

Chapter 7

Discrimination

Legal Tactics: Tenants' Rights in Massachusetts
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Handout 3

What Is Illegal Discrimination 5

1. Federal and State Anti-Discrimination Laws Comparison
2. Who Is Protected Against Discrimination
3. What Housing Is Covered by the Anti-Discrimination Laws
4. What Behavior Is Illegal
5. How Can You Tell If You Are Being Discriminated Against

Common Forms of Housing

Discrimination 12

1. Discrimination Against Families with Children
2. Discrimination Based on Race or National Origin
3. Discrimination Based on Receipt of Public or Rental Assistance
4. Discrimination Based on Disability
5. Discrimination Based on Sex
6. Special Issues Relating to Tenant Screening & Criminal Records
7. Housing Rights for People with Disabilities: Comparison of State and Federal Law

**Steps to Take to Protect Yourself Against
Discrimination 27**

**Steps to Take If You Think You Have Been
Discriminated Against 28**

1. Write Down the Facts Immediately
2. Get a Test Done Quickly
3. Get Legal Advice
4. File a Complaint

Filing a Complaint at HUD 34

**Filing a Complaint with Your Local Fair
Housing Commission 35**

Filing a Complaint in Court..... 35

**Fighting Discrimination Is the
Government's Job 36**

Housing Discrimination

Tenants' Rights in Massachusetts

Laws that protect you against discrimination are called **fair housing laws**.

Answering these 3 questions will help you know if someone discriminated against you.

1. Am I protected from discrimination by the fair housing laws?
2. Is the housing I want to rent or buy covered by the fair housing laws?
3. Is the behavior of the landlord, manager, or other person illegal under the law?

If your answer is yes to all 3 questions, there are steps that you can take to protect yourself.

If you have a physical or mental disability, you may have more rights. You may have the right to get reasonable accommodations.

What are examples of discrimination?

Examples of discrimination include:

- § A property agent shows you apartments in one neighborhood and not another because of your race.
- § A landlord refuses to rent to you because you have a Section 8 voucher.
- § A landlord makes an inappropriate comment about your gender, ethnicity, religion, or disability.
- § A landlord, owner, manager, or employee sexually harasses you.
- § You have young children, and a landlord tells you they cannot rent to you because the apartment has lead paint.

Am I protected under the fair housing laws?

Fair housing laws protect you if someone discriminates against you because of your:

- § Race.
- § Color.
- § National origin or ancestry.
- § Sex.
- § Gender identity.
- § Sexual orientation.
- § Religion.
- § Age, if you are 18 or older.
- § Family status – because you are pregnant or have kids.
- § Receipt of public assistance – because you get government benefits.
- § Housing subsidy – because you have a voucher, like Section 8.
- § Disability (physical or mental).
- § Marital status – because you are married or not married.
- § Veteran status – because you are or were in the military.

Do the fair housing laws apply to my type of housing?

The laws protect against discrimination in most rental housing and some types of temporary housing. This includes houses, apartments, mobile homes, condominiums, cooperatives, and others.

No landlord of any size building can discriminate based on race, getting public benefits, or getting a housing subsidy. And no landlord of any size building can say discriminatory things. But other times, your rights depend on the size of your building:

- § State fair housing laws **do not** protect tenants in or applicants to buildings with only 2 apartments if the landlord lives there.
- § Federal fair housing laws **do not** protect tenants in or applicants to buildings with 4 apartments or less if the landlord lives there.

Can I be discriminated against if I have a housing voucher?

No. A landlord or real estate agent cannot treat you differently because you have a rental voucher or get public benefits, like Social Security Disability Insurance. It is also illegal to deny an applicant with a voucher because of the voucher program requirements. For example, a landlord can't refuse to rent to you because your voucher program requires inspection or a 1-year lease.

When looking for an apartment

- § Do not ask if a landlord takes Section 8 or allows children. Assume the landlord will follow the law.
- § Ask to see all available apartments – even if the landlord says an apartment is small or has lead paint.
- § If they will not rent to you, **ask why**.

How can I protect myself if I have a physical or mental disability?

If you have a disability, you may be able to get what is called a “reasonable accommodation” or “reasonable modification.” Accommodations and modifications are where the landlord makes changes to policies, services, or even the physical structure of an apartment so that you can have full use of your home.

What can I do if I have been discriminated against?

If you feel that you have been discriminated against by a real estate agent, a landlord, or a landlord's employee, it is important to act quickly. There are steps that you can take and organizations that may be able to help you. See www.masslegalhelp.org/LT-Discrimination-Steps.



For more, scan the QR Code for: **Legal Tactics, Chapter 7: Discrimination**
MassLegalHelp.org/LT-Discrimination

Discrimination

by Maureen St. Cyr

Italicized words are in the Glossary

Housing discrimination is when a housing provider takes a negative action against you because of something fundamental about who you are.

Sometimes it is obvious: a landlord may say “I don’t rent to people with Section 8 vouchers.” A maintenance person or a manager of a building may make rude and suggestive sexual remarks.

Other times discrimination can be subtle or hidden. For example, a real estate agent may show you apartments in one neighborhood and not another. A landlord may refuse to rent to you because you are black or Latino, but not say outright that is why they are turning you away. A landlord may come up with lots of reasons not to give you an application once they find out you have children under 6 because there is lead paint in the property. A landlord may make up some reason to evict you, while the real reason is because you are gay.

