

Fair Housing Law Applicable to Tenants with Disabilities

Federal Fair Housing Act (FHA) protects consumers in “real estate transactions” from discrimination due to race, color, national origin, religion, sex/gender, handicap/disability, or familial status.

Exceptions: not applicable to (1) 4 or fewer rental units with one occupied by owner;

(2) single-family homes with no broker involved (cf. NC FHA)

What is *handicapping condition*? “A physical or mental impairment that substantially limits one or more major life activities.” (Self-care, manual labor, walking, lifting, breathing, learning, communicating, etc.)

Exemption: Persons currently involved in illegal use of controlled substance.

A landlord acts in an unlawfully discriminatory manner if s/he refuses (1) to allow tenant to make reasonable modifications of physical premises or (2) to make reasonable accommodations in order to allow a person with a disability full use and enjoyment of housing.

Distinguish *modification* and *accommodation*.

Landlord is not required to make accommodations that are not *reasonable*:

(1) Requested accommodation would impose undue financial or administrative burden;

Factors to consider in evaluating financial burden: LL's financial resources
Costs to LL
Benefit to T
Availability of less expensive alternative

(2) Requested accommodation would alter fundamental nature of program.

Landlord is not required to accommodate a tenant who poses a *direct threat* to health and safety of others. Objectively determined, based on individual facts, not on “fear, assumption, or stereotype.”

Landlord also not required to rent to tenant who “causes *substantial physical damage* to property of others,” if no reasonable accommodation is possible to avoid such damage.

There are no formal requirements for an effective request for accommodations, either in form, content, or timing.

Landlords (and judicial officials) should be careful to limit inquiries to those strictly necessary to determine whether FHA protections apply.

Distinguish *service* and *assistance* animals.

ADA applies only to *service animals*: either dogs or miniature horses, trained to perform some specific task directly related to person's disability.

FHA applies to both *service and assistance* animals. An *assistance* animal is an animal that works, assists, or performs tasks for person with disability, or provides emotional support that alleviates one or more identified symptoms or effects of disability.

There is no mandatory registration or certification procedure for service or assistance animals.

A landlord may not charge a pet fee for S/A animals, but may deduct from security deposit/charge tenant for damage to property caused by animal.

General rules related to permissible behavior of pets may be applied to S/A animals as well, but landlord may not use across-the-board exclusionary rules deny accommodation.

Magistrates are likely to encounter FHA issues (1) as defense in SE cases, or (2) money owed cases due to early termination allegedly caused by LL's refusal to accommodate.

Listed below are just a sample of some useful online resources to help you learn about this law in more detail. Two particularly good resources are:

2014-2015 NC Real Estate Commission publication, *Selected Property Management Issues*, General Update Course, pp. 6-16, found at <https://www.ncrec.gov/Pdfs/genupdate/PropMgmt2014.pdf>.

Fair Housing for Tenants with Disabilities: Understanding Reasonable Accommodations and Reasonable Modifications, 2018 Updated Edition, NC Housing Finance Agency, found at https://www.nchfa.com/sites/default/files/page_attachments/RAGuide.pdf.

Other Resources:

Animals and the Fair Housing Act, pub'd by Disability Rights NC, found at <https://www.disabilityrightsncc.org/sites/default/files/SelfAdvocacyPacket-Animals%20in%20Housing.pdf>.

Fair Housing and Reasonable Accommodation, 2016 online PowerPoint presentation by NC Human Relations Commission, found at https://files.nc.gov/ncdoa/documents/files/FairHousingANDReasonableAccommodation_Presentation.pdf

GS Ch. 41A, State Fair Housing Act.

Right to Emotional Support Animals in "No Pet" Housing, Bazelon Center for Mental Health Law 2017, found at <http://www.bazelon.org/wp-content/uploads/2017/04/2017-06-16-Emotional-Support-Animal-Fact-Sheet-for-Website-final.pdf>

Joint Statement of HUD and DOJ, *Reasonable Accommodations under the Fair Housing Act*, 2004, found at <http://www.fairhousingnc.org/wp-content/uploads/2012/03/HUD-DOJ-Joint-Statement-on-RA.pdf>

Eichstaedt, Marley J., *Assistance Animals in Housing – New HUD Guidance Regarding Assistance Animals*, Northwest Fair Housing Alliance