

Assistance Animals: Reasonable Accommodations under the Fair Housing Act

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Applicable Statutes

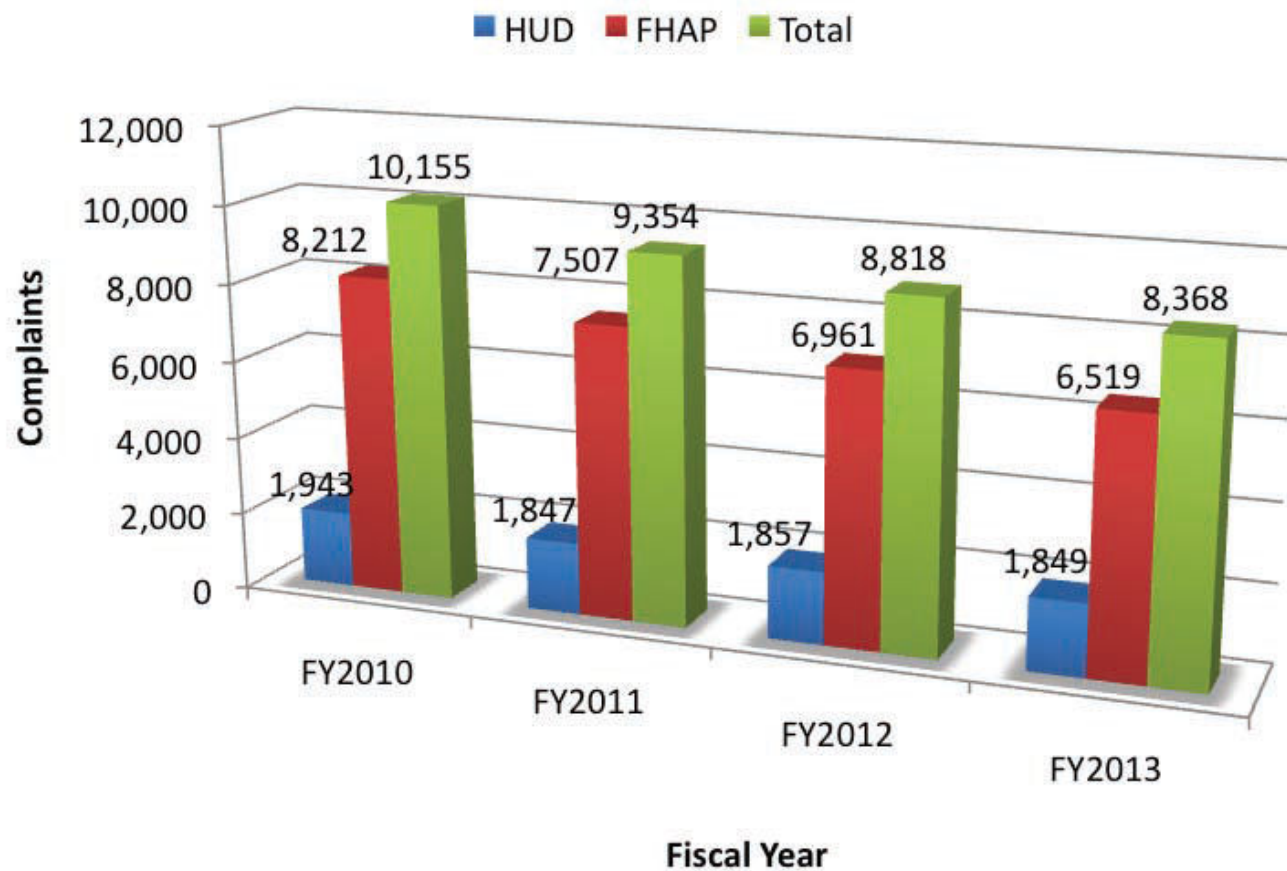
- Fair Housing Act (FHA) 42 U.S.C. 3601 *et seq.*; 24 CFR Part 100.
- Section 504 of the Rehabilitation Act of 1973 (504) 29 U.S.C. 794; 24 C.F.R. Part 8.
- Title II of the Americans with Disabilities Act (ADA) 42 U.S.C. 12101; 28 C.F.R. Part 35.
 - See Preamble to DOJ's Final Rule revising ADA regulations, 75 Fed. Reg. 56164 (Sept. 15, 2010).

