should review 24 CFR 100.205, which sets forth the HUD-recognized safe harbors for compliance. Using these standards does not preclude using other designs that would similarly comply with the requirements. For details, ask your architect, local planning and building officials, the applicable local government's ADA office, and/or the Pacific Disability and Technical Assistance Center (a nonprofit provider of technical assistance that can be reached at (800) 949-4232).

Section C. Section 504

To comply with Section 504's design and construction requirements (for projects receiving federal funding), a housing provider must comply with the Uniform Federal Accessibility Standards (UFAS). The Uniform Federal Accessibility Standards are available at <http://www.access-board.gov/ufas/ufas.htm>. Under UFAS, five percent of the units in a newly constructed multifamily housing project of fifteen (15) or more units must be accessible for people with physical disabilities. UFAS does not include any specific percentage requirements for rehabilitation of housing, but, in the absence of guidance from a particular funding source, a housing provider should be in compliance if the building includes fifteen (15) or more units.

In addition to the UFAS requirements, housing providers must also consult the Section 504 regulations. The HUD regulations implementing Section 504, for example, have the following requirements for new construction projects with more than five (5) units and substantial rehabilitation projects with more than fifteen (15) units: five percent of the units (or at least one unit) must be accessible for people with mobility impairment, and an additional two percent (or at least one unit) must be accessible for people with visual or hearing impairments⁴. The requirements are less extensive for non-substantial rehabilitation. UFAS allows for deviations when the housing provider offers substantially equivalent or greater access and usability. For details, ask your architect and/or your local planning and building officials.

Section D. ADA

The ADA's accessibility requirements depend on whether the project is subject to Title II or Title III of the ADA. Under Title II, a public entity may choose (with limited exceptions) from two design standards, either UFAS or the ADA Standards for Accessible Design ("ADA Standards") when designing or constructing new buildings or performing alterations. Under Title III, the housing provider must follow the ADA Standards.

⁴ 24 CFR § 8.22; 24 CFR § 8.23(a).

APPENDIX 2

The ADA Standards set general accessibility guidelines and specific design and construction requirements for certain types of facilities but currently do not contain specific requirements for housing. To the extent that the ADA Standards do not specifically address a particular type or element of a facility, the type or element should be designed in accordance with the general directive that the facility be "accessible to and usable by" individuals with disabilities. The ADA includes exceptions to the requirements where compliance would be infeasible or structurally impractical. For details, ask your architect and/or local planning and building officials.

APPENDIX 3: Fair Housing Laws Summary

Law	Law Applies to Whom?	Who Is Protected by the Law?	Provisions
Equal Protection Clause of the 14th Amendment to the U.S. Constitution (1868)	All state action, including actions by private parties who receive governmental assistance, including owners of housing receiving government assistance.	<p>Everyone is protected. Distinctions between people based on:</p> <p>"Suspect" laws/policies that categorizes or treats people differently based on certain classes of individuals, or that violate "fundamental rights." Violations determined by "strict scrutiny" test; withstands test if "compelling state interest" and if there is no less restrictive alternative means for the state to achieve its objectives.</p> <p>"Semi-suspect" classifications in laws/policies can be justified by "important governmental interest."</p> <p>All other distinctions can be justified by a "rational basis."</p>	<p>Prohibits government from denying any person "equal protection of the laws."</p> <p>Prohibits irrational, arbitrary or unreasonable discrimination.</p> <p>Discriminatory motivation is required to show a violation of the Equal Protection Clause.</p> <p>Section 5 grants power to Congress to legislate against discriminatory conduct; pursuant to this, Congress has adopted civil rights laws, including Fair Housing Laws.</p>
Fair Housing Act (1968) and Fair Housing Act Amendments (1988)	<p>Applies to all housing— those receiving public funds and the private housing market (with several very narrow exceptions).</p> <p>Applies in sale, rental, financing and advertising of housing as well as to zoning and land use decisions by local government.</p>	<p>Enumerated bases: race, color, religion, national origin, gender, familial status and handicap.</p> <p>Definition of handicap:</p> <p>Physical or mental impairment which substantially limits one or more major life activities (or a record of such an impairment or being regarded as having one).</p> <p>Physical or mental impairment:</p> <ul style="list-style-type: none"> - physiological disorders - mental or psychological disorders. Includes HIV infection, emotional or mental illness, specific learning disabilities, alcoholism, drug addiction (but not current, illegal use of or addiction to a controlled substance). <p>Major life activities includes functions such as caring for one self, performing manual tasks, walking, seeing, hearing, breathing, learning and working.</p>	<p>Prohibits discrimination in housing. (Housing for seniors that meets certain criteria is exempt from the Act's prohibition of discrimination against families with children.)</p> <p>Discriminatory effect without discriminatory intent is generally sufficient to prevail in court. Standard of proof to justify discriminatory effect when there's no discriminatory intent is "business necessity."</p> <p>Includes specific accessibility requirements for newly constructed-housing.</p> <p>Imposes affirmative duty on housing providers to provide reasonable accommodation and reasonable modifications to persons with disabilities to allow them equal access to the housing</p> <p>Reasonable accommodations or reasonable modifications: physical modification of the housing site/unit (at the tenant's expense) and/or a change (accommodation) in the provider's rules, policies and procedures, with the limitation that a provider is not required to undergo undue financial and administrative hardship or make a fundamental alteration to the nature of its program.</p>

Law	Law Applies to Whom?	Who Is Protected by the Law?	Provisions
Section 504 of the Rehabilitation Act of 1973	Applies to all housing and non-housing programs receiving federal funding, including CDBG, HOME, HOPWA, Sections 202 and 811, McKinney Act. Does not include low income housing tax credits or tax-exempt bond financing. Applies to public and private owners receiving federal funding.	<p>Individual with handicaps: any person who has a physical or mental impairment that substantially limits one or more major life activities (or a record of having such an impairment or being regarded as having one). Uses similar definitions as Fair Housing Act above.</p> <p>For purposes of employment, handicap does not include:</p> <p>An individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents him/her from performing the duties of the job in question, or whose employment would constitute a direct threat to property or safety of others.</p> <p>Any individual who has a currently contagious disease or infection and who would constitute a direct threat to the health or safety of other individuals or who is unable to perform the duties of the job.</p> <p>For purposes of other programs and activities (including housing), handicap does not include:</p> <p>Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation would constitute a direct threat to property or the safety of others.</p>	<p>Prohibits discrimination on basis of disability. Requires access for people with disabilities to housing and non-housing programs operated with federal funds.</p> <p>Requires a specific percentage of accessible units and specific accessibility requirements for newly constructed or substantially rehabilitated housing.</p> <p>Requires integration of people with disabilities. Prohibits projects receiving federal funds from limiting occupancy to people with disabilities or with one particular type of disability unless such a restriction is authorized by a federal statute or executive order that applies to the project, e.g., Section 811, HOPWA, Shelter Plus Care, etc., or in limited circumstances if the distinction based on disability is necessary to provide persons with disabilities with equal access to housing, and housing further intent of Section 504.</p> <p>Non-housing and housing programs or activities must be operated so when viewed in entirety they are readily accessible by people with disabilities. Non-substantial alterations are required to the maximum extent feasible. Existing facilities/programs are to be made accessible to extent it doesn't pose undue financial/administrative burden or fundamentally alter the nature of its program.</p> <p>Requires the owner to pay for physical modifications as part of duty of reasonable accommodation.</p>

Law	Law Applies to Whom?	Who Is Protected by the Law?	Provisions
Americans with Disabilities Act (ADA) (1990)	<p>Title II: state and local public entities, also may apply to publicly funded programs and facilities.</p> <p>Title III: commercial establishments and privately owned places of "public accommodation."</p>	<p>Individual with disabilities: any person who has a physical or mental impairment that substantially limits one or more major life activities (or a record of having such an impairment or being regarded as having one).</p> <p>Uses similar definitions as Fair Housing Act above. However, Title III defines symptomatic and asymptomatic HIV as protected.</p>	<p>Broad civil rights protection to people with disabilities, extending beyond activities of the federal government or programs receiving federal funds. Five parts or titles, two are relevant to supportive housing providers:</p> <p>Title II: prohibits discrimination by state and local government in all government programs and services (whether or not federal funding is utilized). Requires all government funded or operated services and activities so that, when viewed in entirety, they are readily accessible. Has its own accessibility standards. Imposes reasonable accommodation duty. Allows state and local government to establish programs to target people with disabilities or a sub-group to provide equal access to housing, so long as overall programs are accessible.</p> <p>Unclear if Title II applies directly to nonprofit housing providers receiving state/local funds under contract. Clear that Title II requires public entities to ensure facilities receiving their funds are operated in a manner that enables the public entity to meet its Title II obligations.</p> <p>Title III: prohibits disability-based discrimination in commercial facilities and places of "public accommodation." Requires facilities to be constructed or altered in compliance with certain accessibility standards. Requires duty of reasonable accommodation for public accommodations.</p> <p>Places of public accommodation include privately-run facilities whose operation affects commerce: hotels and other places of lodging except owner-occupied establishments renting fewer than six rooms, auditoriums and other places of public gatherings, day care centers, homeless shelters, and other social service centers.</p> <p>Places of public accommodation do not include portions of privately owned rental housing used exclusively as residences, but do include areas within those facilities available to the general public, such as rental offices and community rooms available for rent or use by non-residents. (Social services programs operated by housing providers available to non-residents would be public accommodations as well.)</p> <p>If social services are provided only to residents and level of services is significant, services portion of premises may also be considered a public accommodation, subject to Title III.</p>

"How the Law Thinks" – Outline of Relevant Laws

Section A. Landlord/Tenant Law

(1) CONCEPTUAL FRAMEWORK. Landlord/tenant law is a specialized version of basic contract law. Landlord and tenant enter into a contract which is enforceable in court. State and local regulation of this contractual relationship emerged in response to perceived abuse, discrimination and the sanctity of one's home.

(a) Duties. Landlords must comply with the rental agreement, as well as applicable law regarding habitable premises, notice before entry, security deposits, nondiscrimination, and local rent control. Tenants must comply with the terms of the rental agreement.

(b) Rights. Landlords have the right to force tenants to comply with the rental agreement and to terminate the tenancy if the tenant does not comply. Tenants have the right to enforcement of the rental agreement, habitable premises, freedom from landlord entry without notice, and notice and established practices for termination of tenancy. Where local rent control exists, tenants have protection from arbitrary rent increases and from eviction without just cause.

(c) Remedies. Both parties can enforce the rental agreement by going to court and can enforce local rent control law by going to the local rent board and/or to court. The landlord's ultimate remedy is termination of lease for tenant violation and eviction of tenant by court judgment and sheriff enforcement.

(2) APPLICABLE LAWS.

(a) Federal laws. No federal law governs this relationship directly. Federal fair housing laws affect the relationship because they prohibit discrimination and require reasonable accommodation in certain circumstances. Funding programs (like HOME) may also impose lease and eviction requirements.

(b) State Laws. Generally, state law governs landlord tenant law. Each state's laws vary and providers will need to familiarize themselves with their state's particular requirements.

(c) City and County Ordinances.

(i) Rent Control, Rent Stabilization, and Eviction Control Ordinances. States and localities have broad power to pass statutes, adopt ordinances and amend charter provisions regulating rents and evictions.

