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ATTORNEY GENERAL'S GUIDANCE ON REASONABLE ACCOMMODATIONS IN HOUSING

Massachusetts residents with disabilities may face unique barriers in obtaining and maintaining equal access to housing, which is a key pathway to economic security. Because we recognize the importance of access to housing, we have prepared this guide to help educate people with disabilities and landlords on their rights and obligations with respect to housing.

What is a disability under the law?

A person with a disability under state and federal fair housing laws is a person: (1) with a physical or mental impairment that substantially limits one or more major life activities, or (2) who is regarded as having such an impairment, or (3) with a record of having such impairment, even if the person does not currently have a disability. Major life activities include activities such as breathing, walking, talking, hearing, seeing, sleeping, caring for one's self, performing manual tasks, and working. People who are in recovery from substance use disorder and who are not currently engaging in the use of illegal drugs are covered.

What laws exist to protect people with disabilities from discrimination in housing?

State and federal fair housing laws prohibit discrimination against any individual with a disability because of that person's disability, perceived disability, or past record of disability. This includes, for example, imposing different terms or conditions on a rental because of a person's disability, falsely representing that a unit is not available in order to avoid renting to a person with a disability, or adopting a policy or practice that has a discriminatory impact on a person with a disability. These laws also require housing providers to make reasonable accommodations or modifications that are necessary to provide a person with a disability equal access and full enjoyment of the housing unit.

What is a reasonable accommodation or reasonable modification in housing?

A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that will allow a person with a disability to have an equal opportunity to use and enjoy a housing unit, including public and common spaces. A reasonable modification is a

structural change made to an existing housing unit that will allow a person with a disability equal access and full enjoyment of that housing unit.

Various state and federal laws require housing providers to make reasonable accommodations and reasonable modifications for individuals with disabilities that are necessary to provide the person with an equal opportunity to use and enjoy the housing unit. These laws protect not only tenants and home seekers with disabilities, but also those without disabilities who live with or are associated with individuals with disabilities. These laws also prohibit housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because they require a reasonable accommodation or modification.

Who must comply with these requirements?

The requirement to provide reasonable accommodations and modifications applies to individuals, corporations, associations, and others involved in the provision of housing or residential lending, including property owners, housing managers, homeowners and condominium associations, real estate agents, and brokerage services. In certain limited circumstances, under Massachusetts law, a housing provider may be required to allow a reasonable modification, but may not be required to pay for it.

When is a reasonable accommodation or modification necessary?

A requested accommodation or modification may be necessary when there is an identifiable relationship, or nexus, between the requested accommodation or modification and the individual's disability. For example, an individual who has trouble walking may require a parking space that is closer to their housing unit as a reasonable accommodation for their disability, or a person with a service dog or an emotional support animal may require an exception to a housing provider's "no pets" policy as a reasonable accommodation for their disability.

Can an individual request an accommodation prior to moving into a rental unit?

Yes. Individuals with disabilities may request a reasonable accommodation or modification at any point prior to or during a tenancy. It does not matter whether the tenant was aware of the need for an accommodation prior to moving into the unit, nor does it matter when the request was made during the tenancy. For example, an individual with a respiratory condition may rent a unit in a building that permits smoking indoors and may request at any point prior to or after moving into that unit that the landlord make a reasonable accommodation or modification to mitigate the presence of secondhand smoke if doing so is necessary to provide that person with an equal opportunity to use and enjoy the unit.

What information may a provider seek when a reasonable accommodation or modification is requested?

A housing provider may request information to evaluate whether a requested reasonable accommodation or modification may be necessary because of a disability. If a person's disability is obvious, readily apparent, or otherwise known to the provider, and if the need for the requested accommodation or modification is also readily apparent or known, then the provider may not request any additional information. If the disability and/or the disability-related need for the requested accommodation or modification is not known or obvious, the provider may request only information that is necessary to evaluate the disability and/or disability-related need for the accommodation or modification. This information may be provided by the requesting individual, a 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. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary and may be inappropriate.

When may a housing provider deny a requested accommodation or modification?

A housing provider may deny a request for an accommodation or modification 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 or modification. In addition, a request for an accommodation or modification may be denied if providing the accommodation or modification would impose an undue hardship on the housing provider or it would fundamentally alter the nature of the housing provider's program. The determination of undue hardship is made on a case-by-case basis and involves various considerations. If an undue hardship exists vis-à-vis one accommodation or modification, the housing provider is still required to provide other reasonable accommodations or modifications that do not impose an undue hardship on the particular housing provider and/or constitute a fundamental alteration of the program.