Fair Housing Act

Prohibits discrimination in housing because of:

1. race
2. color
3. religion
4. national origin
5. sex
6. familial status
7. disability

The State of Fair Housing: Complaints Filed



Number of Complaints by Basis

Table 1: Bases of HUD and FHAP Complaints (FY 2010-FY 2013)

Basis	FY 2010		FY 2011		FY 2012		FY 2013	
	Number of Complaints	% of Total	Number of Complaints	% of Total	Number of Complaints	% of Total	Number of Complaints	% of Total
Disability	4,839	48%	4,498	48%	4,379	50%	4,429	53%
Race	3,483	34%	3,025	32%	2,597	29%	2,337	28%
Familial Status	1,560	15%	1,425	15%	1,301	15%	1,149	14%
National Origin	1,177	12%	1,195	13%	1,114	13%	1,040	12%
<i>National Origin- Hispanic or Latino</i>	722	7%	759	8%	691	8%	629	8%
Sex	1,139	11%	1,033	11%	1,067	12%	985	12%
Retaliation	707	7%	856	9%	970	11%	928	11%
Religion	287	3%	262	3%	229	3%	220	3%
Color	219	2%	185	2%	155	2%	170	2%
Number of Complaints Filed	10,155		9,354		8,818		8,368	

Source: TEAPOTS

Specific Issues in Complaints

Table 4: Issues in HUD and FHAP Complaints (FY 2010-FY 2013)

Issue	FY 2010		FY 2011		FY 2012		FY 2013	
	Number of	% of Total	Number of	% of Total	Number of	% of Total	Number of	% of Total
Discriminatory Terms, Conditions, Privileges, Services, and Facilities in the Rental or Sale of Property § 804(b) and § 804(f)(2)	5,959	59%	5,674	61%	5,516	63%	5,713	68%
Failure to Make a Reasonable Accommodation § 804(f)(3)(B)	2,556	25%	2,408	26%	2,487	28%	2,543	30%
Refusal to Rent § 804(a) and § 804(f)(1)	2,405	24%	2,239	24%	2,317	26%	2,273	27%
Coercion or Intimidation, Threats, Interference, and Retaliation § 818	1,478	15%	1,650	18%	1,913	22%	1,884	23%
Discriminatory Notices, Statements, or Advertisements § 804(c)	937	9%	784	8%	936	11%	986	12%
Discriminatory Financing § 805(a)	511	5%	442	5%	383	4%	433	5%
False Denial or Representation of Availability § 804(d)	256	3%	250	3%	237	3%	246	3%
Failure to Permit a Reasonable Modification § 804(f)(3)(A)	203	2%	207	2%	204	2%	194	2%
Refusal to Sell § 804(a) and § 804(f)(1)	205	2%	142	2%	190	2%	170	2%
Non-Compliance with Design and Construction Requirements § 804(f)(3)(C)	169	2%	90	1%	106	1%	114	1%
Steering § 804(a) and § 804(f)(1)	84	1%	62	1%	81	1%	80	1%
Refusal to Provide Insurance § 804(a) and § 804(b)	2	<0.5%	0	0%	4	<0.5%	6	<0.5%
Redlining § 804(b) and § 805(a)	6	<0.5%	2	<0.5%	11	<0.5%	5	<0.5%
Number of Complaints Filed	10,155		9,354		8,818		8,368	

Source: TEAPOTS

Joint Statements of HUD/DOJ

- Reasonable Accommodations under the Fair Housing Act (May 2004) available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7771.pdf
- Reasonable Modifications under the Fair Housing Act (March 2008) available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7502.pdf

Definition of Disability

- 1) a physical or mental impairment which substantially limits one or more of a person's major life activities
- 2) a record of having such an impairment or
- 3) being regarded as having such an impairment
 - 42 U.S.C. 3602(h); 42 U.S.C. 12102; See 24 C.F.R. 100.201; 24 C.F.R. 8.3

DISABILITY DISCRIMINATION INCLUDES:

- Refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling (42 U.S.C. 3604(f)(3)(B))
- 24 C.F.R. 100.204

REASONABLE ACCOMMODATIONS

- Definition: A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to use and enjoy a dwelling
- Example: allowing an assistance animal despite a no pet policy

ELEMENTS REQUIRED TO PROVE DISCRIMINATION:

- 1) Person has disability as defined by Act
- 2) Housing provider knew or should have known of person's disability
- 3) Requested accommodation necessary to afford person equal opportunity
 - Necessary = disability-related need
- 4) Housing provider refused request

LIMITATIONS ON INQUIRIES

- May not request information if disability and need for accommodation are obvious
- May not request medical records or detailed information about disability
- **KEY POINT:** Can only request the minimum amount of information necessary to verify disability and nexus

EVALUATING REQUESTS

- A housing provider can request reliable information that is necessary to respond to a request for accommodation
 - Documentation verifying disability status
 - Documentation describing needed accommodation
 - Documentation showing relationship between the disability and requested accommodation

EVALUATING REQUESTS...