(1) Limitations. State and federal constitutional protections and state statutory requirements limit local law against the taking of private property without just compensation (reasonable rate of return).

APPENDIX 4

(2) Exemptions. Local rent control often exempts housing receiving public money that includes rent regulation.

(ii) Interest on Security Deposits. Local ordinances can require landlords to pay interest.

Section B. Fair Housing Laws

(1) CONCEPTUAL FRAMEWORK. Individuals have a right to be free from unlawful discrimination under fair housing laws. Unlawful discrimination is the act of treating people differently on the basis of specifically forbidden considerations, such as race, sex, religion, or disability. Over time, Congress has added more categories to the laws creating more protected classes of people, against whom landlords cannot discriminate based on their protected class. At first, laws prohibited discrimination when a project received federal funding. Over time, fair housing laws extended to all public programs and, finally, to private parties as well. Discrimination includes intentional discrimination and seemingly neutral acts that have a discriminatory impact.

(a) Duties. Owners, managers, sellers, landlords, and brokers have a duty not to discriminate against protected classes of people. This duty includes making reasonable accommodations or modifications for people with disabilities.

(b) Rights. Individuals have the right to obtain housing without discrimination based on certain characteristics. People with disabilities have the right to reasonable accommodations or modifications. Owners have the right to protect other tenants from harm and to protect their property.

(c) Remedies. Aggrieved individuals can file administrative complaints with HUD or a state department charged with enforcing state anti-discrimination legislation, if any, and receive damages, injunctive relief, and civil penalties. They can also file a lawsuit in federal or state court and receive damages, injunctive relief and attorney's fees.

(2) APPLICABLE LAWS.

(a) Federal.

(i) Title VI of the Civil Rights Act of 1964 (42 USC 2000(a)). Made it illegal for programs receiving federal funding to discriminate based on race and other categories.

(ii) Fair Housing Act of 1968 (42 USC 3601). Civil rights law applying to private parties and public agencies, making discrimination illegal if on the basis of race, color, sex, religion, and nationality. Law covered many housing practices, including advertising, renting, terms and conditions, and eviction. HUD has issued implementing regulations at 24 CFR, Part 100, et. seq. Owner-occupied dwellings of no more than four units are exempt.

(iii) Fair Housing Amendments Act of 1988. Amended Fair Housing Act to add disability and family status as protected classes and to add enforcement measures. Imposes

APPENDIX 4

accessibility requirements on new multifamily housing. Also prohibits discriminatory land use and zoning practices.

Disability defined as a physical or mental impairment which substantially limits one or more major life activities. Includes alcoholism and treatment for or recovery from former illegal drug use. Excludes current use of illegal drugs.

(3) Required "reasonable accommodation" or "reasonable modifications" for persons with disabilities, meaning an obligation to make reasonable adjustments to rules, policies, practices and procedures and to make structural modifications that do not result in an undue financial and administrative hardship. Requires owners to permit tenants to make reasonable modifications to premises at their own expense.

(iv) Section 504 of the Rehabilitation Act of 1974 (29 USC 794). Made it illegal to discriminate on the basis of disability in programs receiving federal funding. HUD issued implementing regulations found at 24 CFR Part 8. Regulations require integration of people with disabilities, auxiliary aids and services necessary for communication with disabled, accessibility for newly constructed or substantially rehabilitated housing, and program access.

(v) The Americans With Disabilities Act (ADA) (42 USC 12101 et seq., adopted in 1990). Title II of the ADA extended the coverage of Section 504 to all public entities regardless of federal funding. The requirements are similar to the requirements of the Fair Housing Amendments Act. Title III of the ADA prohibits disability-based discrimination and requires accessibility in places of public accommodation.

(b) State Law. States' own anti-discrimination laws that do not conflict with federal law need to be consulted to determine if the state bars additional bases of discrimination.

(c) Local Ordinances. Local laws may provide protections for additional classes (like sexual orientation) and may establish local commissions to process complaints.

Section C. Relocation Law

(1) CONCEPTUAL FRAMEWORK. Federal and state statutes and regulations give people who are displaced by public action the right to receive certain benefits to mitigate their displacement. These laws were adopted at the federal and state level in response to massive displacement due to freeway building and urban renewal movements of the 1950s and 1960s.

(a) Duties. The government has a duty to adopt relocation plans and to provide certain assistance to people displaced by public action, including private party action receiving public agency funding.

APPENDIX 4

(b) Rights. Displaced people and businesses have the right to receive special advanced notice of pending displacement, counseling, moving allowances, and payments to offset increased costs resulting from displacement.

(c) Remedies. Displacees can appeal to a local relocation appeals board and can sue in court to enforce their right to benefits. Courts can also prevent/delay displacee eviction if the relocating agency failed to comply with federal, state or local requirements.

(2) APPLICABLE LAWS.

(a) Federal.

(i) Uniform Relocation Act (URA) (42 USC 4601 et seq. and Regulations (49 CFR Part 24). This statute applies to all displacement as a result of federal government action or private action the federal government funds. The U.S. Department of Transportation and HUD adopted regulations, found at Title 49 of the Code of Federal Regulations. The URA and regulations apply to housing developers who receive financing from CDBG, HOME, HOPWA, McKinney Act, and other federal programs.

(ii) HUD Handbook 1378. The HUD handbook is not a regulation, but it sets forth HUD's interpretation of the requirements of the statute and regulations, and provides sample forms of required notices. Since HUD implements most of the federal housing programs, HUD's view of the implementation of the law and regulations is persuasive authority. HUD is currently updating Handbook 1378. It has only updated several chapters as of the date of drafting this Appendix.

(iii) Statutes and Regulations for Various HUD Programs. The individual laws and regulations for many programs like HOME and HOPWA have additional relocation obligations.

(b) State Laws. Many states also have relocation laws.

Section D. Zoning and Planning Law

(1) CONCEPTUAL FRAMEWORK. The U. S. and some state constitutions give local governments broad "police power" to regulate land use to protect the health, safety, and welfare of residents. Other state constitutions are more restrictive, only granting specified powers to local governments. A land use restriction is valid if it is fairly debatable that it bears a reasonable relation to the general welfare. However, state statutes set minimum standards for exercise of the police power by local governments, and state and federal fair housing laws prohibit local land use that has a discriminatory impact on protected groups. Federal and state constitutions also impose restrictions on the government taking private property without just compensation.

APPENDIX 4

(a) Duties. If it has the authority to regulate land use, a local government must do so in furtherance of legitimate goals of public welfare and cannot discriminate against protected classes of people in arriving at land use decisions.

(b) Rights. The local community often has the collective right to establish land use plans and standards. Individual property owners (including housing developers) have the right to develop their property in a manner consistent with local land use standards, if any. Protected classes of people have the right to nondiscriminatory adoption and application of local land use laws.

(c) Remedies. Affected parties can usually appeal land use decisions to a local or legislative regulatory body, as applicable. Thereafter, they can sue in court to enforce their rights and force or invalidate project approval.

(2) APPLICABLE FEDERAL LAW.

(a) Federal. No federal law governs planning and zoning directly. The U.S. Constitution and federal fair housing laws prohibit zoning laws that have discriminatory impact, and require zoning laws to reasonably accommodate persons with disabilities. The U.S. Constitution also prohibits government taking of private property without just compensation.



**U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION**



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**

*Washington, D.C.
March 5, 2008*

**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE MODIFICATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the federal Fair Housing Act¹ (the “Act”), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.⁴

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

² The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(A).

⁴ This Statement does not address the principles relating to reasonable accommodations. For further information see the Joint Statement of the Department of Housing and Urban

This Statement is not intended to provide specific guidance regarding the Act's design and construction requirements for multifamily dwellings built for first occupancy after March 13, 1991. Some of the reasonable modifications discussed in this Statement are features of accessible design that are required for covered multifamily dwellings pursuant to the Act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the Act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, the Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual. All of these are available on HUD's website at www.hud.gov/offices/fheo/disabilities/index.cfm. Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against housing applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability. The Act makes it unlawful for any person to refuse "to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."⁵ The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions⁶,

Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, dated May 17, 2004. This Joint Statement is available at www.hud.gov/offices/fheo/disabilities/index.cfm and http://www.usdoj.gov/crt/housing/jointstatement_ra.htm. See also 42 U.S.C. § 3604(f)(3)(B).

This Statement also does not discuss in depth the obligations of housing providers who are recipients of federal financial assistance to make and pay for structural changes to units and common and public areas that are needed as a reasonable accommodation for a person's disability. See Question 31.

⁵ 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.

⁶ The Act contemplates certain limits to the receipt of reasonable accommodations or reasonable modifications. For example, a tenant may be required to deposit money into an interest bearing

placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.

2. What is a reasonable modification under the Fair Housing Act?

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

To show that a requested modification may be necessary, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. Further, the modification must be "reasonable." Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area. These examples of reasonable modifications are not exhaustive.

3. Who is responsible for the expense of making a reasonable modification?

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.

4. 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 limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an 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

account to ensure that funds are available to restore the interior of a dwelling to its previous state. See, e.g., Question 21 below. A reasonable accommodation can be conditioned on meeting reasonable safety requirements, such as requiring persons who use motorized wheelchairs to operate them in a manner that does not pose a risk to the safety of others or cause damage to other persons' property. See Joint Statement on Reasonable Accommodations, Question 11.

than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term “substantially limits” suggests that the limitation is “significant” or “to a large degree.”

The term “major life activity” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking. This list of major life activities is not exhaustive.

5. Who is entitled to a reasonable modification under the Fair Housing Act?

Persons who meet the Fair Housing Act’s definition of “person with a disability” may be entitled to a reasonable modification under the Act. However, there must be an identifiable relationship, or nexus, between the requested modification and the individual’s disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

Example 1: A tenant, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the tenant’s disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the tenant’s expense.

Example 2: A homeowner with a mobility disability asks the condo association to permit him to change his roofing 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. There is no evidence that the shingles permitted by the homeowner’s association provide inadequate fire protection and the person with the disability has not identified a nexus between his disability and the need for clay tiles and fiberglass shingles. The homeowner’s association is not required to permit the homeowner’s modification because the homeowner’s request is not reasonable and there is no nexus between the request and the disability.

6. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested reasonable modification?

A housing provider may not ordinarily inquire as to the nature and severity of an individual’s disability. However, in response to a request for a reasonable modification, 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 (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed modification, and (3) shows the relationship between the person’s disability and the need for the requested modification. Depending on the individual’s circumstances, information verifying that the person meets the Act’s definition of disability can usually be provided by the individual herself (e.g., proof that an individual under 65 years of age receives Supplemental Security

Income or Social Security Disability Insurance benefits⁸ or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable modification is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable modification request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

7. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable modification?

A housing provider is entitled to obtain information that is necessary to evaluate whether a requested reasonable modification may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the housing provider, and if the need for the requested modification is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the modification.

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

Example 1: An applicant with an obvious mobility impairment who uses a motorized scooter to move around asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested modification.

⁸ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Income ("SSDI") benefits in most cases meet the definition of a disability under the Fair Housing Act, although the converse may not be true. See, e.g., Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Example 2: A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

8. Who must comply with the Fair Housing Act's reasonable modification requirements?

Any person or entity engaging in prohibited conduct – i.e., refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises – may be held liable unless they fall within an exception to the Act's coverage. 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 have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. See, e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 2d 703, 710 (D. Md. 2001), aff'd, 2002 WL 2012545 (4th Cir. 2002).