Sometimes it is obvious that the housing provider is discriminating, other times you may just have a feeling that something is off. If you feel that you have been discriminated against by a real estate agent, a landlord, or a landlord's employee, it is important to act quickly. There are steps that you can take and organizations that may be able to help you. This chapter will tell you what discrimination is illegal and how you can protect your rights.

What Is Illegal Discrimination

Housing discrimination is illegal under several different federal and state laws.¹ Each of the laws is slightly different in whom it protects, what type of housing it covers, and what kind of discrimination is illegal. If one law does not fit your situation, another law or possibly several laws may.² Under these laws, a housing provider cannot discriminate against you because of your membership in a *protected class*. Thus, it is illegal to do any of the following because of your membership in a *protected class*:

- § Refuse to rent or sell property,
- § Discriminate in the terms or conditions of a rental or sales agreement,
- § Discriminate in mortgage lending or other related practices,
- § Make discriminatory statements or advertise in a discriminatory manner, or

§ Otherwise make housing unavailable.

For more about whether you are in a *protected class* see the next section:
Who Is Protected Against Discrimination.

In addition, under the law, disabled people are entitled to *reasonable accommodations* in any housing transaction. This means a change to a housing provider's policy or practice, or a physical change to a property, when needed because of a disability. For more see **Discrimination Based on Disability**.³

If you are trying to decide if what happened to you was illegal discrimination, start by asking yourself three questions:

- § Am I protected from discrimination by the anti-discrimination laws?
- § Is the property I want to rent (or buy) covered exempted by the anti-discrimination laws?
- § Is the behavior of the landlord, manager, or other person illegal under the law?

The answer to all three questions must be “yes” for the anti-discrimination laws to apply to your situation. We go through each question in more detail on the following pages.

Following is a chart called **Federal and State Anti-Discrimination Laws Comparison** that gives you basic information about federal and state discrimination laws. Another chart that describes federal and state laws that protect people who have physical and mental disabilities is at the end of the section called **Discrimination Based on Disability**.

1. Federal and State Anti-Discrimination Laws Comparison

What Is the Discrimination Based On	What Housing Is NOT Covered by the Law*	What Law Says It's Illegal	Where Can You File a Complaint
Race	This law applies to all properties.	Federal: 42 U.S.C. §§1981, 1982	Court
Race Color National Origin Sex (<i>has been interpreted to include gender identity or sexual orientation</i>) ⁴ Religion	<u>Federal Law:</u> Owner-occupied buildings with 4 units or fewer. <u>State Law:</u> Owner-occupied buildings with 2 units or fewer.	Federal: Title VIII, 42 U.S.C. §3604 State: M.G.L. c. 151B, §4	HUD, MCAD, or Court
Familial Status <i>Includes families with children and pregnant women and discrimination because of lead paint</i>	<u>Federal and State Law:</u> Same as box above, plus: - Elderly housing. - 3-family buildings where one unit is occupied by an elderly or infirm person for whom children would be a hardship. - The temporary renting of one's primary residence.	Federal: Title VIII, 42 U.S.C. §3604 State: M.G.L. c. 151B, §4(11)	HUD, MCAD, or Court
Physical or Mental Disability	<u>Federal Law:</u> Owner-occupied buildings with 4 units or fewer.	Federal: Title VIII, 42 U.S.C. §3604	HUD, Court
	<u>Federal Law:</u> All housing not receiving federal money.	Federal: 29 U.S.C. §794	HUD, Court
	<u>State Law:</u> Owner-occupied buildings with 2 units or fewer.	State: M.G.L. c. 151B, 4(7A)	MCAD, State Court
Marital Status Sexual Orientation Age (<i>except minors</i>) Ancestry Military or Veteran Status Genetic Information or Gender Identity	<u>State Law:</u> 2-unit owner-occupied buildings.	State Only: M.G.L. c. 151B, §4(7)	MCAD, State Court
Public Assistance or Housing Subsidies	<u>State Law:</u> This law applies to all properties.	State Only: M.G.L. c. 151B, §4(10)	MCAD, State Court

* What housing is exempt (not covered) is complicated. For example, properties that are listed as exempt under some laws may be covered by other laws.

2. Who Is Protected Against Discrimination

It is illegal for someone to discriminate against you based on your:

- § Race
- § Color
- § National origin
- § Sex
- § Sexual orientation
- § Gender Identity
- § Religion
- § Marital status
- § Familial status (*includes families with children and pregnant women*)
- § Age (*except minors*)⁵
- § Ancestry
- § Physical or mental disability
- § Receipt of public assistance (*welfare, SSI, EAEDC, etc.*)
- § Receipt of a housing subsidy or rental assistance
- § Status as a veteran or member of the armed forces

Under the law, people who are discriminated against for these reasons are members of a *protected class*. If you feel you have been discriminated against for one or more of the reasons on the list above, you should read the section in this chapter called **Steps to Take If You Think You Have Been Discriminated Against**.