- Is requested accommodation reasonable?
 - Unreasonable if:
 - Undue financial and administrative burden or
 - Fundamental alteration in the nature of the program or operation
- Would accommodation pose direct threat?
 - 42 U.S.C. 3604(f)(9)

Undue Financial and Administrative Burden

- Case-by-case determination
- Factors to consider:
 - Cost
 - Provider's financial resources
 - Benefits of accommodation
 - Availability of alternatives

Fundamental Alteration

- A change that alters the essential nature of the provider's operations
- Generally not required to grant request to:
 - Eliminate essential lease or program requirements
 - Provide supportive services not already offered

If Undue Burden or Fundamental Alteration:

- Explore alternatives
- Interactive process
- **KEY POINT:** Required to provide any other reasonable accommodation not resulting in an undue burden or fundamental alteration

Assistance Animals

- Animals that work, provide assistance, or perform tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability
- Service animals- ADA, FHA and 504
- Emotional support animals- FHA and 504

Common Issues

- Verification of need
- Training or certification requirements
- Pet deposits or fees
- Breed, size and weight restrictions
- Damage to property
- Disturbing others
- Imposing rules or conditions on assistance animals

HUD Guidance: FHEO Notice

- FHEO Notice 2013-01 (April 25, 2013) Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs
- If ADA, FHA and 504 all apply, apply ADA service animal test first. 2 questions:
 - Is this a service animal that is required because of a disability?
 - What work or tasks has the animal been trained to perform?
- If no ADA coverage or not a service animal, apply FHA and 504 reasonable accommodation analysis

FHEO Notice 2013-01

- FHA and 504 do not require individual training or certification.
- Breed, size, weight restrictions do not apply
- Direct threat analysis
 - Look at history/behavior of individual animal that caused harm or damage, not fear or speculation about breed.

Additional Resources

- Preamble to HUD's Final Rule, Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63834 (October 27, 2008)
 - 24 C.F.R. Part 5 Subpart C
- Subpart C does not apply to animals that assist, support, or provide service to persons with disabilities.
 - 24 C.F.R. 5.303

Additional Resources

- HUD Regulations (24 C.F.R. Parts...)
 - Fair Housing (Part 100), Section 504 (Part 8), General (Part 5), PIH- (Parts 960, 965, 966- public housing) (Parts 982, 983- housing choice voucher)
- HUD Notices, Handbooks and Guidebooks
- HUD Multifamily Occupancy Handbook 4350.3
 - See Section 2-44 on Assistance Animals and Section 3-29 regarding Verification of the need for the animal.
- Public Housing Occupancy Guidebook

HUD ALJ Cases

- HUD v. Riverbay Corp., 2012 HUD ALJ Lexis 15 (HUD ALJ May 7, 2012)
<http://portal.hud.gov/hudportal/documents/huddoc?id=HUD11-f-052-fh-18.pdf>
 - *Affirmed on Secretarial Review*, 2012 HUD ALJ LEXIS 19 (June 6, 2012)
- HUD v. Castillo Condominium Assoc., et al. (HUD ALJ 2014). Final Order on Secretarial Review at
<http://portal.hud.gov/hudportal/documents/huddoc?id=SecReview.pdf>
 - *Petition for review denied*, Castillo Condo. Ass'n v. HUD, 821 F.3d 92 (1st Cir. 2016)

Cases

- Overlook Mutual Homes Inc. v. Spencer, 666 F.Supp. 2d 850 (S.D. Ohio 2009)
- Fair Housing of the Dakotas v. Goldmark Property Management, 778 F. Supp.2d 1028 (D. N.D. 2011)
 - DOJ amicus brief available at www.justice.gov
- Warren v. Delvista Towers Condo. Ass'n, 49 F. Supp. 3d 1082 (S.D. Fla. 2014)

DOJ Settlements

- U.S. v. Fox Point at Redstone Ass'n, Inc.
- University cases:
 - U.S. v. University of Nebraska (Kearney)
 - U.S. v. Kent State University
 - U.S. v. Milliken University
- Consent orders available at <https://www.justice.gov/crt/housing-and-civil-enforcement-section-cases-1#disabil>

Recent HUD Charges

- HUD v. Garden Grove, LLC, et al.
 - Filed 9/8/16. Available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/enforcement
- HUD v. 111 East 88th Partners, et al.
 - Filed 9/21/16. Available at <http://portal.hud.gov/hudportal/documents/huddoc?id=FHEONo.02-15-0578-8.pdf>

QUESTIONS?