9. What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?⁹

Under the Fair Housing Act, a reasonable *modification* is a structural change made to the premises whereas a reasonable *accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service. A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification. See Reasonable Accommodation Statement, Questions 7 and 8.

Example 1: Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.

⁹ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability, and obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. See Question 31.

Example 2: Because of a hearing disability, a tenant wishes to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's expense.

Example 3: Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense. See also Questions 19, 20 and 21.

Example 4: Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable accommodation, and the housing provider must grant the accommodation.

10. Are reasonable modifications restricted to the interior of a dwelling?

No. Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas such as widening entrances to fitness centers or laundry rooms, or for changes to exteriors of dwelling units such as installing a ramp at the entrance to a dwelling.

11. Is a request for a parking space because of a physical disability a *reasonable accommodation* or a *reasonable modification*?

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

12. What if the structural changes being requested by the tenant or applicant are in a building that is subject to the design and construction requirements of the Fair Housing Act and the requested structural changes are a feature of accessible design that should have already existed in the unit or common area, e.g., doorways wide enough to accommodate a wheelchair, or an accessible entryway to a unit.

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.

For a discussion of the design and construction requirements of the Act, and their applicability, see HUD's website at: www.hud.gov/offices/fheo/disabilities/index.cfm and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

Example 1: A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building that was built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. Under these circumstances, one federal court has held that the tenant may have a potential claim against the housing provider.

Example 2: A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.

Example 3: A tenant with a disability resides in an apartment in a building that was built in 1993 in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

13. Who is responsible for expenses associated with a reasonable modification, e.g., for upkeep or maintenance?

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by

the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

Example 1: Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.

Example 2: Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.

Example 3: A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp. However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

14. In addition to current residents, are prospective tenants and buyers of housing protected by the reasonable modification provisions of the Fair Housing Act?

Yes. A person may make a request for a reasonable modification at any time. An individual may request a reasonable modification of the dwelling at the time that the potential tenancy or purchase is discussed. Under the Act, a housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made. Such conduct would constitute discrimination. The modification does not have to be made, however, unless it is reasonable. See Questions 2, 16, 21 and 23.

15. When and how should an individual request permission to make a modification?

Under the Act, a resident or an applicant for housing makes a reasonable modification request whenever she makes clear to the housing provider that she is requesting permission to make a structural change to the premises because of her disability. She should explain that she has a disability, if not readily apparent or not known to the housing provider, the type of modification she is requesting, and the relationship between the requested modification and her disability.

An applicant or resident is not entitled to receive a reasonable modification unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable modification request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable modification request does

not need to mention the Act or use the words “reasonable modification.” However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability.

Although a reasonable modification request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable modification requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

16. Does a person with a disability have to have the housing provider’s approval before making a reasonable modification to the dwelling?

Yes. A person with a disability must have the housing provider’s approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

17. What if the housing provider fails to act promptly on a reasonable modification request?

A provider has an obligation to provide prompt responses to a reasonable modification request. An undue delay in responding to a reasonable modification request may be deemed a failure to permit a reasonable modification.

18. What if the housing provider proposes that the tenant move to a different unit in lieu of making a proposed modification?

The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability.

Example: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, as his request to modify his unit is reasonable and must be approved.

19. What if the housing provider wants an alternative modification or alternative design for the proposed modification that does not cost more but that the housing provider considers more aesthetically pleasing?

In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design. However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design. See Question 24 for a discussion of the restoration requirements.

Example 1: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, as his request to modify his unit is reasonable and must be approved.

Example 2: As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

20. What if the housing provider wants a more costly design for the requested modification?

If the housing provider wishes a modification to be made with more costly materials, in order to satisfy the landlord's aesthetic standards, the tenant must agree only if the housing provider pays those additional costs. Further, as discussed in Questions 21 and 23 below, housing providers may require that the tenant obtain all necessary building permits and may require that the work be performed in a workmanlike manner. If the housing provider requires more costly materials be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well. In such a case, however, the housing provider's design must still meet the tenant's needs.

21. What types of documents and assurances may a housing provider require regarding the modification before granting the reasonable modification?

A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification. A description of the modification to be made may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification. A housing provider may also require that the tenant obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. For example, a housing provider cannot require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. However, the Preamble to the Final Regulations also indicates that there are some conditions that can be placed on a tenant requesting a reasonable modification. For example, in certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, ordinary wear and tear excepted. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

22. May a housing provider or homeowner's association condition approval of the requested modification on the requester obtaining special liability insurance?

No. Imposition of such a requirement would constitute a violation of the Fair Housing Act.

Example: Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider's potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

23. Once the housing provider has agreed to a reasonable modification, may she insist that a particular contractor be used to perform the work?

No. The housing provider cannot insist that a particular contractor do the work. The housing provider may only require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary building permits.

24. If a person with a disability has made reasonable modifications to the interior of the dwelling, must she restore *all* of them when she moves out?

The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition 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. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy. See also Question 28.

Example 1: Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.

Example 2: Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.

Example 3: Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

25. Of the reasonable modifications made to the interior of a dwelling that must be restored, must the person with a disability pay to make those restorations when she moves out?

Yes. Reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling must be paid for by the tenant unless the next occupant of the dwelling wants to retain the reasonable modifications and where it is reasonable to do so, the next occupant is willing to establish a new interest bearing escrow account. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider. See also Question 24.

26. If a person with a disability has made a reasonable modification to the exterior of the dwelling, or a common area, must she restore it to its original condition when she moves out?

No. The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored.

27. May a housing provider increase or require a person with a disability to pay a security deposit if she requests a reasonable modification?

No. The housing provider may not require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy. See Questions 21 and 28.

28. May a housing provider take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy?

Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and the terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

Simply because an individual has a disability does not mean that she is less creditworthy than an individual without a disability. The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought. In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established, and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant.

Example 1: Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.

Example 2: Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest bearing escrow account to ensure that funds are available for restoration.

Example 3: A housing provider requires all tenants with disabilities to pay a set sum into an interest bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

29. What if a person with a disability moves into a rental unit and wants the carpet taken up because her wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification?

Depending on the circumstances, removal of carpeting may be either a reasonable accommodation or a reasonable modification.

Example 1: If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.

Example 2: If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy. See Questions 24 and 25.

Example 3: If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

30. Who is responsible for paying for the costs of structural changes to a dwelling unit that has not yet been constructed if a purchaser with a disability needs different or additional features to make the unit meet her disability-related needs?

If the dwelling unit is not subject to the design and construction requirements (i.e., a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to

be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

Example 1: A buyer with a mobility disability is purchasing a single family dwelling under construction and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. If the cabinet costs more than the standard vanity cabinet provided by the builder, the buyer is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by the buyer costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to the buyer.

Example 2: A buyer with a mobility disability is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. The buyer requests that the builder grade the entrance to eliminate the need for the step. If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to the purchaser.

Example 3: A buyer with a mobility disability is purchasing a unit that is subject to the design and construction requirements of the Fair Housing Act. The buyer wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the design and construction provisions of the Act. The buyer is responsible for the costs of installing and paying for the grab bars.

31. Are the rules the same if a person with a disability lives in housing that receives federal financial assistance and the needed structural changes to the unit or common area are the result of the tenant having a disability?

Housing that receives federal financial assistance is covered by both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other means. Housing that receives federal financial assistance and that is provided by state or local entities may also be covered by Title II of the Americans with Disabilities Act.

Example 1: A tenant who uses a wheelchair and who lives in privately owned housing needs a roll-in shower in order to bathe independently. Under the Fair Housing Act the tenant would be responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

Example 2: A tenant who uses a wheelchair and who lives in housing that receives federal financial assistance needs a roll-in shower in order to bathe independently. Under Section 504 of the Rehabilitation Act of 1973, the housing provider would be obligated to pay for and install the roll-in shower as a reasonable accommodation to the tenant unless doing so was an undue financial and administrative burden or unless the housing provider could meet the tenant's disability-related needs by transferring the tenant to another appropriate unit that contains a roll-in shower.

HUD has provided more detailed information about Section 504's requirements. See www.hud.gov/offices/fheo/disabilities/sect504.cfm.

32. If a person believes that she has been unlawfully denied a reasonable modification, what should that person do if she wants to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for a reasonable modification, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application

and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE

*REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT*

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. 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 have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. 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 limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an 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.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

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

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment 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. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is 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. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

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.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: 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. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a 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 housing provider or it would fundamentally alter 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.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider 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 operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

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. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

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. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. 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 she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, 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. Housing providers may, however, 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 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.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, 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 (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

Fair Housing Act and Regulations

Fair Housing Act and Regulations

Congress first passed the Fair Housing Act in 1968. It has amended the Act several times, the last in 1988. As discussed in Chapter 2, the three key concepts for analyzing the Fair Housing Act are the duties, rights, and remedies it created:

- When a law imposes a duty on a person (defined broadly to include a governmental actor, a private artificial person such as a corporation, or a natural, living, breathing person), the law requires the person to act in a specified way or to refrain from acting in a specified way. For example, fair housing laws impose a duty on housing providers not to discriminate based on certain personal characteristics.
- When a law grants a right to a person, the law permits that person to obtain a certain benefit. One person's right to obtain a certain benefit usually matches another person's duty to provide that benefit. For example, fair housing laws grant individuals the right to obtain housing without discrimination based on certain personal characteristics. The flip side of that right is the duty imposed on housing providers not to discriminate based on those personal characteristics. Rights also include rights to be free from governmental interference in a specified area. For example, the federal Constitution establishes a freedom from interference in religious practice. Stated differently, this freedom is a right to stop the government from interfering in an individual's religious practice. This constitutional right, freedom of religious practice, imposes a corresponding duty on the government not to interfere in one's religious practice.
- The last key concept in analyzing laws is the law's mechanism to make victims whole and to punish wrongdoers, or the remedy imposed by the law. Remedies are sometimes the payment of monetary damages, and sometimes governmental orders for remedial actions to be undertaken. An example of money damages is that fair housing laws allow victims of illegal discrimination to recover money damages from a discriminating housing provider to compensate for the injury the violation caused. An example of a remedial order is an order to admit into a housing project a victim of illegal discrimination wrongfully excluded, in accordance with fair housing laws. The government administers the remedy process either through administrative agencies or courts.

The Department of Housing and Urban Development (HUD), under Section 808 of the Act, is responsible for administering the Fair Housing Act. HUD has issued Regulations that interpret and provide guidelines for how HUD administers the Act. Regulations, like statutes, are considered laws.

This Appendix provides links to the Fair Housing Act and the implementing Regulations and offers a list of Act and Regulatory sections.