3. What Housing Is Covered by the Anti-Discrimination Laws

Many types of housing are covered under the fair housing laws.⁶ The laws cover houses, apartments, mobile homes, condominiums, cooperatives, and some types of temporary residences.⁷

In general, owner-occupied 2 family buildings are exempt under most of the fair housing laws. However, **no** landlord or owner can discriminate based on race, receipt of public assistance, or receipt of a housing subsidy. This means, for example, that if a landlord who lives in one half of a two-unit building wants to rent only to men and not to women, the landlord can do this. But if they refuse to rent to someone because they are Black or have a Section 8 voucher, that would be illegal.

Each fair housing law is slightly different in who it does and does not cover. Landlords who are *exempt* (not covered) under one law may still have to follow other antidiscrimination laws. See the chart called **Federal and State Anti-Discrimination Laws Comparison**, which lists the housing discrimination laws and what housing is not covered under each.

4. What Behavior Is Illegal

It is illegal for a landlord, real estate agent, or apartment manager to discriminate against someone because they are a member of a “protected class” (see **Who Is Protected Against Discrimination** for a list of protected classes) by doing any of the following things:

§ **Refusing to rent to you.**⁸

EXAMPLE: A landlord cannot refuse to rent to you because you have a Section 8 voucher and they “do not participate in Section 8” or “don’t want to take government funds.”

§ **Offering you different terms or conditions on any of the terms of your lease or tenancy.**

EXAMPLE: It is illegal for a landlord to require you to pay a security deposit because you have a disability, but not require non-disabled tenants to pay a security deposit. Likewise, a landlord cannot offer others rent discounts or extra services to non-disabled tenants, but not offer them to you.⁹

§ **Telling you the place you want is already rented when it is still available.**¹⁰

EXAMPLE: When you show up to see the apartment and the landlord sees that you are Latina, the landlord says: “Yes, it was available when you called, but I just rented it 10 minutes ago right before you came to look at it.” Your friend calls about the apartment later that afternoon, and the landlord says to them that it is still available for rent.

§ **Advertising in writing in a way that indicates a preference or limitation, or is discriminatory.**¹¹

EXAMPLE: An ad in the newspaper says “no Section 8,” “not dealeded,” or “mature tenants only.”

- § **Making an oral statement that is discriminatory.**
EXAMPLE: A real estate agent says: "I'm so sorry, we can't rent to you because the owner doesn't want children here."
- § **"Steering" you into one part of town or one part of an apartment building.**¹²
EXAMPLE: A real estate agent directs a person of color looking for an apartment into a neighborhood that is predominantly African-American and away from neighborhoods that are predominantly white. Or, a landlord rents to families with children only on certain floors or in certain buildings in a housing complex.¹³
- § **Refusing to negotiate to rent an apartment.**¹⁴
EXAMPLE: A landlord uses burdensome application procedures (such as asking for three verifications of income) or uses delay tactics that they do not impose on others in order to discourage you from renting.
- § **Discriminating in brokerage services.**¹⁵
EXAMPLE: A real estate agent refuses to return your phone calls or avoids taking your calls, or does not tell you about everything that is available.
- § **Threatening, coercing, or intimidating you when you attempt to exercise your fair housing rights.**¹⁶
EXAMPLE: You request a *reasonable accommodation* to have an assistance animal (exception to landlord's "no pets" policy) and two weeks later you are served with an eviction notice.
- § **Refusing to reasonably accommodate the needs of a person with a mental or physical disability in order to allow that person to occupy and fully enjoy the unit.**¹⁷
EXAMPLE: A landlord refuses to allow someone who receives disability income on the 7th of the month to pay their rent by 10th. A *reasonable accommodation* would be to set the rental date as the 10th of the month to allow the tenant to pay when they get their monthly income.¹⁸
- § **Using policies that fall hardest on a protected group.** Even if a landlord has a policy or practice that is not itself illegal, if it impacts members of protected groups more heavily than others, it may violate fair housing laws.¹⁹
EXAMPLE: A landlord refuses to rent to anyone with a criminal record, no matter what the offense or when it took place. This across the board policy is most likely illegal, but not because people with criminal records are a protected group. It may be discriminatory because it will deny housing to people of color more than others because they have been so heavily targeted by the criminal justice system.²⁰

When Can a Landlord Legitimately Refuse to Rent or Evict

There are many legitimate reasons a landlord can refuse to rent to you or can evict you. Some legal reasons that a landlord can refuse to rent to you may be:

- § You cannot afford the rent;
- § You have been evicted from past apartments for non-payment of rent;
- § You have a history of destroying property;
- § You or someone in your family has a criminal record which suggests that they are likely to be a threat to the health or safety of others.

Similarly, a landlord can lawfully take steps to evict you because:

- § You or someone in your family has damaged the apartment you currently live in;
- § You or someone in your family has disturbed the neighbors;
- § You have not paid the rent.

But watch out: While landlords can set reasonable standards and may have legitimate reasons for decisions they are making, they must still treat people the same. For example, while a landlord can perform credit checks on all applicants, it is illegal for a landlord to only perform credit checks on certain groups of people (for example people with Section 8 or disabled people).

5. How Can You Tell If You Are Being Discriminated Against

Discrimination happens in many ways. Sometimes it is very easy to know when you are being discriminated against. If a landlord or a rental agent does not want to talk to you after they see that you are black or Latino or have a child, their behavior is highly suspect. If a landlord or rental agent says any of the following things to you when you telephone or visit, that person is breaking the law:

- § "I don't rent to families with children."
- § "We have lead paint and it would be too dangerous for you and your baby here."
- § "The owner doesn't accept people with Section 8 subsidies or people on welfare."
- § "Wheelchairs? We cannot accommodate that."

