

Special fair housing considerations in public and subsidized housing

Carol Gish, West Tennessee Legal Services
Tracey McCartney, Tennessee Fair Housing Council

Statutes with special applicability to public/subsidized housing and Section 8

- Section 504 of the Rehabilitation Act of 1973
- Titles II and III of the Americans with Disabilities Act
- Violence Against Women Act Reauthorization of 2005 (109 Pub. L. 162)

What is a “handicap” or a “disability”?

- A physical or mental impairment that substantially limits one or more major life activities
- Having a record of such an impairment
- Being regarded as having such an impairment

The definitions are similar under all three statutes – Section 504, ADA and the Fair Housing Act

The Fair Housing Act

- Amended in 1988 to add “handicap” (disability) as a protected class
- Prohibits discrimination – refusal to rent, differences in terms and conditions, “otherwise mak(ing) unavailable and deny(ing)” housing
- Requires reasonable accommodations
- Requires reasonable modifications
- Design and construction requirements

The Fair Housing Act (cont.)

Examples of prohibited discriminatory practices:

- Simple refusal to deal with a tenant or prospective tenant because of their disability
- Charging a higher security deposit for someone who uses a wheelchair
- Making illegal inquiries into the nature and severity of a disability

Section 504 of the Rehab Act of 1973

- Prohibits discrimination on the basis of disability in any program or activity that receives financial assistance from any federal agency, including the U.S. Department of Housing and Urban Development (HUD) as well as in programs conducted by federal agencies including HUD.
- Regulations are at 24 C.F.R. Part 8

Section 504 (continued)

- Prohibits the same practices prohibited under the Fair Housing Act
- Requires reasonable accommodations
- Reasonable modifications are usually the financial responsibility of the **housing provider**, not the tenant
- Requires **program** accessibility, not just housing accessibility

Section 504 (continued)

Communications

- Recipients of federal funds must be able to communicate effectively with applicants, tenants, public
- Recipient may need to furnish communication aids
- Recipient should have procedures in place so that persons with hearing and vision impairments can get information

Section 504 (continued)

- 504 has certain accessibility requirements for new construction and alterations of housing and non-housing facilities that are federally assisted
- For new construction, at least one unit or at least 5% of units, whichever is greater, must meet Uniform Federal Accessibility Standards (higher degree of accessibility than under the Fair Housing Act)

Americans with Disabilities Act

- Title II prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities (such as housing authorities). HUD enforces Title II when it relates to state and local public housing, housing assistance and housing referrals.

Americans with Disabilities Act (cont.)

- Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public. For example, it covers the rental office since the rental office is open to the general public.

Common concepts

Reasonable accommodation:

- A change or exception to a policy, practice or procedure if necessary to give a person with a disability the same use & enjoyment of a dwelling as everyone else
- “Reasonable” is a key word – if it’s an undue financial and administrative burden, or changes the nature of the program, it’s unreasonable.

Common concepts

Reasonable accommodations (cont.)

- Accommodations in dwelling itself – examples
- Programmatic accommodations – examples
- Undue delay in granting an accommodation is deemed a denial

Common concepts

Reasonable accommodations (cont.):

Documentation issues

- Housing providers can request from tenant documentation from a professional or other knowledgeable person that the tenant has a disability as defined by federal law and that the accommodation is necessary because of that disability
- Documentation not appropriate if the disability and the need for the accommodation are obvious

Common concepts

Reasonable modifications

- Changes to the physical structure of a dwelling or common areas to give a person with a disability the same use as anyone else.
- In conventional rentals, usually the financial responsibility of the tenant.
- Undue delay in granting or providing a modification is deemed a denial

Examples?

Further resources on 504

Section 504 Frequently Asked Questions, available at

<http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm>

Violence Against Women Act

- 2005 reauthorization added protections for victims of domestic violence in public/subsidized housing and in the Section 8 program (both voucher-based and project-based)
- Key provisions:
 - Involvement as a victim in an incident of DV is not good cause for eviction or rejection
 - Victims of DV have ability to transfer to another development or port voucher

Violence Against Women Act – specifics

Section 8 program:

- An applicant's record as a victim of domestic violence, dating violence or stalking is not a basis for denial of a voucher (42 USC § 1437f(c)(9)(A))
- Incidents of actual or threatened domestic or dating violence or stalking are not "serious or repeated" violations of the lease and are not good cause for eviction or termination of voucher (42 USC § 1437f(c)(9)(B))

Violence Against Women Act – specifics

Section 8 program:

- Incidents of actual or threatened domestic or dating violence or stalking are not considered “criminal activity” that are cause for eviction or termination of voucher (42 USC § 1437f (c)(9)(c)(i))
- Landlords can “bifurcate” a lease to evict an abuser without evicting the rest of the family (42 USC § 1437f (c)(9)(c)(ii))

Violence Against Women Act – specifics

Section 8 program:

- Tenant can be evicted if the owner, manager or PHA can demonstrate an “actual and imminent threat” to other tenants or employees if the tenant is not evicted or terminated from Section 8 (42 USC § 1437f (c)(9)(C)(iv))
- A family can port a voucher to another jurisdiction if it is necessary to leave for the safety of the family. (42 USC § 1437f (r)(5))

Violence Against Women Act – specifics

Public housing program:

- The PHA cannot deny admission to an otherwise qualified applicant just because he or she has been a victim of domestic violence, dating violence or stalking (42 USC §1437d (c)(3))
- The PHA lease must provide that it can evict only for good cause, and incidents of actual or threatened violence is not good cause (42 USC §1437d (l)(5))

Violence Against Women Act – specifics

Public housing program:

- As with Section 8, a PHA can bifurcate a lease to evict an abuser and allow the rest of the family to remain in the housing (42 USC §1437d (l)(6)(B))
- The PHA can, at its discretion, allow a victim of domestic abuse to move to another unit or project.

Violence Against Women Act – specifics

Documentation: Under both public housing and Section 8, the alleged victim can be required to certify that he or she is a victim of domestic violence by providing, within 14 days:

- Documentation from a victim service provider, or
- Attorney or doctor from whom the victim has sought assistance with the abuse, or
- Federal, state, local or tribal police report or court record

Note: the law does not **require** that the housing provider demand documentation.

Further resources

The impact of the Violence Against Women Act 2005 (VAWA) on the housing rights and options of survivors of domestic and sexual violence: Frequently Asked Questions, available at

<http://www.ncdsv.org/images/ImpactofVAWAHousingFAQ.pdf>

Sexual orientation & public/subsidized housing

- HUD is planning to propose a rule that will:
 - Clarify that the term "family" as used to describe eligible beneficiaries of public housing and Housing Choice Voucher programs include otherwise eligible lesbian, gay, bi-sexual or transgender (LGBT) individuals and couples.
 - require grantees and those who participate in HUD programs to comply with local and state non-discrimination laws that cover sexual orientation or gender identity.