APPENDIX 6

Fair Housing Act

The Act may be found on the Department of Justice's website at <http://www.justice.gov/crt/housing/title8.php>. The sections of the **Fair Housing Act** are:

- Sec. 800** (42 U.S.C. 3601): Short Title
- Sec. 801** (42 U.S.C. 3601): Declaration of Policy
- Sec. 802** (42 U.S.C. 3602): Definitions
(42 U.S.C. 3602 note: Neither the term "individual with handicaps" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite)
- Sec. 803** (42 U.S.C. 3603): Effective dates of certain prohibitions
- Sec. 804** (42 U.S.C. 3604): Discrimination in sale or rental of housing and other prohibited practices
- Sec. 805** (42 U.S.C. 3605): Discrimination in Residential Real Estate-Related Transactions
- Sec. 806** (42 U.S.C. 3606): Discrimination in provision of brokerage services
- Sec. 807** (42 U.S.C. 3607): Religious organization or private club exemption
- Sec. 808** (42 U.S.C. 3608): Administration
- Sec. 808a** (42 U.S.C. 3608a): Collection of certain data
- Sec. 809** (42 U.S.C. 3609): Education and conciliation; conferences and consultations; reports
- Sec. 810** (42 U.S.C. 3610): Administrative Enforcement; Preliminary Matters
- Sec. 811** (42 U.S.C. 3611): Subpoenas; Giving of Evidence
- Sec. 812** (42 U.S.C. 3612): Enforcement by Secretary
- Sec. 813** (42 U.S.C. 3613): Enforcement by Private Persons
- Sec. 814** (42 U.S.C. 3614): Enforcement by the Attorney General
- Sec. 814a**: Incentives for Self-Testing and Self-Correction
- Sec. 815** (42 U.S.C. 3614a): Rules to Implement Title
- Sec. 816** (42 U.S.C. 3615): Effect on State laws
- Sec. 817** (42 U.S.C. 3616): Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in
- Sec. 818** (42 U.S.C. 3617): Interference, coercion, or intimidation; enforcement by civil action
- Sec. 819** (42 U.S.C. 3618): Authorization of appropriations
- Sec. 820** (42 U.S.C. 3619): Separability of provisions
- (Sec. 12 of 1988 Act)** (42 U.S.C. 3601 note): Disclaimer of Preemptive Effect on Other Acts
- (Sec. 13 of 1988 Act)** (42 U.S.C. 3601 note): Effective Date and Initial Rulemaking
- (Sec. 14 of 1988 Act)** (42 U.S.C. 3601 note): Separability of Provisions
- Section 901** (Title IX As Amended) (42 U.S.C. 3631): Violations; bodily injury; death; penalties

Regulations

The Fair Housing Act Regulations may be found at the Government Printing Office website (<http://ecfr.gpoaccess.gov>). Links to each regulatory Part are included below:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

Subpart A—General

- § 100.1: Authority
- § 100.5: Scope
- § 100.10: Exemptions

APPENDIX 6

§ 100.20: Definitions

Subpart B—Discriminatory Housing Practices

- § 100.50: Real estate practices prohibited
- § 100.60: Unlawful refusal to sell or rent or to negotiate for the sale or rental
- § 100.65: Discrimination in terms, conditions and privileges and in services and facilities
- § 100.70: Other prohibited sale and rental conduct
- § 100.75: Discriminatory advertisements, statements and notices
- § 100.80: Discriminatory representations on the availability of dwellings
- § 100.85: Blockbusting
- § 100.90: Discrimination in the provision of brokerage services

Subpart C—Discrimination in Residential Real Estate-Related Transactions

- § 100.110: Discriminatory practices in residential real estate-related transactions
- § 100.115: Residential real estate-related transactions
- § 100.120: Discrimination in making of loans and in the provision of other financial assistance
- § 100.125: Discrimination in the purchasing of loans
- § 100.130: Discrimination in the terms and conditions for making available loans or other financial assistance
- § 100.135: Unlawful practices in the selling, brokering, or appraising of residential real property
- § 100.140: General rules
- § 100.141: Definitions
- § 100.142: Types of information
- § 100.143: Appropriate corrective action
- § 100.144: Scope of privilege
- § 100.145: Loss of privilege
- § 100.146: Limited use of privileged information
- § 100.147: Adjudication
- § 100.148: Effective date

Subpart D—Prohibition Against Discrimination Because of Handicap

- § 100.200: Purpose
- § 100.201: Definitions
- § 100.201a: Incorporation by reference
- § 100.202: General prohibitions against discrimination because of handicap
- § 100.203: Reasonable modifications of existing premises
- § 100.204: Reasonable accommodations
- § 100.205: Design and construction requirements

Subpart E—Housing for Older Persons

- § 100.300: Purpose
- § 100.301: Exemption
- § 100.302: State and Federal elderly housing programs
- § 100.303: 62 or over housing
- § 100.304: Housing for persons who are 55 years of age or older
- § 100.305: 80 percent occupancy
- § 100.306: Intent to operate as housing designed for persons who are 55 years of age or older

APPENDIX 6

§ 100.307: Verification of occupancy

§ 100.308: Good faith defense against civil money damages

Subpart F—Interference, Coercion or Intimidation

§ 100.400: Prohibited interference, coercion or intimidation

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

Subpart A—Purpose and Definitions

§ 103.1: Purpose and applicability

§ 103.5: Other civil rights authorities

§ 103.9: Definitions

Subpart B—Complaints

§ 103.10: What can I do if I believe someone is discriminating against me in the sale, rental, finance, or advertisement of housing?

§ 103.15: Can I file a claim if the discrimination has not yet occurred?

§ 103.20: Can someone help me with filing a claim?

§ 103.25: What information should I provide to HUD?

§ 103.30: How should I bring a claim that I am the victim of discrimination?

§ 103.35: Is there a time limit on when I can file?

§ 103.40: Can I change my complaint after it is filed?

§ 103.100: Notification and referral to substantially equivalent State or local agencies

§ 103.105: Cessation of action on referred complaints

§ 103.110: Reactivation of referred complaints

§ 103.115: Notification upon reactivation

§ 103.200: Investigations

§ 103.201: Service of notice on aggrieved person

§ 103.202: Notification of respondent; joinder of additional or substitute respondents

§ 103.203: Answer to complaint

§ 103.204: HUD complaints and compliance reviews

§ 103.205: Systemic processing

§ 103.215: Conduct of investigation

§ 103.220: Cooperation of Federal, State and local agencies

§ 103.225: Completion of investigation

§ 103.230: Final investigative report

Subpart E—Conciliation Procedures

§ 103.300: Conciliation

§ 103.310: Conciliation agreement

§ 103.315: Relief sought for aggrieved persons

§ 103.320: Provisions sought for the public interest

§ 103.325: Termination of conciliation efforts

§ 103.330: Prohibitions and requirements with respect to disclosure of information obtained during conciliation

§ 103.335: Review of compliance with conciliation agreements

APPENDIX 6

Subpart F—Issuance of Charge

- § 103.400: Reasonable cause determination
- § 103.405: Issuance of charge
- § 104.410: Election of civil action or provision of administrative proceeding
- § 103.500: Prompt judicial action
- § 103.510: Other action by HUD
- § 103.515: Action by other agencies

PART 107—NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063

- § 107.10: Purpose
- § 107.11: Relation to other authorities
- § 107.15: Definitions
- § 107.20: Prohibition against discriminatory practices
- § 107.21: Prevention of discriminatory practices
- § 107.25: Provisions in legal instruments
- § 107.30: Recordkeeping requirements
- § 107.35: Complaints
- § 107.40: Compliance meeting
- § 107.45: Resolution of matters
- § 107.50: Compliance reviews
- § 107.51: Findings of noncompliance
- § 107.55: Compliance report
- § 107.60: Sanctions and penalties
- § 107.65: Referral to the Attorney General

PART 108—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

- § 108.1: Purpose and application
- § 108.5: Authority
- § 108.15: Pre-occupancy conference
- § 108.20: Monitoring office responsibility for monitoring plans and reports
- § 108.21: Civil rights/compliance reviewing office compliance responsibility
- § 108.25: Compliance meeting
- § 108.35: Complaints
- § 108.40: Compliance reviews
- § 108.45: Compliance report.
- § 108.50: Sanctions

PART 110—FAIR HOUSING POSTER

Subpart A—Purpose and Definitions

- § 110.1: Purpose
- § 110.5: Definitions

APPENDIX 6

Subpart B—Requirements for Display of Posters

- § 110.10: Persons subject
- § 110.15: Location of posters
- § 110.20: Availability of posters
- § 110.25: Description of posters

Subpart C—Enforcement

- § 110.30: Effect of failure to display poster.

PART 115—CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES

Subpart A—General

- § 115.100: Definitions.
- § 115.101: Program administration.
- § 115.102: Public notices

Subpart B—Certification of Substantially Equivalent Agencies

- § 115.200: Purpose
- § 115.201: The two phases of substantial equivalency certification
- § 115.202: Request for interim certification
- § 115.203: Interim certification procedures
- § 115.204: Criteria for adequacy of law
- § 115.205: Certification procedures
- § 115.206: Performance assessments; Performance standards
- § 115.207: Consequences of interim certification and certification
- § 115.208: Procedures for renewal of certification
- § 115.209: Technical assistance
- § 115.210: Performance deficiency procedures; Suspension; Withdrawal
- § 115.211: Changes limiting effectiveness of agency's law; Corrective actions; Suspension; Withdrawal; Consequences of repeal; Changes not limiting effectiveness
- § 115.212: Request after withdrawal

Subpart C—Fair Housing Assistance Program

- § 115.300: Purpose
- § 115.301: Agency eligibility criteria; Funding availability
- § 115.302: Capacity building funds
- § 115.303: Eligible activities for capacity building funds
- § 115.304: Agencies eligible for contributions funds
- § 115.305: Special enforcement effort (SEE) funds
- § 115.306: Training funds
- § 115.307: Requirements for participation in the FHAP; Corrective and remedial action for failing to comply with requirements
- § 115.308: Reporting and recordkeeping requirements
- § 115.309: Subcontracting under the FHAP
- § 115.310: FHAP and the First Amendment
- § 115.311: Testing

APPENDIX 6

PART 121—COLLECTION OF DATA

- § 121.1: Purpose
- § 121.2: Furnishing of data by program participants

PART 125—FAIR HOUSING INITIATIVES PROGRAM

- § 125.103: Definitions
- § 125.104: Program administration
- § 125.105: Application requirements
- § 125.106: Waivers
- § 125.107: Testers
- § 125.201: Administrative Enforcement Initiative
- § 125.301: Education and Outreach Initiative
- § 125.401: Private Enforcement Initiative
- § 125.501: Fair Housing Organizations Initiative

List of Citations for Definitions of "Disability" and Related Terms

The term "disability" and related terms such as "handicap" and "person with handicaps" are defined in several different laws. One law's definition may be the same as another law's definition, or may be unique.

This document lists citations and text for these definitions.

1. Fair Housing Act.

The statutory definition of "handicap" is at 42 USC § 3602(h).

- (h) "Handicap" means, with respect to a person--
 - (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 such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 USC 802)).

HUD's regulatory definitions of "handicap" and related terms (including "physical or mental impairment," "major life activities," "has a record of such an impairment," and "is regarded as having an impairment") are at 24 CFR § 100.201:

Handicap means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

- (a) Physical or mental impairment includes:
 - (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
 - (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 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.

APPENDIX 7

- (b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (c) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (d) Is regarded as having an impairment means:
 - (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
 - (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
 - (3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

2. Section 504.

HUD's regulatory definitions of "handicap" and related terms (including "individual with handicaps," "physical or mental impairment," "major life activities," "has a record of such an impairment," and "is regarded as having an impairment") are at 24 CFR § 8.3:

Handicap means any condition or characteristic that renders a person an individual with handicaps.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

- (a) Physical or mental impairment includes:
 - (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin;

APPENDIX 7

and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 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, mental retardation, emotional illness, drug addiction and alcoholism.