§ "We don't have anything against gay couples but want to keep a low profile and can't rent to you because your lifestyle and relationship would attract too much attention."

§ "I'd be glad to rent to you, but your Latino friend can't live here or visit here because the neighbors would complain."²¹

Usually, landlords who are illegally discriminating are more subtle and it is not easy to know if you have been discriminated against. For example, you may ask a landlord or real estate agent about an apartment and be told something like:

§ "I'm sorry, the place we advertised was just rented."

§ "We have a very long waiting list on those apartments."

§ "No, we don't have anything available in that particular neighborhood that's at your price."

§ "I'd show the place to you, but I don't have the key right now."

§ "I'll call you back if I get any place you might want." (But they don't phone back.)

A landlord or a real estate agent may say these things to you in a polite and friendly manner, and they could be true. Or, these statements could be cover-ups for illegally denying you the place you want to live in.

For more see **Steps to Take If You Think You Have Been Discriminated Against**.

Common Forms of Housing Discrimination

1. Discrimination Against Families with Children

Families with children are protected from discrimination by the fair housing laws.²²The law also protects people who are pregnant and households in the process of adopting a child, getting custody of a child, getting guardianship of a child, or who provide foster care for children.²³ It is illegal for landlords to refuse to rent to you or in any way discriminate against you because you have or are expecting children.

For example, if you are a mother with three kids, a real estate agent cannot tell you that you would be overcrowded in an apartment but then rent the same place to four students. Similarly, a landlord cannot refuse to show you

an apartment because it has lead paint. And a landlord cannot charge you a larger security deposit or insist on more frequent inspections because you have children.

In some circumstances, however, the law does allow Massachusetts landlords to exclude families with children. In general, there are two types of housing where this may be allowed:

§ Two-family homes where the owners are occupants;²⁴ and

§ Certain buildings intended for and occupied by people over 55 years old.²⁵

Yet, even where an owner-occupant can legally refuse to rent to children, a landlord is not protected by state or federal law if they publish, advertises, or makes any written or verbal statements that they will not rent to children.²⁶ Most landlords do not put ads in the paper that say "no children, please" because they know that would be illegal. But some landlords do instruct real estate brokers and managers not to rent to families with kids or to reject them on some made-up grounds. A broker violates the law if they carry out the instructions of an owner-occupant of a two-family building and refuses to show or rent a property to families with children.²⁷

a. Lead Paint

Because lead poisoning is so serious, Massachusetts law requires owners to delead apartments whenever a child under the age of six lives in the property.²⁸ State law also makes it illegal for a landlord to refuse to rent to you and your children because an apartment has lead paint. Landlords must delead an apartment if you want to rent it and you have a child under the age of six. However, because the process of deleading is expensive, landlords frequently attempt to avoid this expense by not renting to families with children. Landlords will often say something like "Unfortunately, I can't rent to you because the unit doesn't have a lead certificate." **This is wrong: the landlord can rent to you, but they have to go through the process of abating any lead hazards first.**²⁹ You should still ask to see the apartment and ask for an application, if you want to rent it. The landlord should take steps to delead it and make it available if you are approved. If they do not or they deny your application in a suspicious way, they may be discriminating.

A common, but subtle, way of discriminating against families with children is to ask the ages of the children on the rental application. **You do not have to tell the ages of your children.** Simply list the names of everyone who will be living in the apartment without listing their ages. If a landlord insists on knowing how old your children are, it may be a sign they intend to discriminate against you because you need a delead apartment. If this

happens, read the section on **Steps to Take If You Think You Have Been Discriminated Against**.³⁰

If you have a Section 8 certificate or voucher, most housing authorities will not allow you to rent a place that is not certified as "lead-free."³¹ In these cases, a landlord **must** delead the apartment.³² They cannot simply refuse to rent to you or refuse to accept your Section 8.³³ For more see section on **Discrimination Based Upon Receipt of Public Assistance**.

b. Apartment Size

If you have kids, you may find that landlords, especially public or subsidized housing landlords, require you to rent apartments with a certain number of bedrooms, perhaps more than you need or can afford – or turn you away from units that you believe are large enough, but they say would be too small. For example, many public housing authorities have a rule requiring a single parent with a young child to apply for a 2-bedroom apartment. Although the rule allows two adults to share a 1-bedroom apartment, the rule would prevent a mother and her baby from being in the same room. This violates the federal and state fair housing laws because a 2-person family with a child is being treated differently than 2-person household without a child.³⁴ However, a landlord is sometimes allowed to reject tenants based on the size of their family in order to comply with state and local housing codes, but can do so only as long as the landlord treats all tenants the same when complying with the these housing codes.³⁵

2. Discrimination Based on Race or National Origin

Although housing discrimination based on a person's race or national origin is illegal, people of color still experience discrimination at high rates.³⁶ According to the 2020 U.S. Census figures, people of color in Massachusetts continue to be in much greater concentrations in cities, while the suburbs remain overwhelmingly white.³⁷ Segregation this severe and this widespread does not happen by chance.

