

RISK MANAGEMENT & THE FAIR HOUSING ACT: AN OVERVIEW FOR HOUSING PROVIDERS



**FAIR HOUSING PROJECT
LEGAL AID OF NORTH CAROLINA**

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EQUAL HOUSING
OPPORTUNITY

TYPES OF PROPERTY COVERED

The FHA broadly applies to “dwellings,” which includes almost every residential rental unit

- Single and multi-family housing
 - houses, apartments & condos
- Group homes
- Shelters
- Migrant housing
- Assisted living housing
- Long-term transient lodging



WHO HAS TO COMPLY?

Almost all people involved in selling, renting, and managing housing must comply with Fair Housing laws

- Owner, landlord, management company, manager, maintenance workers, and other employees
- Real estate agencies, agents, sellers, banks, lending institutions, and insurance companies
- Homeowners Associations and Condo Boards



PROTECTED CLASSES

The FHA prohibits discriminatory conduct against persons based on:

1. race
2. color
3. national origin
4. religion
5. sex (gender)
6. familial status (families with children)
7. handicap (disability)
8. affordable housing (NC only)

NOWHERE ON A RENTAL APPLICATION DOES IT SAY



YOU MUST BE A WHITE MAN

WITH NO KIDS



AND NO DISABILITIES.



BEST PRACTICE TIPS TO REDUCE RISK OF FUTURE LIABILITY

- 1. Have written policies re RA, TSP, sex and other types of harassment, etc.**
- 2. Mandate training by employees/agents**
- 3. Require uniform practices/procedures**
- 4. Monitor implementation**
- 5. Have process to receive and document tenant complaints**
- 6. Respond promptly to complaints**



DISCRIMINATION BASED ON DISABILITY

REASONABLE ACCOMMODATIONS

- A change in rules, policies or procedures
- Necessary because of the person's disability
- Provides full/equal use and enjoyment of housing

Can request at any time

- Before tenancy/when applying
- During tenancy
- When facing eviction, if RA could remove basis for eviction

Can be requested by: tenant, family member, MD, social worker, therapist, or others**

****House Bill 795/ESAs**



RA EXAMPLES

Rule/Policy → Changed Rule/Policy as RA

First come, first served parking



Reserved parking for Tenant with mobility impairment

Tenant must complete application



Assist a Tenant with cognitive disability to complete application

Rent due on 1st of month



Move rent due date for Tenant who receives SSI or disability payment

1-year lease for 2nd floor unit



Move to 1st floor unit w/o fee for Tenant with mobility impairment

Rent must be paid by check



Allow direct deposit or representative payee for Tenant whose disability affects ability to timely pay rent

Needed Because of Disability

RA EXAMPLES

Rule/Policy → Changed Rule/Policy as RA

Fee for early lease termination



Allow tenant to terminate lease early without fee due to disability (e.g. emergency hospitalization or unit conditions exacerbate disability)

Occupants may only be added at lease renewal



Allow a Tenant with a disability to have live-in aide

Terminate tenancy due to poor housekeeping



Allow a Tenant more time to comply with the lease requirements and remove excess clutter

No pets allowed



Allow service or assistance animal for Tenant with disability



Needed Because of Disability



**HOW TO HANDLE A
REQUEST FOR A
REASONABLE
ACCOMMODATION**

BEST PRACTICES FOR EVALUATING RA/RM REQUESTS

Acknowledge receipt of request

**If it was oral request, put it in writing (w/ date) and
give person copy**

If you need add'l info to evaluate, ask in writing

Respond promptly

- Sometimes immediately
- Generally 7-10 days
- Delay = denial

WHAT CAN PROVIDER REQUEST WHEN EVALUATING RA/RM REQUEST?

Proof of disability

- But *only* if disability is not obvious or otherwise known
- Not entitled to medical history or even diagnosis

Information of how RA/RM will help w/ this disability (the “nexus”)

- But *only* if not readily apparent or known

WHEN CAN AN RA REQUEST BE DENIED?

The person does not have a disability

There is no disability-related need for the accommodation

The request is not reasonable because:

- the request would require a “fundamental alteration” in the nature of the services, program or activity, or
- the request creates an undue financial and administrative burden.

EXCEPTIONS

Direct Threat. FHA does not require a tenancy that would be a “direct threat” to the health or safety of others or result in substantial damage to the property of others unless an RA could eliminate the threat

- Determination must be based on an individualized assessment
- Unlawful to exclude people b/c of fear, speculation or stereotypes

Drug use. Current use of illegal drugs is excluded from the definition of disability.

HARASSMENT & LIABILITY: HUD'S 2016 RULE

HARASSMENT

Types

- Can be written, verbal, or other conduct
- Does not require physical contact

Single incident may be enough where

- Incident is sufficiently severe to create a hostile environment or
- Incident evidences a quid pro quo

QUID PRO QUO HARASSMENT

“Unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to”

- sale, rental or availability of a dwelling;
- terms, conditions, or privileges of the sale or rental; or
- availability, terms, or conditions of a residential real estate-related transaction.

**Does not matter if person acquiesces in
unwelcome request or demand**

- 24 CFR 100.600(a)(1)

HOSTILE ENVIRONMENT HARASSMENT

“Unwelcome conduct that is sufficiently severe or pervasive as to interfere” with

- availability, sale, rental or use or enjoyment of a dwelling;
- terms, conditions, or privileges of the sale or rental; or
- availability, terms, or conditions or a residential real estate-related transaction.”

- 24 CFR 100.600(a)(2)

DIRECT LIABILITY FOR DISCRIMINATION

One's own conduct *or*

Failing to take prompt action to correct & end a discriminatory housing practice by

- employee/agent where knew or should have known of discriminatory conduct *or*
- third party (eg another tenant, where knew of conduct & had power to correct)

VICARIOUS LIABILITY FOR DISCRIMINATION

Follows agency law principles

- Liable for actions of agent that are w/in scope of employment/agency
- Liable for actions of agent outside scope of employment/agency when agent is aided in commission of acts by existence of agency relationship

Unlike direct liability, this may occur *regardless* of whether the person knew or should have known of the agent's conduct

FOLLOWING FAIR HOUSING LAW REDUCES YOUR RISK OF LIABILITY

Being aware of and following fair housing laws is the best way to avoid having to defend a claim that might be lodged against you.

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