(b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

3. **Americans with Disabilities Act.**

The statutory definition of "disability" is at 42 USC § 12102:

As used in this Act:

(1) Disability. The term "disability" means, with respect to an individual--

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities.

(A) In general. For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions. For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

APPENDIX 7

- (3) Regarded as having such an impairment. For purposes of paragraph (1)(C):
 - (A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
 - (B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.
- (4) Rules of construction regarding the definition of disability. The definition of "disability" in paragraph (1) shall be construed in accordance with the following:
 - (A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.
 - (B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
 - (C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
 - (D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
 - (E) (i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as--
 - (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
 - (II) use of assistive technology;
 - (III) reasonable accommodations or auxiliary aids or services;
 - or
 - (IV) learned behavioral or adaptive neurological modifications.
 - (ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
 - (iii) As used in this subparagraph--
 - (I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
 - (II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

With respect to Title I of the ADA, the Equal Employment Opportunity Office's regulatory definitions of "disability" and related terms (including "physical or mental impairment," "major life activities,"

APPENDIX 7

"substantially limits," "has a record of such an impairment," and "is regarded as having an impairment") are at 29 CFR § 1630.2 and 1630.3. Helpful interpretive guidance accompanies the regulations:

29 CFR § 1630.2:

- (g) Disability means, with respect to an individual --
 - (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - (2) A record of such an impairment; or
 - (3) being regarded as having such an impairment.
(See § 1630.3 for exceptions to this definition).
- (h) Physical or mental impairment means:
 - (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
 - (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- (i) Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (j) Substantially limits -- (1) The term substantially limits means:
 - (i) Unable to perform a major life activity that the average person in the general population can perform; or
 - (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
- (2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:
 - (i) The nature and severity of the impairment;
 - (ii) The duration or expected duration of the impairment; and
 - (iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.
- (3) With respect to the major life activity of working --
 - (i) The term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

APPENDIX 7

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of "working":

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

(k) Has a record of such impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(l) Is regarded as having such an impairment means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (h) (1) or (2) of this section but is treated by a covered entity as having a substantially limiting impairment.

29 CFR § 1630.3:

(a) The terms disability and qualified individual with a disability do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(1) Drug means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C 812)

(2) Illegal use of drugs means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration. This term does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(b) However, the terms disability and qualified individual with a disability may not exclude an individual who:

(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

APPENDIX 7

- (2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- (3) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(c) It shall not be a violation of this part for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b) (1) or (2) of this section is no longer engaging in the illegal use of drugs. (See § 1630.16(c) Drug testing).

(d) Disability does not include:

- (1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from current illegal use of drugs.

(e) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this part.

With respect to Title II of the ADA, the Department of Justice has regulatory definitions of "disability" and related terms (including "physical or mental impairment," "major life activities," "has a record of such an impairment," and "is regarded as having an impairment") at 28 CFR § 35.104, and with respect to Title III of the ADA, the Department of Justice has regulatory definitions at 28 CFR § 36.104. The Department of Justice's Title II and Title III regulatory definitions are identical to each other, and similar but not identical to the Equal Employment Opportunity Office's definitions (which for example define "substantially limits" while the Department of Justice definitions do not). Helpful interpretive guidance accompanies the regulations:

28 CFR § 35.104:

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) (i) The phrase physical or mental impairment means --

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

APPENDIX 7

(ii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase physical or mental impairment does not include homosexuality or bisexuality.

(2) The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase is regarded as having an impairment means --

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(5) The term disability does not include --

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

28 CFR § 36.104:

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) The phrase physical or mental impairment means--

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

APPENDIX 7

- (iii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism;
- (iv) The phrase physical or mental impairment does not include homosexuality or bisexuality.

(2) The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase is regarded as having an impairment means--

- (i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a private entity as constituting such a limitation;
- (ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- (iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a private entity as having such an impairment.

(5) The term disability does not include--

- (i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (ii) Compulsive gambling, kleptomania, or pyromania; or
- (iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Regulations related to the ADA Amendments Act of 2008 have not yet been enacted, but the CFR sections referenced could be amended in 2010.

4. Social Security Act.

The statutory definition of "aged, blind, or disabled individual" is at 42 USC § 1382(a):

(a) Eligible individual" defined.

(1) Each aged, blind, or disabled individual who does not have an eligible spouse and--

(A) whose income, other than income excluded pursuant to section 1612(b) [42 USCS § 1382a(b)], is at a rate of not more than \$ 1,752 (or, if greater, the amount determined under section 1617 [42 USCS § 1382f]) for the calendar year 1974 or any calendar year thereafter, and

APPENDIX 7

- (B) whose resources, other than resources excluded pursuant to section 1613(a) [42 USCS § 1382b(a)], are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B), shall be an eligible individual for purposes of this title [42 USCS §§ 1381 et seq.].
- (2) Each aged, blind, or disabled individual who has an eligible spouse and--
- (A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1612(b) [42 USCS § 1382a(b)], is at a rate of not more than \$ 2,628 (or, if greater, the amount determined under section 1617 [42 USCS § 1382f]) for the calendar year 1974, or any calendar year thereafter, and
- (B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1613(a) [42 USCS § 1382b(a)], are not more than the applicable amount determined under paragraph (3)(A), shall be an eligible individual for purposes of this title [42 USCS §§ 1381 et seq.].
- (3) (A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be \$ 2,250 prior to January 1, 1985, and shall be increased to \$ 2,400 on January 1, 1985, to \$ 2,550 on January 1, 1986, to \$ 2,700 on January 1, 1987, to \$ 2,850 on January 1, 1988, and to \$ 3,000 on January 1, 1989.
- (B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be \$ 1,500 prior to January 1, 1985, and shall be increased to \$ 1,600 on January 1, 1985, to \$ 1,700 on January 1, 1986, to \$ 1,800 on January 1, 1987, to \$ 1,900 on January 1, 1988, and to \$ 2,000 on January 1, 1989.

The regulatory definition of "aged, blind, or disabled individual" is at 20 CFR § 416.120:

(13) Eligible individual means an aged, blind, or disabled individual who meets all the requirements for eligibility for benefits under the supplemental security income program.

(14) Eligible spouse means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that individual (see § 416.1801(c)).

5. Section 811.

The statutory definition of "person with disabilities" is at 42 USC § 8013(k)(2):

(2) The term "person with disabilities" means a household composed of one or more persons at least one of whom is an adult who has a disability. A person shall be considered to have a disability if such person is determined, pursuant to regulations issued by the Secretary to have a physical, mental, or emotional impairment which (A) is expected

APPENDIX 7

to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be consider to have a disability if such person has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 USCS § 15002]. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing assisted under this section. Notwithstanding the preceding provisions of this paragraph, the term "person with disabilities" includes two or more persons with disabilities living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this paragraph who were living, in a unit assisted under this section, with the deceased member of the household at the time of his or her death.

HUD's regulatory definition of "person with disabilities" is at 24 CFR § 891.305:

Person with disabilities shall have the meaning provided in Section 811 (42 U.S.C. § 8013(k)(2)). The term "person with disabilities" shall also include the following:

- (1) A person who has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)), i.e., if he or she has a severe chronic disability which:
 - (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (ii) Is manifested before the person attains age twenty-two;
 - (iii) Is likely to continue indefinitely;
 - (iv) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - (A) Self-care;
 - (B) Receptive and expressive language;
 - (C) Learning;
 - (D) Mobility;
 - (E) Self-direction;
 - (F) Capacity for independent living;
 - (G) Economic self-sufficiency; and
 - (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
- (2) A person with a chronic mental illness, i.e., a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and which impairment could be improved by more suitable housing conditions.
- (3) A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers from alcoholism or drug addiction, provided they meet the definition of "person with disabilities" in Section 811 (42 U.S.C. 8013(k)(2)). A person whose sole

APPENDIX 7

impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in section 811 (42 U.S.C. 8013(k)(2)) will not be eligible for occupancy in a section 811 project.

HUD Handbook § 4350.3 (on multifamily occupancy) defines "disabled" in Figure 3.6 of Section 3.16:

Definition E – Person with Disabilities [24 CFR § 5.403]. A person with disabilities for purposes of program eligibility:

- (1) Means a person who:
 - (i) Has a disability, as defined in 42 U.S.C. 423;
 - (A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
 - (B) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness, as defined in section 416(i)(1) of this title, means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.
 - (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
 - (A) Is expected to be of long-continued and indefinite duration,
 - (B) Substantially impedes his or her ability to live independently, and
 - (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
 - (iii) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that
 - (A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (B) Is manifested before the person attains age 22;
 - (C) Is likely to continue indefinitely;
 - (D) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - a. Self-care,
 - b. Receptive and expressive language,
 - c. Learning,

APPENDIX 7

- d. Mobility,
 - e. Self-direction,
 - f. Capacity for independent living, and
 - g. Economic self-sufficiency; and
- (E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

- (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
- (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
- (4) Means person with disabilities (individual with handicaps), as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

6. HEARTH Act.

The HEARTH Act (described in Chapter 3 Section C Question 3 above) adds a definition of "homeless individual with a disability:"

- (9) Homeless individual with a disability.--
- (A) In general.--The term 'homeless individual with a disability' means an individual who is homeless, as defined in section 103, and has a disability that—
- (i)
 - (I) is expected to be long-continuing or of indefinite duration;
 - (II) substantially impedes the individual's ability to live independently;
 - (III) could be improved by the provision of more suitable housing conditions; and
 - (IV) is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post traumatic stress disorder, or brain injury;
 - (ii) is a developmental disability, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002); or
 - (iii) is the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agency for acquired immunodeficiency syndrome.
- (B) Rule.--Nothing in clause (iii) of subparagraph (A) shall be construed to limit eligibility under clause (i) or (ii) of subparagraph (A).



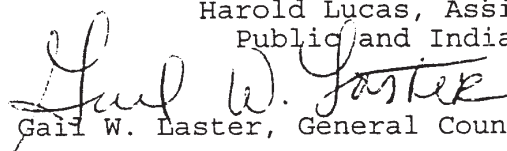
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0500

OFFICE OF THE GENERAL COUNSEL

September 24, 1999

MEMORANDUM FOR: William C. Apgar, Assistant Secretary, Office of
Housing/Federal Housing Commissioner, H

Harold Lucas, Assistant Secretary, Office of
Public and Indian Housing, P

FROM:  Gail W. Laster, General Counsel, G

SUBJECT: Medical use of marijuana in public housing

The Office of Housing requested our opinion with respect to whether a section 8 tenant's use of medical marijuana¹ requires an owner to terminate the tenancy of the medical marijuana user. It further inquired whether the cost of medical marijuana is deductible for purposes of determining adjusted income under applicable section 8 regulations.² Several HUD Field Offices have also requested guidance on this matter. Because these issues are also relevant to the public housing program and the section 8 programs operated by the Office of Public and Indian Housing, this memorandum is also addressed to that office. As more fully articulated below, we conclude that State laws purporting to legalize medical marijuana directly conflict with the admission and occupancy requirements of the Quality Housing and Work Responsibility Act of 1998 ("Public Housing Reform Act") and are thus subject to preemption.³

¹ The term "medical marijuana" in this memorandum means marijuana which, when prescribed by a physician to treat a serious illness such as AIDS, cancer, or glaucoma, is legal under State law.