Sometimes the discrimination can be blatant, such as when a landlord says: "I don't want to rent to Spanish people." More often it is subtle, where you are shown houses or apartments only in areas where everyone else looks like you. For example, if you are Black and you are only shown apartments in neighborhoods where there is a large number of other Black people. Other times, you may simply not get a call back. Many non-white populations face high rates of housing discrimination. Hispanic or Latine people or people with accents may simply not receive a return phone call. People of Middle Eastern descent also face high rates of discrimination – based on race, national origin or religion. Similarly, Asian Americans have faced high rates of discrimination, in particular following the COVID-19 pandemic.

A landlord may run uniform background checks to ensure ability to pay rent or fitness as a tenant. But asking about race and ethnicity are impermissible inquiries.³⁸ You cannot be asked about what your religion is or told that you cannot have guests or visitors of a certain race. If you are being asked questions about your race or ethnicity, you may be the victim of discrimination. For more information about what to do and who to call for help see the section in this chapter called **Steps to Take If You Think You Have Been Discriminated Against**.

Bias Against Immigrants

Relatedly, many people who are recent arrivals face discrimination. Landlords also make assumptions about someone's citizenship status based on their national origin, perceived national origin, or because they do not speak English. A landlord may assume that someone whose family came to the United States decades ago is an undocumented immigrant. Turning someone away for that reason is illegal.

3. Discrimination Based on Receipt of Public or Rental Assistance

It is illegal under state law to discriminate in renting housing because a person receives some form of public assistance, including welfare, medical assistance, or rental assistance. Thus, if a landlord says they don't take Section 8, or require all tenants to have employment income (as opposed to SSDI for example), that is discriminatory under Massachusetts law.

It is also illegal to discriminate against a person **because of the requirements of these programs**.³⁹ For example, a tenant with a Section 8 voucher can rent an apartment only if their landlord signs a lease. No lease, no subsidy. If a landlord says they will not rent to you because they don't want to do a lease, that is unlawful under state law.⁴⁰ It may also be discrimination if the landlord refuses to take payments (called vendor payments) from the Department of Transitional Assistance.

If you run up against a landlord or agent who refuses to rent to you because you have a rental subsidy or receive other public assistance, you should promptly report your complaint to the local housing authority or regional nonprofit agency that gave you the housing subsidy. These agencies have a duty to assist you in filing a complaint.⁴¹ You should also reach out to a fair housing agency for help. You can find the contact information for different fair housing agencies in the section called **Steps to Take If You Think You Have Been Discriminated Against**.

4. Discrimination Based on Disability

Disabled tenants are protected against housing discrimination under state and federal law.⁴² In addition, these same antidiscrimination laws give disabled people **affirmative rights** in housing: the right to *reasonable accommodations* and to *reasonable modifications*.⁴³

These laws seek to ensure that disabled people are not unnecessarily excluded from living in the community: our country has a long history of segregating disabled people or housing them unnecessarily in institutional settings.⁴⁴ Fair housing laws seek to remedy this exclusion.

a. The Right to Not Face Discrimination

It is illegal for a landlord to take any of the negative actions defined in the earlier parts of this chapter **because** someone is disabled. Thus, it is illegal to refuse to rent to someone because they have a disability, or to evict someone because they have a disability. For example, if a landlord refuses to rent to someone who has been in recovery from Substance Use Disorder without a relapse for years, or learns that a tenant is HIV-positive, and tries to evict them as a result, that would likely be illegal discrimination.⁴⁵

It is also illegal to make discriminatory statements based on disability, harass a tenant based on their disability or a household member's disability, or take other negative actions against an applicant or tenant because of their disability.

The law protects against actions taken because of a tenant's disability, but also because the landlord **perceives** them to be disabled (even if they are not) or because they **have a history** of disability.⁴⁶ State and federal laws prohibit virtually every kind of housing discrimination against people with almost all kinds of disabilities, including the refusal to make needed accommodations and modifications because of a disability.⁴⁷ Thus, a blind person, someone with epilepsy, AIDS, or alcoholism, or someone who suffers from depression or is developmentally disabled, has the right to rent and remain in an apartment, just like anyone else.

There are three definitions of disability used by the fair housing laws:

- § A "physical or mental impairment that substantially limits one or more life activities." This means that if you have a physical or mental condition or disease that prevents you from performing such tasks as walking, seeing, hearing, talking, breathing, holding a job, paying bills, or understanding things, you may be considered disabled. Also, the condition or disease must limit your activities to a great degree and for a long or substantial period of time.

- § A record of having a physical or mental impairment that substantially limits one or more life activities; or
- § A person who is considered by others to have a physical or mental impairment that substantially limits one or more life activities.⁴⁸

You are protected against discrimination on all of these bases.

b. Reasonable Accommodations

Under the law, disabled people have the right to *reasonable accommodations* in their housing.

A *reasonable accommodation* is a change in a rule, a policy, or a practice of the landlord (compare below to **Reasonable Modification** – a physical change to the property).⁴⁹ For example, if a landlord has a rule that tenants cannot have dogs, and you need an assistance animal (also called an emotional support animal) or a service animal, the landlord should *wave* the "no pet" rule for you.⁵⁰

Other examples of *reasonable accommodations* might include:

- § Transferring a tenant with a mobility disability to a vacant first-floor apartment, even if the lease on their fourth-floor apartment has months to run.
- § Allowing a tenant with a mobility disability to have a designated parking spot close to the building entrance or exit so they can access their car.
- § Agreeing to send out all notices in large-point font to allow a blind tenant to read mailings from the landlord.
- § Pausing or stopping eviction proceedings when the tenant is facing eviction due to disability-related behavior and they have new supportive services that will help them not violate the lease going forward.⁵¹

These are just a few examples. There are many other types of accommodations. Accommodations are highly individualized, and will be different for each person, based on their disability-related needs.

