



THE COMMONWEALTH OF MASSACHUSETTS
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Dear Trustees and Property Managers:

This letter is to remind you that state and federal fair housing laws, including those protecting people with disabilities, apply to condominiums, and to provide guidance on the obligations and duties of condominium associations when following those laws.

As you may be aware, both the state anti-discrimination statute, Massachusetts General Laws Chapter 151 B, and the federal Fair Housing Amendments Act of 1988 ("FHAA"), 42 U.S.C. 3601 *et seq.*, prohibit disability-based housing discrimination. These laws consider a person to be disabled if the person has a physical or mental impairment that substantially limits one or more major life activities, including, but not limited to, walking, hearing, seeing, or thinking.¹ These laws also protect a person who has a record of being disabled or is regarded as being disabled. Because these laws do not distinguish the rights and obligations they create by type of ownership, they apply to condominium units to the same extent as other covered housing.

The primary requirements of these laws include:

- **You may not discriminate on the basis of disability by refusing to sell or rent a condominium to a person with a disability.** See G.L. c. 151B, §§ 4(6) & (7A); 42 U.S.C. § 3604(f)(1). It is also illegal to refuse to sell or rent a condominium to a person with a disability because the person needs a reasonable accommodation or reasonable modification to the premises (*see* below).
- **You may not discriminate in rights and privileges associated with condominium ownership or rental.** See G.L. c. 151B, § 4(6); 42 U.S.C. § 3604(0)(2). For example, you may not prevent residents with a disability from

¹ Under state law, a person is disabled if the person would be substantially limited in a major life activity without the use of self-help measures, such as medication, hearing aids, or corrective lenses. Because some disabilities (such as mental illness or cognitive disabilities) are invisible, and because state law determines whether a person is disabled based on how that person would function without the use of self-help measures, the determination of whether or not a person is disabled and afforded the protections of these laws should never be made based on whether or not a person "looks" or "seems" disabled.

using amenities available to residents in common, such as use of the community room or swimming pool.

- **You must make reasonable accommodations in policies, practices, and procedures for existing or prospective owners or tenants with disabilities.** *See G.L. c. 151B, § 4(7A); 42 U.S.C. § 3604(f)(3)(B).* Some examples of reasonable accommodation include allowing a service or companion animal a person needs because of a disability even though there is an existing "no pet" policy, or assigning a handicap parking space a person needs because of a disability despite an established procedure of making handicap parking available on a first-come, first-served basis. Note that some applicants, because of their disability, may need changes made in the applications process.
- **You must allow a person with a disability to make reasonable modifications at his or her own expense.** *See G.L. c. 151B, 4(7A); 42 U.S.C. § 3604(f)(3)(A).* Some examples include providing a ramp for a front entrance of five or fewer stairs, installing bathroom grab bars, or widening a doorway. Unreasonable conditions, limitations, or delays by a condominium association in granting approval for modification may constitute discrimination.
- **You must engage in an interactive process with the person with a disability even when the accommodation requested poses an undue burden.** *See Andover Housing Authority v. Shkolnik, 443 Mass. 300 (2004); Joint Statement of The Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act (May 17, 2004) ("Joint HUD/DOJ Statement," available at www.usdoj.gov/crt/housing/jointstatement_ra.htm) at 7.* The hallmark of these laws is the expectation that all parties will work together to find an effective accommodation that is "reasonable," that is, it does not pose an undue burden or fundamental alteration of the nature of the housing services. If the requested accommodation is not reasonable, the parties must work together to determine whether an alternative accommodation exists that would meet the needs of the person with the disability.
- **You may request more information when the need for a requested accommodation is unclear.** *See, e.g., Joint HUD/DOJ Statement at 11-15.* However, you are only entitled to the minimum amount of information

² In certain circumstances (for an example under federal law, where the unit or the building was designed or constructed for first occupancy after March 13, 1991, but was not designed or constructed to comply with the relevant accessibility regulations; for an example under state law, in the case of landlords who own a specific number of units and satisfy other conditions set forth in Chapter 151B), the condominium owner or condominium association may be responsible for paying for the modification. *See G.L. c. 151B, §§ 4(6), (7A); 42 U.S.C. § 3604(f)(3)(C).*

required to verify that the person is disabled within the meaning of the law and needs an accommodation.

Chapter 151 B and the FHAA contain construction requirements for certain housing built for first occupancy after March 13, 1991. *See* G.L. c. 151B, § 4(6); 42 U.S.C. § 3604(f)(3)(C). In addition, the state building code, 521 C.M.R., establishes architectural access standards applicable to construction, reconstruction, alterations, and remodeling of certain housing. *See* www.mass.gov/aab/aab_regs.htm.

Because this is a complex area of the law, we recommend that:

*You seek legal advice when specific questions arise;

*You ensure that all condominium association employees and board members who may handle reasonable accommodation receive training; and

*You have a policy in place to deal with reasonable accommodation requests and make residents and prospective residents aware of this policy. This policy should state, at minimum, how a person may request an accommodation or modification, to whom the person should make the request, and the time frame for approvals.

If you have any questions, please feel free to contact Attorney General Tom Reilly's Disability Rights Project at 617-727-2200, x 2939. In addition, useful information can be found at a number of Web sites, including the Web sites of the Massachusetts Commission Against Discrimination (MCAD), www.mass.gov/mead, the Fair Housing and Equal Opportunity Office of the United States Department of Housing and Urban Development (HUD), www.hud.gov/offices/fheo, the Massachusetts Architectural Access Board, www.mass.gov/aab, and Fair Housing First, an initiative of HUD established to promote compliance with the architectural access requirements of the FHAA, www.fairhousingfirst.org.

Sincerely,



Alice E. Moore
Chief, Public Protection Bureau