² These issues arose in the wake of Washington State's November 3, 1998 referendum in which voters approved the medical use of marijuana. According to the Office of National Drug Control Policy ("ONDCP"), the following States have enacted laws purporting to legalize medical marijuana to date: Alaska, Arizona, California, Connecticut, Massachusetts, New Hampshire, Nevada, Oregon, Vermont, Virginia, and Washington and, depending on the interpretation of the law in Louisiana, may also be legal there under certain circumstances. See ONDCP's web page, "Status of State Marijuana Initiatives" (copy attached).

³ The Public Housing Reform Act amended the United States Housing Act of 1937 ("Act"), 42 U.S.C. § 1437. As more fully discussed below, it also contains four freestanding sections, sections 576

I. Admissions Standards

Section 576(b)(1) of the Public Housing Reform Act requires public housing agencies ("PHAs") and owners to establish standards that:

prohibit admission to . . . federally assisted housing for any household with a member--
 (A) who the public housing agency or owner determines is illegally using a controlled substance; or
 (B) with respect to whom the public housing agency or owner determines that it has reasonable cause to believe that such a household member's illegal use (or pattern of illegal use) of a controlled substance . . . may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

42 U.S.C. §13661(b)(1) (emphasis added). We interpret the word "prohibit" in this context to mean that the admission standards which the statute prescribes require that PHAs and owners **must** deny admission to the first class of households, i.e., those with a member who the PHA or owner determines is, at the time of consideration for admission, illegally using a controlled substance.⁴ See 64 Fed. Reg. 40262, 40270 (1999) (to be

through 579, which apply across the board to all federally assisted housing. Three of these four sections, section 576 ("Screening of Applicants for Federally Assisted Housing"), section 577 ("Termination of Tenancy and Assistance for Illegal Drug Users and Alcohol Abusers in Federally Assisted Housing"), and section 579 ("Definitions"), govern the questions articulated above. They are codified in Chapter 135 ("Residency and Service Requirements in Federally Assisted Housing") of Title 42 of the United States Code, 42 U.S.C. §§ 13661, 13662, & 13664, rather than with the Act itself.

⁴ None of the three applicable freestanding provisions identified in footnote 3 contains a definition of "controlled substance." Section 579(a)(1) of the Public Housing Reform Act, however, attributes the related phrase, "drug-related criminal activity," with the meaning specified in section 3(b) of the Act. 42 U.S.C. § 13664(a)(1). Section 3(b)(9) of the Act defines "drug-related criminal activity" as "the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is identified in section 102 of the Controlled Substances Act.)" 42 U.S.C. § 1437b(9). The Controlled Substances Act in turn

codified at 24 C.F.R. §§ 5.853(a)(1)) (proposed July 23, 1999).
Id. at 40274 (to be codified at 24 C.F.R. § 882.518(a)(1)(i)).

With respect to the determination as to whether a person is illegally using a controlled substance, the Act does not indicate a minimum length of time that must have transpired since the last illegal use of a controlled substance for an applicant to be deemed eligible to receive Federal assistance. Legislative history to the Americans with Disabilities Act ("ADA"), which similarly excludes "current users of illegal drugs" from its protections, indicates that in excluding such persons from coverage, Congress intended to exclude persons "whose illegal use of drugs occurred recently enough to justify a reasonable belief that a person's drug use is current." H.R. Conf. Rep. No. 101-596, at 64, reprinted in 1990 U.S.C.C.A.N. 267, 573. See also, D'Amico v. City of New York, 955 F. Supp. 294, 298 (S.D. N.Y. 1997) (Rehabilitation Act's prohibition against current illegal use of controlled substances encompasses illegal uses occurring recently enough to justify reasonable belief that illegal drug use is current), aff'd 132 F.3d 145 (2d Cir.), cert. denied, 118 S.Ct. 2075 (1998). We thus interpret the Public Housing Reform Act's prohibitions against "current" illegal use of a controlled substance as encompassing uses occurring recently enough to warrant a reasonable belief that the use is ongoing.

The courts of appeal which have addressed this issue in cases brought under Federal civil rights statutes have reached different conclusions regarding the length of time that must have passed since the last instance of illegal use for a person not to be considered a "current" illegal user. Most agree, however, that the issue of whether or not a person is a "current" illegal user under Federal civil rights laws requires a highly individualized, fact-specific examination of all relevant circumstances. See, e.g., Shafer v. Preston Memorial Hospital, 107 F.3d 274, 278 (4th Cir. 1997) (employee whose last illegal use of drugs occurred three weeks prior to termination held to be "currently engaging in the illegal use of drugs" under ADA); Collins v. Longview Fibre Co., 63 F.3d 828, 833 (9th Cir. 1995) (passage of "months" between last illegal use of controlled

defines "controlled substance" as "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter." 42 U.S.C. § 802(6). Schedule I includes marijuana. 21 U.S.C. § 812(c) (Schedule I) (c)(10). We therefore attribute the latter definition of "controlled substance" to that phrase, as used in sections 576 and 577 of the Public Housing Reform Act. Sullivan v. Stroop, 496 U.S. 478, 484 (1990) ("identical words used in different parts of the same Act are intended to have the same meaning") (quoting Helvering v. Stockholms Enskilda Bank, 293 U.S. 84, 87 (1934)).

substance and termination held insufficient for employees to escape classification of current illegal users under ADA); United States v. Southern Management Corp., 955 F.2d 914, 918 (4th Cir. 1992) (persons drug-free for one year held not "current" users under Fair Housing Act). In any event, it is likely that when issues arise with respect to medical marijuana, the person in question will be currently using the controlled substance.

With respect to the second class of households addressed in section 576(b)(1)(B), i.e., those including a member for whom the PHA or owner determines that reasonable cause exists to believe that the member's pattern of illegal use of a controlled substance may interfere with other residents' health, safety, or right to peaceful enjoyment⁵, section 576(b)(2) of the Public Housing Reform Act affords PHAs and owners limited discretion to admit such households. That section provides as follows:

Consideration of Rehabilitation.--In determining whether, pursuant to paragraph (1)(B), to deny admission to the program or federally assisted housing to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member--

(A) has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(B) has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(C) is participating in a supervised drug or

⁵ Section 576(b)(1)(B) of the Public Housing Reform Act does not expressly limit the reasonable cause determination to ***past*** illegal use or a ***past and noncontinuing*** pattern of illegal use, of a controlled substance. But given section 576(b)(1)(A)'s prohibition against admitting any household with a member who the PHA or owner determines is illegally using a controlled substance, i.e., at the time of consideration for admission or recently enough to warrant a reasonable belief that a household member's illegal use is ongoing, we interpret section 576(b)(1)(B) to require PHAs and owners to deny admission to households based on a reasonable cause determination that the household member's ***past*** illegal use or ***past and noncontinuing*** pattern of illegal use of a controlled substance may interfere with other residents' health, safety, or right to peaceful enjoyment of the premises. 42 U.S.C. § 13661(b)(1)(B).

alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

42 U.S.C. § 13661(b)(2). A PHA or owner may admit such a household under this provision after having determined that both conditions in one of the three considerations enumerated above have been met, i.e., some evidence of drug rehabilitation and no current illegal use. See 64 Fed. Reg. at 40270 (to be codified at 24 C.F.R. § 5.860(a)). As with households including a member who the PHA or owner determines is illegally using a controlled substance, a PHA or owner may admit a household under section 576(b)(1)(B) on the condition that the household member for whom reasonable cause exists to believe that such person's past and noncontinuing illegal use may interfere with other residents' health, safety, or right to peaceful enjoyment, may not reside with the household or on the premises. 64 Fed. Reg. at 40270 (to be codified at 24 C.F.R. § 5.860(b)).

The law of preemption provides that "it is not necessary for a federal statute to provide explicitly that particular state laws are preempted." Hillsborough County v. Automated Medical Laboratories, Inc., 471 U.S. 707, 713 (1985). Moreover, a State statute "is invalid to the extent that it 'actually conflicts with a . . . federal statute.'" International Paper Co., v. Ouellette, 479 U.S. 481, 492 (1987) (quoting Ray v. Atlantic Richfield Co., 435 U.S. 151, 158 (1978)). "Such a conflict will be found when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Ouellette, 479 U.S. at 492 (quoting Hillsborough County, 471 U.S. at 713).

It is our opinion that State statutes which purport to legalize marijuana stand as such an obstacle to the accomplishment of the purpose of section 576(b)(1) of the Public Housing Reform Act, i.e., to require owners of federally assisted housing to "establish standards that prohibit admission to federally assisted housing" for the two categories of households identified in section 576(b)(1). To the degree that a PHA may look to these State laws for authorization to admit families with a member who is using medical marijuana on the grounds that under State law the use of medical marijuana is not the illegal use of a controlled substance, we believe that the PHA would not be in compliance with section 576. We therefore conclude, with regard to required standards prohibiting admission to federally assisted housing of households with members who are illegally using a controlled substance, that State medical marijuana statutes which purport to remove medical marijuana from classification as a controlled substance are preempted by section 576 of the Public Housing Reform Act.

II. Termination of Tenancy and Assistance

With regard to existing public housing tenants and program participants, section 577(a) of the Public Housing Reform Act requires that PHAs and owners:

establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that **allow** the agency or owner . . . to terminate the tenancy or assistance for any household with a member--

- (1) who the public housing agency or owner determines is illegally using a controlled substance; or
- (2) whose illegal use (or pattern of illegal use) of a controlled substance . . . is determined by the [PHA] or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

42 U.S.C. § 13662(a) (emphasis added). Unlike the prescribed admission standards, which "prohibit" admission of households identified in section 576(b)(1), the prescribed continued occupancy and assistance standards merely "allow" termination when a PHA or owner determines that a household member is illegally using a controlled substance or when a household member displays a past and noncontinuing pattern of illegal use which is determined by the PHA or owner to interfere with other residents' health, safety, or right to peaceful enjoyment. See 64 Fed. Reg. at 40274 (to be codified at 24 C.F.R. § 882.518(b)(1)(i)).

As discussed above, with respect to the classification of medical marijuana, Federal law preempts any discretion on the part of the PHA or owner from determining that medical marijuana is not a controlled substance. Therefore, an owner or PHA could not make a determination that use of medical marijuana per se is never grounds for termination of tenancy or assistance. And, consequently, could not establish standards or lease provisions that generally permit occupancy of Federally assisted housing by medical marijuana users.

That being said, the statute provides the PHA and the owner with the discretion to determine on a case-by-case basis when it is appropriate to terminate the tenancy or assistance of a household. The propriety of any decision to evict a household or to terminate assistance for past or current illegal use of a controlled substance, or for a stated or demonstrated intent by a resident prospectively to use medical marijuana, requires a highly individualized, fact-specific analysis that is tailored to the relevant circumstances of each case. See Southern Management Corp., 955 F.2d at 918; Forrisi v. Bowen, 794 F.2d 931, 933 (4th

Cir. 1986) (decided under Rehabilitation Act). It is therefore not practicable to articulate specific guidance which is relevant to all cases where a PHA is considering eviction or termination of assistance for past or current illegal use of a controlled substance or for a resident's stated or demonstrated intent prospectively to use medical marijuana.