As the examples above show, a landlord's duty to reasonably accommodate the needs of disabled people applies not only to those with physical disabilities, but also to those with mental disabilities.

As noted above, a landlord must grant an accommodation related to the disability if it is requested and will ameliorate the symptoms of the disability,

and does not pose **an undue financial and administrative burden**.⁵² An undue financial and administrative burden is not any burden – many accommodations will pose **some** burden to the landlord – but one that is too much to reasonably expect the landlord to carry out. Thus, it may be unreasonable to expect a small or moderate landlord to provide an accommodation that costs a lot of money.

An accommodation also cannot pose a “**fundamental alteration**” to the landlord – that is, it cannot ask a landlord to do something that the landlord would not do as part of their ordinary business.⁵³ Thus, although it might be helpful to a tenant, it is likely not a reasonable accommodation to expect a landlord to drive a mobility-impaired tenant to the bank to get a rent check.

Another reason why a landlord might not have to grant a reasonable accommodation is if, even with the accommodation, the tenant would pose a “**direct threat**” to the health or safety of other tenants or people on the property. Thus, while the reasonable accommodation laws might require a landlord to delay the eviction of a tenant with a mental health disability who was causing minimal property damage and not disturbing other tenants,⁵⁴ an accommodation might not be reasonable if other tenants have been threatened or seriously disturbed by the tenant requesting an accommodation.⁵⁵

In Housing Court there is a program called the [Tenancy Preservation Program](#) which specifically helps households with mental health challenges preserve their tenancy and works with landlords to develop reasonable accommodations. If you think a referral might be helpful, you can ask court staff about a referral or reach out using the contact information online.

c. Reasonable Modification

A *reasonable modification* is a physical change to the property to make it accessible or more usable for a disabled person.

The most obvious kind of modification is making a physical change in the common areas of a building or in an apartment. This might mean the construction of a ramp, widening of a doorway, installation of grab bars, or installation of a door light for a person who cannot hear the doorbell, or installing an automatic shutoff device on a stove to prevent fires when a tenant has a memory impairment.

As with reasonable accommodations, these are just a few examples, and there are many more modifications that a tenant may be entitled to in order to use and enjoy their housing.

Unlike reasonable accommodations, reasonable modifications almost always cost money. The question then is: who has to pay for the modification? The answer depends on what type of housing you live in.

The general rule for **private housing** is that a landlord must allow a tenant to make reasonable modifications to an apartment at the tenant's own expense if it would allow the tenant full enjoyment of the apartment.⁵⁶ In certain situations, a landlord is required to pay for the modifications needed by the tenant. For instance, landlords who own ten or more units in the same building must pay for reasonable modifications for disabled tenants.⁵⁷

Additionally, properties that receive federal funds, like **public or subsidized housing**, must make reasonable modifications at their own expense.⁵⁸

Even when they are required to pay for modifications under the law, the housing provider may not have to make them if a modification poses an undue administrative and financial burden. That said, the fact that a modification may cost a lot of money does not mean that it will cause an "undue hardship," unless the landlord can show that they can't afford it.⁵⁹ So, for example, a landlord may have to install a roll-in shower even though it is expensive, but not have to install a new elevator in a two-story building. The analysis of what costs too much depends on a number of factors, including the cost, the landlord's overall resources, and the need for the accommodation.⁶⁰ For a listing of the different state and federal laws guaranteeing fair housing to people with disabilities, see the chart that follows.

d. Process for Requesting an Accommodation or Modification

Step 1: Tenant Makes the Request

The first step for a tenant to request an accommodation or modification from their landlord or property manager, is that the tenant – or someone on their behalf, with their permission – should make a request. The request does not need to include any “magic words” or phrases and needs to only make clear to the housing provider that the tenant is asking for a change because of a disability.⁶¹

The request can be verbal or in writing, but it is best practice to request in writing so there is a record of the request being made.

Often, a housing provider will have a Reasonable Accommodation/Modification Request Form. A tenant is not required to use any specific form to make the request, but may use the housing provider's form if they prefer to do so.⁶²

Step 2: Housing Provider Reviews and Verifies the Request

When evaluating a request, the housing provider is permitted to verify that the tenant has a disability, that the disability is related to the request being made, and that the requested accommodation will ameliorate the symptoms of the disability.⁶³

Sometimes the disability and the disability-related need will be obvious. For example, if a tenant who relies on a wheelchair requests that two front steps be ramped, the disability and the need will be readily apparent. In these cases, the housing provider **may not do further investigation**.⁶⁴

Where the disability or the disability-related need is not readily apparent, the housing provider may request medical verification to confirm the need for the accommodation. For example, a tenant with a panic disorder and anxiety disorder requests permission to have an assistance animal. The housing provider may request that the tenant provide a letter from a medical provider (doctor, therapist, social worker, etc.) confirming that the tenant has a disability and the disability-related need for the accommodation.

