

**THE CITY OF ALEXANDRIA
COMMON INTEREST COMMUNITIES
EDUCATION SERIES**



**REASONABLE ACCOMMODATIONS
AND MODIFICATIONS**

APRIL 6, 2024

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Program Overview

- Overview of Fair Housing Laws
- Disability
- Reasonable Accommodations and Modifications
- Enforcement, Penalties for Noncompliance
- Best Practice Recommendations
- Resources



OVERVIEW OF FAIR HOUSING LAWS

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Statutory Foundation

- Federal Fair Housing Act of 1968 and the Fair Housing Amendments of 1988 (42 U.S.C. Sections 3601 et seq. as amended)
- Virginia Fair Housing Law (Section 36-96.1 et seq. of Code of Virginia and 18 VAC 135-50-10 of the Virginia Administrative Code)
- Local Fair Housing-Related Ordinances



Federal Fair Housing Act

Federal Fair Housing Act prohibits housing providers from discriminating in any aspect of sale or rental of a dwelling unit, or in the provision of services or facilities, on the basis of:

- Race
- Color
- Religion
- National Origin
- Disability
- Sex (including gender identity and sexual orientation)
- Familial status (under the age of 18)



Virginia Fair Housing Law

The provisions of the Virginia Fair Housing Law mirror those of the federal Fair Housing Act, ***except*** that the Virginia Fair Housing Law adds additional “protected classes” –

- Elderly (55 or older)
- Military Status
- Source of Funds



Source of Funds

Any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidizing program.



Classes Not Protected by Federal or State Law

Several groups are **not** protected under either state or federal fair housing law:

- Students
- Income Status
- Smokers
- Marital Status

But these persons may be protected under local ordinance.



Applicability to Community Associations

Courts have applied fair housing laws to both homeowners and condominium unit owners associations, determining that each is a **housing provider**.



Contrast with the American with Disabilities Act

- The American with Disabilities Act (ADA) prohibits discrimination on the basis of disability by operators of **places of public accommodation**.
- The ADA generally has limited application to community associations.



Who Enforces Fair Housing Laws?

- Department of Justice (DOJ) - ***Federal***
- Department of Housing and Urban Development (HUD) - ***Federal***
- Virginia Fair Housing Office - ***State***
- Local governments to extent local ordinances have been passed - ***County/City***



DISABILITY

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History

- In 1988, Congress extended the protections of the federal Fair Housing Act to persons with physical and mental disabilities.
- In 1991, the General Assembly added handicap as an additional protected class to the Virginia Fair Housing Law.



Joint Statements

The DOJ and HUD issued Joint Statements in 2004 and 2008 to provide guidance regarding the rights of individuals with disabilities and the obligations of housing providers under the federal Fair Housing Act.



Disability Defined

The Fair Housing Act defines a person with a disability as an:

- With a **physical or mental impairment** that *substantially limits* one or more **major life activities**;
- Who is regarded as having such an impairment; **and**
- With a record of such an impairment.



Physical or Mental Impairment Defined

The Joint Statements define the term “physical or mental impairment” to include, but not limited to:

- Cerebral Palsy
- Autism
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Heart disease
- Orthopedic, visual, speech and hearing impairments
- HIV
- Mental retardation
- Emotional illness
- Alcoholism
- Hoarding
- Diabetes
- Drug addition (other than illegal use of controlled substance)



Major Life Activity Defined

The Joint Statements provide that the term “major life activity” means:

Activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning and speaking.



REASONABLE ACCOMMODATIONS & MODIFICATIONS



Fair Housing Law Requirements

Fair housing laws **require** housing providers to:

- Make **reasonable accommodations** in rules, policies, practices, or services **necessary** to afford disabled individuals an equal opportunity to use and enjoy their **dwelling**; **and**
- Make **reasonable modifications** of existing premises that are occupied by disabled individuals if such modifications are **necessary** to afford disabled individuals with an equal opportunity to use and enjoy the **dwelling**.



Fair Housing Law Requirements

Housing providers are only required to provide a **reasonable** accommodation or modification if a reasonable accommodation or modification is requested.



Reasonable Accommodation & Reasonable Modification - *Defined*

Defined under the Fair Housing Act:

- **Reasonable Accommodation** - a *change, exception, or adjustment to a rule, policy, practice, or service.*
- **Reasonable Modification** - a *structural change made to the premises.*



Reasonableness – *The Test*

What constitutes a reasonable accommodation or modification is determined by a **facts and circumstances test** which takes into consideration the resources of the entity required to provide the accommodation or modification.



How Courts Define *Reasonable*

Courts have generally held that an accommodation or modification is **reasonable** if the accommodation or modification would not impose **an undue hardship or burden** upon the entity making the accommodation or modification, and would **not undermine the basic purpose** that the requirement seeks to achieve.