In determining how to exercise the discretion which section 577 of the Public Housing Reform Act affords, however, PHAs and owners should be guided by the fact that historically, HUD has not extensively regulated the area of eviction and termination of assistance, leaving the ultimate determination of whether to evict or terminate assistance to their reasoned discretion. HUD intends that PHAs and owners utilize their discretion under section 577 to make consistent and reasoned determinations with respect to eviction and termination of assistance determinations. In cases where a household member states or demonstrates an intent prospectively to use medical marijuana, PHAs and owners should consider all relevant factors in determining whether to terminate the tenancy or assistance, including, but not necessarily limited to: (1) the physical condition of the medical marijuana user; (2) the extent to which the medical marijuana user has other housing alternatives, if evicted or if assistance were terminated; and (3) the extent to which the PHA or owner would benefit from enforcing lease provisions prohibiting the illegal use of controlled substances.

For households with a member who a PHA or owner determines to be illegally using a controlled substance or whose past and noncontinuing pattern of illegal use of a controlled substance is determined by the PHA or owner to interfere with other residents' health, safety, or right to peaceful enjoyment, the prescribed continued occupancy and assistance standards, like the prescribed admissions standards, must allow the PHA or owner to consider evidence of successful rehabilitation or current participation in a supervised drug rehabilitation program when determining whether to terminate tenancy or assistance to such a household. Section 577(b).

Again as discussed above with respect to section 576, State statutes which purport to legalize medical marijuana directly conflict with the quoted provisions of section 577 of the Public Housing Reform Act insofar as they purport to remove marijuana, when used pursuant to a physician's prescription, from the Controlled Substances Act's list of controlled substances. The limited discretion which section 577 affords PHAs and owners to refrain from terminating the tenancy of or assistance for illegal drug use, however, does not include any discretion to determine that marijuana is not a controlled substance within the meaning of the Controlled Substances Act, 21 U.S.C. § 812(b)(1)(c), even if a State statute purports to legalize its use for medical purposes.

If enforced, such laws would "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting section 577 of the Public Housing Reform Act, i.e., to require that PHAs and owners "establish standards which allow them to terminate the tenancy or assistance" for either class of households identified in section 577(a). Ouellette, 479 U.S. at 492 (quoting Hillsborough County, 471 U.S. at 713). If given effect, such laws would operate to divest PHAs and owners of the discretion which Congress intended them to have regarding termination of tenancy or assistance for use of a controlled substance. We thus conclude that State medical marijuana statutes, insofar as they may be interpreted to mean that use of medical marijuana is not the illegal use of a controlled substance, are preempted by section 577 of the Public Housing Reform Act.

III. Conclusion

Based on this analysis, we conclude that PHAs and owners must establish standards that require denial of admission to households with a member whom the PHA or owner determines to be illegally using a controlled substance, or for whom it determines that reasonable cause exists to believe that a household member's pattern of illegal use of a controlled substance may interfere with other residents' health, safety, or right to peaceful enjoyment. Section 576(b). The Public Housing Reform Act affords PHAs and owners limited discretion to admit households with a member for whom such a reasonable cause determination is made in the face of evidence of rehabilitation. Section 576(b)(2). HUD's proposed rule would further allow a PHA or owner to impose as a condition to admission a requirement that "any household member who engaged in or is culpable for the drug use . . . may not reside with the household or on the premises." 64 Fed. Reg. at 40270 (to be codified at 24 C.F.R. § 5.860(b)). Because State medical marijuana laws, insofar as they may be interpreted to mean that use of medical marijuana is not the illegal use of a controlled substance, directly conflict with the objective of the Public Housing Reform Act's requirements regarding admissions, they are preempted.

We further conclude that PHAs and owners must establish standards or lease provisions for continued assistance or occupancy which allow termination of tenancy or assistance for any household with a member whom the PHA or owners determines to be illegally using a controlled substance or whose past and noncontinuing pattern of illegal use of a controlled substance is determined by the PHA or owner to interfere with other residents' health, safety, or right to peaceful enjoyment. The Public Housing Reform Act affords PHAs and owners limited discretion to refrain from terminating the tenancy or assistance for any household with a member for whom such a determination is made in the face of evidence of rehabilitation. Section 577(b). HUD's

proposed rule would further allow a PHA or owner to impose as a condition for continued assistance a requirement that "any household member who engaged in or is culpable for the drug use . . . may not reside with the household or on the premises." 64 Fed. Reg. at 40270 (to be codified at 24 C.F.R. § 5.860(b)).

The standards which section 577 requires must also allow PHAs and owners to terminate the tenancy of or assistance to a household with a member who states or demonstrates an intent prospectively to use medical marijuana. In determining whether to exercise their discretion to evict or terminate assistance for such a household, PHAs and owners should consider all relevant factors particular to each case, including, but not necessarily limited to: (1) the physical condition of the medical marijuana user; (2) the extent to which the medical marijuana user has other housing alternatives, if evicted or if assistance were terminated; and (3) the extent to which the PHA or owner would benefit from enforcing lease provisions that prohibit illegal use of controlled substances.

With regard to the Office of Housing's question concerning the deductibility of the cost of medical marijuana, the Internal Revenue Service has already concluded, based on the premise that marijuana is a Federally controlled substance for which there are no legal uses, that the cost of medical marijuana is not a deductible medical expense. Rev. Ruling 97-9, 1997-9 I.R.B. 4, 1997 WL 61544 (I.R.S.). While for the purposes of HUD's assisted housing programs, PHAs and owners are not technically bound by the IRS Revenue Ruling, consistent with the conclusions in this memorandum, we believe that PHAs and owners should be advised that they may not allow the cost of medical marijuana to be considered a deductible medical expense.

Obtaining HUD Information and Understanding Federal Law Citations

Section A. Obtaining HUD Information

HUD's Website

The HUD website at <http://www.hud.gov> offers information on the Department, its organizational structure and its policies and programs. Particularly useful are the Program Descriptions, which contain highlighted links to such information as authorizing statutes, implementing regulations, current income and rent limits, allocation amounts, and other relevant materials. Another helpful resource is the HUD employee directory which is searchable by a person's name or the HUD office location. To access the employee directory, first click on the "Contact Us" link at the top menu bar and then click on the "Contact HUD Personnel" link. Since the HUD website functions both as a public relations tool and an information resource, some information is buried deep within the site and may require diligence on the part of the user to uncover.

HUDCLIPS

HUD's Client Information and Policy System (HUDCLIPS) is HUD's online document repository. Located at <http://www.hud.gov/offices.adm/hudclips>, HUDCLIPS contains full text searchable databases of program notices, handbooks, regulations, federal register notices, Notices of Funding Availability (NOFAs), forms, mortgagee letters and related materials. The site is comprehensive and relatively easy to use. When searching the HUDCLIPS database, if no result is returned, the user may want to try a number of alternate search terms or search the site index rather than using the "Search HUDCLIPS" box.

Community Connections

HUD's Office of Community Planning and Development (CPD) offers online information and research on CPD's programs and policies through Community Connections at <http://www.comcon.org>. In addition, staff of Community Connections is available to assist in finding/ordering publications and to make technical assistance referrals by telephone at 1-800-998-9999.

HUD USER

HUD's Office of Policy Development & Research (PD&R) established HUD User as an information resource for housing and community development researchers and policy makers. Federal government reports, case studies, economic and housing data, and other information are available from HUD User either online at <http://www.huduser.org> or by telephone at 1-800-245-2691.

APPENDIX 9

Section B. Understanding Federal Law Citations

A "citation" is a shorthand description of where a particular law has been published. Citations exist for all types of laws. The following paragraphs introduce how to work with citations, with several examples of federal and state law citations relevant to supportive housing. More information can be found in books such as Finding The Law by Cohen, Berring, and Olson (from which some of the examples listed below are drawn) and through publishers like Nolo Press.

I. Statutes are located in publications known generically as "session laws." Session law publications are usually arranged chronologically, with subject indices at the back.

A. The official federal session law publication is known as United States Statutes At Large, published annually by Little, Brown & Co. under Congressional authorization. Here is an example of a federal session law citation: Public Law 92-195. This citation refers to a statute that was adopted during the 92nd Congress (in 1971), and it is the 195th statute to appear in United States Statutes At Large for the 92nd Congress. United States Statutes At Large is available in many law libraries. Session laws enacted in recent years, dating back to the 101st Congress are also available at <http://thomas.loc.gov> (a website operated by the Library of Congress).

B. State session law citations vary from state to state. An example of a California session law is as follows: Stats.1990, c. 113 (S.B. 504), § 2. This session law was adopted in 1990 (and is therefore part of the California compilation called "Statutes 1990" or "Stats.1990" for short; it is listed under chapter 113; it was proposed as a law in senate bill 504; and it is listed, in chapter 113, under section 2. Session laws are available in some law libraries. In addition, Internet access to session laws varies by state.

II. Statutes are also published and arranged by topic in publications known generically as "codes." Codes are generally much more useful than session laws publications.

A. The federal statutory code is known as the "U.S. Code," and it is arranged into fifty subject titles, generally in alphabetical order. Title 42 of the U.S. Code deals with the public health and welfare and contains most of the statutes that created federal housing programs. Here is an example of a U.S. Code citation: 42 USC 3601. This citation refers to a statute that is located at Section 3601 of Title 42 of the U.S. Code. The U.S. Code is available in most law libraries. It is also available at <http://uscode.house.gov/search/criteria.shtml> (a website operated by the House of Representatives).

B. State statutory code citations vary from state to state. An example of a California statutory code citation is as follows: Health and Safety Code Section 1502.2. This statute is found in California's Health and Safety Code (one of several dozen California code subject titles) at Section 1502.2. This statute also happens to be the statute used in the California session law example above. State statutory codes are generally available in law libraries, but only the largest law libraries maintain state statutory codes from other states.

APPENDIX 9

In addition, Internet access to state codes varies by state. Many state codes are available at <http://www.findlaw.com/casecode/state.html> (operated by Findlaw).

III. Regulations are sometimes published in chronicles similar to session laws for statutes.

A. Proposed and recently finalized federal regulations are published in a daily chronicle of federal administrative activities known as The Federal Register. The Federal Register publishes not only regulations, but also many other administrative pronouncements, including executive orders and notices (including NOFAs, or notices of funding availability). Here is an example of a Federal Register citation: 12 Fed.Reg. 32 (1947). This citation refers to a 1947 administrative pronouncement that appears on page 32 of volume 12 of The Federal Register. The Federal Register is available in many law libraries. It is also available at <http://www.gpoaccess.gov/fr/index.html> (a website operated by the National Archives and Records Administration).

B. State practices vary on the publication of regulations. Some states have no chronicle analogous to The Federal Register.

IV. Federal and state regulations are also published and arranged by topic in codes of regulations.

A. The code of federal regulations is known, aptly, as the Code of Federal Regulations, or CFR. Like the U.S. Code, the CFR is arranged into fifty subject titles. HUD's program regulations are generally located in Title 24 of the CFR. Here is an example of a CFR citation: 24 CFR 100.202. This citation refers to Section 100.202 of Title 24 of the CFR. The CFR is available in many law libraries. It is also available at <http://www.gpoaccess.gov/cfr/index.html> (a website operated by the National Archives and Records Administration).