Step 3: Housing Provider Approves Request or Engage in Interactive Process

At this point, if the housing provider has sufficient information to determine that the request is reasonable and appropriate, they should approve the request.

If the housing provider believes the request poses an undue administrative and financial burden, that the request would result in a fundamental alteration, or that the tenant poses a direct threat, they should invite an interactive dialogue with the tenant to determine if an alternative accommodation would meet the needs of the disabled tenant without imposing an undue burden or fundamentally altering the provider's operations. "Reasonable accommodation contemplates an interactive process between the parties and takes time."⁶⁵

If no accommodation can be made that resolves the undue burden, fundamental alteration or direct threat, then the housing provider may deny the request.⁶⁶

5. Discrimination Based on Sex

While it is not extremely common for landlords to refuse to rent to someone explicitly because they are a man or a woman, discrimination based on sex most commonly occurs based on three different issues:

§ Domestic violence

§ LGBTQ discrimination

§ Sexual harassment

a. Domestic Violence

Landlords or housing providers often take action against survivors of domestic violence because they are or have experienced domestic violence. For example, a landlord might seek to evict a tenant who has been a victim of domestic violence because the landlord believes the tenant will allow their abuser to come back again and again. Or, a landlord might refuse to rent to a survivor of domestic violence believing if they have experienced domestic violence in the past, it's likely they will again. Assumptions like this are often based in gender stereotypes, and as a result, may be illegal sex discrimination.⁶⁷

Additionally, if a landlord has a blanket policy of evicting everyone in a household after the police are called, that policy can unfairly result in the eviction of victims of domestic violence. And, because victims of domestic violence are disproportionately women, these policies may be illegal sex discrimination.⁶⁸

Survivors of domestic violence also have other legal rights, under both state and federal law. Massachusetts law, for example, provides survivors with the right to change their locks, break their lease early, and not be denied new housing because of their history of domestic violence.⁶⁹

Under the federal Violence Against Women Act (VAWA), survivors of domestic violence who live in, or are applying to live in, certain federally funded subsidized housing cannot be denied admission, denied assistance, terminated from participation, or evicted from those federal program if the basis for the denial or eviction is **because of** the domestic violence.⁷⁰

b. LGBTQ Discrimination

State and federal law also provide protections against discrimination in housing because of someone's sexual orientation or gender identity. Massachusetts law has explicitly protected tenants against discrimination based on sexual orientation since 1989 and based on gender identity since 2012.⁷¹

In 2020, the U.S. Supreme Court recognized in the context of employment discrimination that discrimination "because of sex" includes discrimination because of sexual orientation or gender identity.⁷² Following the Court's decision, the federal government issued guidance making clear that it interprets the federal Fair Housing Act's prohibition against sex discrimination to prohibit discrimination based on sexual orientation or

gender identity. While the federal government has since shifted its position, a number of federal courts have interpreted the FHA's prohibition against sex discrimination to incorporate discrimination based on sexual orientation or gender identity.⁷³

It is illegal to refuse to rent to someone, treat them differently in housing, harass them, or evict them because they are lesbian, gay, bisexual, transgender, gender non-conforming, or non-binary. Studies performed using fair housing testers confirm that transgender and non-binary applicants for rentals often experience subtle discriminatory treatment – like being ghosted, told more about the negative aspects of a rental than cisgender applicants, or not being offered an application when a similarly situated cisgender applicant was given one.⁷⁴

c. Sexual Harassment

It is illegal for a housing provider, maintenance staff, or another tenant acting under the control of the landlord to harass you because of your sex.

Sexual harassment includes where a housing provider pressures a tenant to engage in sexual conduct in order to get an apartment or to not be evicted. For example, a landlord tells an applicant they will evict the tenant if they refuse to have sex with the landlord.

It also includes where a housing provider or their agent makes comments or engages in ongoing conduct that is so severe or pervasive that it changes the nature of the housing. For example, over a period of months, the on-staff maintenance man comes into a tenant's apartment without their permission, tells the tenant how much they like how the tenant looks and threatens not to make repairs if the tenant will not go out with them.

Sexual harassment is illegal discrimination. If you have experienced it, see the section at the end called **Steps to Take If You Think You Have Been Discriminated Against**. Both the [U.S. Department of Housing and Urban Development](#) and the [U.S. Department of Justice](#) have initiatives dealing with sexual harassment in housing, and complaints can be filed directly with them. For more go to:

U.S. Department of Housing and Urban Development at:
www.hud.gov/program_offices/fair_housing_equal_opportunity/sexual_harassment_resources

U.S. Department of Justice at: www.justice.gov/crt/sexual-harassment-housing-initiative-how-report

6. Special Issues Relating to Tenant Screening & Criminal Records

Subsidized and private housing providers more and more frequently utilize “tenant screening” companies to help them review rental applications. Or, they do their own screening of applicants to determine whether they have a criminal record, an eviction history, or poor (or no) credit. For information specifically about tenant screening processes, see **Chapter 2: Tenant Screening**. Tenant screening processes can affect tenants and applicants in discriminatory ways. While the factors being considered – eviction history, criminal history, credit history – are not **explicitly** discriminatory under the fair housing laws, they all can raise questions about how or why the housing provider is using them. This is because screening policies that affect protected classes can violate the fair housing laws if they are used in certain ways:

First, some housing providers do not apply screening policies equally. For example, a housing provider who wants to exclude Black applicants might claim they deny all applicants with certain criminal histories – but only apply that criminal history “policy” to Black applicants and not to white applicants with similar criminal records. This is treating people differently based on race, and is illegal, but it may be hard to spot because the housing provider claims it uses its policy similarly across the board.