Additionally, when a housing provider denies a requested accommodation or modification, the provider should discuss with the tenant whether there is an alternative reasonable accommodation or modification that would effectively address the tenant's disability-related needs and does not fundamentally alter the provider's operations and/or impose an undue hardship. As part of this interactive process, the housing provider should recognize that the individual requesting the accommodation or modification is most familiar with their disability and is in the best position to determine what type of accommodation or modification will be effective to meet a disability-related need. These discussions often result in an effective solution that does not impose an undue burden on the provider.

Can a landlord discourage individuals with disabilities from applying for an apartment to avoid having to implement a reasonable accommodation or modification?

No. Housing providers cannot discriminate based on disability, which includes treating potential tenants who have disabilities worse or differently than potential tenants without disabilities. There are many ways that landlords may engage in illegal discrimination against people with disabilities at the applicant stage. For example, it is illegal for a landlord or their agent to do any of the following because a potential tenant has a disability:

- Discourage potential tenants from looking for housing in particular buildings or neighborhoods, fail to show or inform potential tenants about available rental units in specific buildings or neighborhoods, or encourage potential tenants to look for housing in specific buildings or neighborhoods;
- Stop communicating with any applicants who tell the landlord they have a disability; or
- Reject a qualified applicant because they requested a reasonable accommodation or modification on their housing application.

How to File a Complaint at the Attorney General's Office

If you believe that your rights have been violated, we encourage you to alert the Attorney General's Civil Rights Division by filing a complaint. There are many ways to reach us:

- **Online:** Complete an E-Complaint at <https://www.mass.gov/how-to/file-a-civil-rightscomplaint>;
- **By Mail:** Send a completed Civil Rights Complaint form to the Civil Rights Division at One Ashburton Place, 18th Floor, Boston, MA 02108;
- **By E-mail:** Email a completed Civil Rights Complaint form to the Civil Rights Division at civilrights@mass.gov; or
- **By Phone:** Call (617) 963-2917.

If you need an accommodation due to a disability in order to file a complaint, please reach out to our ADA Coordinator, Bethany Brown, at (617) 963-2939 or Bethany.h.brown@mass.gov.

Because the Civil Rights Division receives many complaints, the time it takes to review each complaint can vary. We will do our best to contact you as soon as possible after receipt of your complaint. If you have already filed a complaint with the Civil Rights Division and wish to inquire about the status, you should contact us by calling (617) 963-2917.

Other Resources

Massachusetts Commission Against Discrimination (MCAD)

Overview of Housing Discrimination in Massachusetts:

<https://www.mass.gov/info-details/overview-of-housing-discrimination>

File a Complaint Online:

<https://www.mass.gov/how-to/how-to-file-a-complaint-of-discrimination>

U.S. Department of Housing & Urban Development (HUD)

File a Complaint Online:

https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint

Boston Fair Housing Commission

Boston Fair Housing Regulations: <https://www.boston.gov/departments/fair-housing-and-equity/boston-fair-housing-regulations>

File a Complaint Online: <https://www.boston.gov/departments/fair-housing-and-equity/howfile-housing-discrimination-complaint>

Cambridge Human Rights Commission

General Information about Housing Discrimination:

<https://www.cambridgema.gov/Departments/HumanRightsCommission>

File a Complaint Online:

<https://www.cambridgema.gov/Services/fileadiscriminationcomplaint>

Massachusetts Office on Disability (MOD)

Disability Rights in Housing: <https://www.mass.gov/info-details/disability-rights-in-housing>

Other Resources

Community Legal Aid:

<https://communitylegal.org/what-we-do/housing-and-homelessness/>

Greater Boston Legal Services Housing Unit: <https://www.gbls.org/our-work/housing>

Massachusetts Fair Housing Center:

<https://massfairhousing.org/housing-discrimination/disability>

SouthCoast Fair Housing: <http://southcoastfairhousing.org/about/>

Suffolk University Law School, Housing Discrimination Testing Program:

<https://www.suffolk.edu/law/academics-clinics/clinics-experiential-opportunities/housingdiscrimination-testing-program>