B. The code of state regulations varies from state to state. In California, the code of regulations is known as the California Code of Regulations, or CCR. The CCR is arranged into numerous subject titles. Here is an example of a CCR citation: 25 CCR 6000. This citation refers to Section 6000 of Title 25 of the CCR. Codes of state regulations are generally available in law libraries, but only the largest law libraries maintain codes of regulations from other states. In addition, Internet access to state regulations varies by state. State agencies typically have their own websites, many containing relevant regulations of the state agency.

V. Some federal and state administrative agencies, including HUD, publish program-specific handbooks that summarize and/or explain the statutory and regulatory requirements, as well as procedural guidelines that govern the applicable program. While handbooks are not official parts of the law, they are given great weight by the courts because they represent official executive branch interpretations of the statutes and regulations. Handbooks are generally available only from the agency that published them (as with HUD's handbooks, often through the agency's website).

APPENDIX 9

VI. Judicial decisions or cases are published chronologically in collections known as "reporters."

A. Reporters of federal court cases exist at each level of federal court.

1. There are three common reporters for the United States Supreme Court: U.S. Reports, published by the government; United States Supreme Court Reports, Lawyers' Edition, published by a commercial publisher; and Supreme Court Reporter, published by a commercial publisher. Lawyers and legal publications commonly use all three reporters. Here is an example of a case citation in U.S. Reports: Clark v. Community For Creative Non-Violence, 468 U.S. 288 (1984). This citation refers to the 1984 Supreme Court decision in the case of Clark versus Community For Creative Non-Violence, published at page 288 of volume 468 of U.S. Reports. This case can also be cited as Clark v. Community For Creative Non-Violence, 82 L. Ed. 2d 221 (1984). This citation refers to the same case, published at page 221 of volume 82 of the Second Series of United States Supreme Court Reports, Lawyers' Edition. Finally, this case can also be cited as Clark v. Community For Creative Non-Violence, 104 S.Ct. 3065 (1984). This citation refers to the same case, published at page 3065 of volume 104 of Supreme Court Reporter. Supreme Court reporters are available in most law libraries. U.S. Reports, one of the Supreme Court reporters, is also available at <http://www.findlaw.com/casecode/supreme.html> (a website operated by Findlaw).

2. For lower federal courts, the reporters are known as Federal Reporter (for appellate court cases) and Federal Supplement (for district court cases). Here is an example of a case citation in Federal Reporter: Keith v. Volpe, 855 F.2d 467 (9th Cir. 1988). This citation refers to the 1988 decision of the Ninth Circuit Court of Appeals in the case of Keith versus Volpe, published at page 467 of volume 855 of the Second Series of Federal Reporter. Here, too, is an example of a case citation in Federal Supplement: Independent Housing Services v. Fillmore Center Associates, 840 F. Supp. 1328 (N.D. Cal. 1993). This citation refers to the 1993 decision of the District Court for the Northern District of California in the case of Independent Housing Services versus Fillmore Center Associates, published at page 1328 of volume 840 of the Federal Supplement. Lower federal court reporters are available in most law libraries. Circuit court opinions are also available at <http://www.findlaw.com/casecode/courts/index.html> (a website operated by Findlaw), and district court opinions are available at http://www.findlaw.com/10fedgov/judicial/district_courts.html (a website operated by Findlaw).

B. State court case reporters vary from state to state. In addition, within a state, there may be different reporters depending on the level of the court deciding the case. However, the conventions for state court citations are similar to those for federal court citations. For example, the case Harris v. Capital Growth Investor XIV was cited as 52 Cal.3d 1142 (1991) in the body of Between The Lines. This citation refers to the 1991 California Supreme Court decision in the case of Harris versus Capital Growth Investor

APPENDIX 9

XIV, published at page 1142 of the 52nd volume of the third series of the California Reporter. State court case reporters are generally available in law libraries, but only the largest law libraries maintain state court case reporters from other states. In addition, Internet access to web versions of reporters varies by state. A general-purpose website for finding state court cases is <http://www.findlaw.com/casecode/state.html> (a website operated by Findlaw).

Glossary of Commonly Used Legal Terms

This glossary is a tool to help establish a common vocabulary of selected law-related terms for people who work in a supportive housing environment, and to help those people communicate with others (whether colleagues, tenant-clients, lawyers, or others). One lawyerly disclaimer is that many of the definitions in this glossary are not technically precise or complete.

AFFIRMATIVE DUTY means a duty to take a specified action (as opposed to a duty to refrain from taking a specified action).

CIVIL RIGHTS LAW means the area of law that deals with specific types of discrimination against members of protected classes of people. Fair housing law is a subset of civil rights law.

COMPELLING GOVERNMENT INTEREST means a government interest of the greatest importance. An example is the protection of a person's life or health.

CONDITIONAL USE PERMIT means an administrative approval of a land use that requires a specific type of approval. Typically, a planning commission or city council would issue a conditional use permit, but a city may also issue approval administratively. For example, a zoning law might only permit taverns in a certain district with a conditional use permit.

CONSTITUTIONAL ACTION means a judicial action based on an alleged violation of a constitution. Constitutional actions usually challenge a governmental actor's authority to act.

CONTROLLED SUBSTANCE means, for most purposes, a substance whose possession or use is controlled by the federal Drug Enforcement Administration pursuant to Section 102 of the Controlled Substance Act, including medicines for which a prescription is required and drugs for which no prescription is available (such as heroin, cocaine, and marijuana).

DISABILITY (or handicap) means, in general, a physical or mental impairment that substantially limits one or more of a person's major life activities. This term has several different context-specific definitions set forth in several different laws.

DISCRIMINATION means the act of treating people or things differently. Not all discrimination is unlawful, but many civil rights laws make it illegal to engage in specific types of discrimination against members of protected classes of people.

EVICTION means the expulsion of a tenant from leased premises after a court has terminated tenancy.

EXECUTIVE ORDER means a directive from the chief executive of a governmental body. The federal government commonly uses executive orders issued by the President of the United States in applying and/or enforcing various fair housing and other civil rights laws.

FAIR HOUSING LAW means any of several federal and state civil rights laws that prohibit discrimination in housing.

APPENDIX 10

FUNDAMENTAL RIGHT means a right that the courts consider to be so important that governmental impairment of the right is permitted only to the extent necessary to advance a compelling governmental interest. Examples of fundamental rights include the right to speak and express oneself, the right to practice one's religion, and the right of bodily privacy (including abortion).

HOMELESS means, in general, without a fixed residence. HUD defines the term in Section 103 of the McKinney Act (42 U.S.C. 11302) more specifically as individuals or families: (1) who lack a fixed, regular, and adequate nighttime address; (2) who have a primary nighttime residence that is a park or public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; or (3) who are living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by federal, state, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing). The definition also includes: (4) individuals who reside in a shelter or place not meant for human habitation and who are exiting an institution where they temporarily resided; (5) individuals or families who will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by federal, state, or local government programs for low-income individuals or by charitable organizations, who have no subsequent residence identified, and who lack the resources or support networks needed to obtain other permanent housing; (6) certain unaccompanied youth and homeless families with children and youth defined as homeless under other federal statutes; or (7) individuals or families who are fleeing or attempting to flee domestic violence or other dangerous life-threatening conditions. This definition specifically excludes any individual imprisoned or otherwise detained pursuant to state or federal law, but individuals who are exiting an institution where they temporarily resided are considered homeless if the individual was homeless upon entering the institution. HUD generally has defined "temporarily residing" in an institution as 30 calendar days or fewer. Other federal, state or local programs may include a different definition of "homeless."

INITIATIVE means a legislative action enacted through a voter-approved ballot measure placed on the ballot by petition.

JUST CAUSE or **GOOD CAUSE** means, in some tenancies, the standard by which a landlord can terminate a tenancy. Just cause standards are often found in rent control laws and in housing assistance program regulations and requires a specific reason for termination of tenancy, rather than general landlord-tenant law, in which a landlord may terminate tenancy for any non-retaliatory reason, as long as the lease agreement term has expired.

LAND USE law means the area of law regulating how land is used, typically distinguishing residential from non-residential uses, and within residential uses, typically regulating population density.

LANDLORD means a person who owns or manages rental property and leases it to a tenant. In the event of a master tenant leasing property to a subtenant, the master tenant acts as a landlord to the subtenant.

LEASE AGREEMENT (or rental agreement) means the oral or written agreement between a landlord and a tenant in which the landlord gives the tenant an exclusive right of occupancy to a specified property.

LEASE VIOLATION (or lease default) means a violation of a lease agreement. Most lease agreements provide for the exercise of specified remedies upon a lease violation.

APPENDIX 10

MASTER TENANT means a tenant of a leased property who transfers his or her exclusive right of occupancy in the property to another person (a "subtenant") and then acts as a landlord with respect to the subtenant.

OCCUPANCY STANDARD means a limit on the number of people allowed to live in a dwelling.

PROTECTED CLASS means a class of people sharing a specified characteristic (such as race, sex, nationality, religion, family status, or handicap) who are protected by civil rights laws against denial of specified benefits on account of the characteristic.

QUIET ENJOYMENT means the unimpaired use and enjoyment of leased premises. A tenant generally has a right to quiet enjoyment of leased premises.

REASONABLE ACCOMMODATION is a concept used within certain fair housing laws that requires a landlord to make accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford to a disabled person an equal opportunity to use and enjoy a dwelling and would not require an alteration in mission or program goals.

REASONABLE MODIFICATION is a concept used within certain fair housing laws that requires a landlord to permit a tenant to make modifications to leased property when necessary to afford to a disabled person an equal opportunity to use and enjoy a dwelling.

REFERENDUM means a ballot measure for the electorate to ratify or reject a legislative action, placed on the ballot either by petition or by the legislature.

RENT CONTROL means a locally adopted law that regulates the landlord-tenant relationship, often setting a ceiling on rent payments or increases and prohibiting eviction except where the landlord can prove just cause.

STRICT SCRUTINY means the standard that a court applies in an action challenging a government attempt to impair a fundamental right or to act in a discriminatory fashion against specific classes of individuals. Under this standard, the government must present significantly more than merely a rational basis for its action, or even an important justification; instead, the courts will permit government action only to the extent necessary to advance a compelling government interest.

SUBTENANT means a tenant of leased property whose landlord is a master tenant and whose right of occupancy in the leased premises is based on the right of the master tenant.

THIRTY—DAY NOTICE means a notice to terminate a tenancy in 30 days. Either a landlord or tenant may issue this notice. It is the common mechanism to terminate a "month-to-month" tenancy (a tenancy where the landlord and tenant each agree to a term of one month, renewable each month). Under certain housing assistance programs, landlords would also give this notice to a tenant to terminate a tenancy in the event of a lease violation.

THREE—DAY NOTICE means a landlord's notice to a tenant to cure a lease violation in three days, or else the tenancy will terminate.

APPENDIX 10

UNLAWFUL DETAINER means a civil case to rapidly determine who (as between a landlord and a tenant) has a right of possession of leased premises. Only a government official enforcing a court judgment in an unlawful detainer case may force an eviction.

ZONING means an area of land use law dividing a community into zones in which the community permits specified uses automatically or conditionally. Some fair housing laws regulate the extent to which zoning can exclude housing for particular populations or for certain types of housing from an area.