Necessity of Accommodation or Modification

To determine whether a requested accommodation or modification is necessary, there must be an identifiable relationship, or **nexus**, between the requested accommodation or modification and the individual's disability.



Use and Enjoyment

Case law suggests that use and enjoyment of dwellings **extends** to areas outside of the dwelling.



Overlap Between Reasonable Accommodations & Modifications

- “80% Rule”
- **Accommodation** – Allowing an exception to the rule that 80% of floors are covered by carpet;
- **Modification** – Replacing carpet with hard surface flooring.



Reasonable Accommodations - Examples

- Service animals & comfort animals
- Parking
- Sign language interpreters at Association meetings
- Floor coverings
- Use of pesticide alternatives to accommodate chemical sensitivity



Reasonable Modifications - Examples

- Installation of:
 - Curb cuts
 - Ramps into buildings
 - Grab bars in a hallway
 - Chair lifts in community pool
 - Automatic entry doors
- Lowering:
 - Entry threshold into a unit or dwelling
 - Kitchen counters or cabinets



Who Pays?

As a general rule:

- **Reasonable Accommodations** – association responsible for costs.
- **Reasonable Modification** – requesting party responsible for costs.
- Requesting party may be responsible for cost of restoring premises to original condition upon moving out.



What You **CAN** Ask

If the disability is **NOT** obvious, the housing provider may ask for information that:

- Is necessary to verify that the person is disabled
- Describes the needed accommodation or modification
- Shows relationship between disability and need for requested accommodation or modification



What You **CAN** Ask

If the disability **IS** obvious, but the need for the modification is not readily apparent or known, the housing provider may only request information necessary to evaluate the disability-related need for the modification.

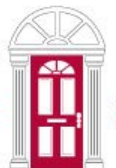


What **NOT** To Ask

The housing provider may not ask about the nature or severity of an individual's disability or request medical records from the individuals.



ENFORCEMENT & PENALTIES FOR NONCOMPLIANCE



Enforcement Options

Individuals can file:

- A complaint with HUD.
- A complaint with the Virginia Fair Housing Office (VFHO).
- A lawsuit in federal or state court.



Enforcement Options

The DOJ may bring a lawsuit where it has reason to believe that a person or entity is engaged in a **pattern or practice** of discrimination or where a denial of rights to a group of persons raises an issue of **general public importance**.



“Pattern or Practice” Defined

Courts have found a “pattern and practice” when the evidence establishes that the discriminatory actions were the defendant’s regular practice, rather than an isolated instance.



“General Public Importance” Defined

Courts have held that the Attorney General has discretion to decide what constitutes an issue of “general public importance,” and courts will not second-guess the Attorney General’s decision.



Complaints Filed with HUD

- Complaints filed with HUD must be filed within one year of the incident.
- If HUD determines that reasonable cause exists to believe that a discriminatory housing practice has occurred, then either the complainant or respondent may have the case heard in federal court.
- The DOJ will bring the case on behalf of the individual complainant.



Complaints Filed with VFHO

- The VFHO is the investigative branch of the Virginia Fair Housing Board and Real Estate Board (Board).
- Any aggrieved person may file a complaint with the VFHO, but the complaint must be filed no later than one year after the alleged discriminatory housing practice occurred or terminated.
- The Board must, within 100 days after the filing a complaint, determine, after consultation with the Attorney General, whether reasonable cause exists to believe that a discriminatory housing practice has occurred.



Complaints Filed with VFHO

- If the Board determines reasonable cause exists, the Board must issue a “charge” and refer the charge to the Attorney General for civil action in the appropriate circuit court.
- The Board may not issue a charge after the beginning of a trial of a civil action commenced by the aggrieved party under an Act of Congress or a state law seeking relief with respect to that discriminatory housing practice.



Individually Filed Actions

An individual may commence a civil action in the appropriate United States district court or state court not later than two years after the occurrence of the termination of an alleged discriminatory housing practice.



Penalties for Noncompliance

Damages available under Virginia Fair Housing Law include:

- Actual damages
- Punitive damages
- Injunctive relief
- Attorneys' fees and costs



BEST PRACTICE RECOMMENDATIONS



Recommendations to Ensure Compliance with Fair Housing Laws

- Adopt a fair housing policy for your community
- Review the governing documents and rules and regulations to confirm the documents do not effectively discriminate against a protected class.



Recommendations to Ensure Compliance with Fair Housing Laws

- Confirm with the association insurance carrier that the association has adequate directors and officers insurance in place to cover defense of fair housing claims – whether administrative or litigation.
- Respond promptly to owner requests and inquiries and maintain active communication.



RESOURCES



Resources

- **Virginia Fair Housing Office**

<https://www.dpor.virginia.gov/FairHousing>

FairHousing@DPOR.Virginia.Gov

888-551-3247

- **U.S. Department of Housing and Urban Development**

<https://www.hud.gov/resources>

Housing Discrimination Hotline - 800-669-9777



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