Second, even if a housing provider has a neutral policy that they apply in the same way to everyone, that policy can still have a *disparate impact*. Unlike the example above where applicants were treated differently *because of* their protected class – called *disparate treatment* by the courts – a disparate impact occurs when a policy on its face treats people the same but has a disproportionate, unfair, impact on a protected class (or classes).⁷⁵ These are complex legal questions, and it is a good idea to consult an attorney if you think you are being denied due to a discriminatory policy.

For example, a credit history on its face may appear to be a neutral, non-discriminatory factor because a credit history is supposed to help evaluate whether an applicant is likely to pay their rent going forward. However, screening applicants out because they have poor credit can act to disproportionately exclude applicants with vouchers – whose ability to pay the rent is at least partially covered by their voucher.⁷⁶

Similarly, employing a screening criterion that applicants have “no housing court history” can act to disproportionately exclude Black women, who face eviction at higher rates.⁷⁷

a. Criminal History Screening and Race or National Origin

One common example of policies that can have a *disparate impact* on protected classes are policies screening out applicants based on criminal histories. Applicants for both public and private housing are frequently denied because they have a criminal history.⁷⁸ For detailed information about your rights if you are looking for housing and have a criminal record go to **CORI and Housing** at: masslegalhelp.org/criminal-records-cori-licenses/criminal-offender-record-information-cori/cori-and-housing.

In addition to rights you may have under CORI laws, the fair housing laws protect against discriminatory uses of criminal records. Denying an applicant because they have a criminal history is not, by itself, considered discriminatory. However, if a housing provider only turns away Black applicants with criminal histories, that would be race discrimination. And, if a housing provider has an overly restrictive screening policy that disproportionately, and unnecessarily excludes Black or Latine applicants, that could also be discrimination.

For example, a blanket policy that excludes *anyone* with a criminal history, no matter for what or no matter how old the conviction, is likely to have a disproportionate impact on communities of color due to racial disparities in policing and interaction with the criminal justice system.⁷⁹ To avoid having a discriminatory impact, criminal history screening policies should be narrowly tailored and only consider convictions (and not arrests), take into consideration the age of a conviction and its relevance to being a “good” tenant, and consider mitigating evidence, such as evidence of more recent tenant history or evidence of rehabilitation.⁸⁰

b. Criminal History Screening and Disability

Sometimes, someone may have a criminal history as a result of a disability: for example, someone may have a criminal history because they have a history of untreated mental illness, substance use disorder, or alcohol use disorder.⁸¹ However, when a criminal history is **because of** a disability, you may have the right to a **reasonable accommodation** to have the criminal history overlooked in the application process.

As noted in **Section 4. Discrimination Based on Disability**, individuals with alcohol use disorder or substance use disorder (who are **not current users** of illegal drugs) are considered disabled under the antidiscrimination laws – and therefore entitled to reasonable accommodation rights.⁸²

You may be able to challenge the landlord's refusal to rent to you by asking for a *reasonable accommodation*. This could mean that the landlord makes an exception to a criminal history policy based on your disability. **This is difficult and complicated.** You should consult a lawyer if you plan to do this. In general, you must show that what happened before is not likely to

happen again. You can do this by showing evidence of new or different treatment or supportive services; that enough time has passed since you were using illegal drugs or alcohol to reassure a reasonable person that you are unlikely to relapse;⁸³ other evidence of rehabilitation; and/or and that the issues raised by your CORI are extremely unlikely to reoccur.

Ultimately, you should aim to demonstrate to the landlord that you have gone through treatment and rehabilitation and that your past substance abuse, which may have led to your having a CORI, likely will not pose a threat to the health or safety of other tenants or yourself.

c. Challenging a Denial

If you want to challenge a housing provider's denial of housing because you believe the denial is discriminatory based on (for example) race or national origin, or you believe you are entitled to a reasonable accommodation see **Steps to Take If You Think You Have Been Discriminated Against**, below, for how to document, seek help, or file a complaint if you think you've been discriminated against.

If you live in subsidized or public housing, your rights are different. For more information go to:

§ **CORI and Housing** at masslegalhelp.org/criminal-records-cori-licenses/criminal-offender-record-information-cori/cori-and-housing

§ **Challenging a Denial of Housing** forthcoming at masslegalhelp at www.masslegalhelp.org/housing/public-housing

7. Housing Rights for People with Disabilities: Comparison of State and Federal Law

The Law	What Housing Is Covered	Reasonable Accommodation	Multi-family Units Constructed After March 13, 1991
State Law G.L. c. 151B, §4(7A)	Broad discrimination protections with respect to all housing other than owner-occupied, 2-family units.	Reasonable accommodations required in rules, policies, practices, or services. Landlord must pay for reasonable physical modifications in publicly assisted housing and all buildings with 10 or more units. Tenant must pay for modifications in other rental properties, but landlord cannot unreasonably refuse permission for modifications.	Units on first floor and, if there is an elevator, other floors must be adaptable in apartment buildings with three or more units. Five percent of new buildings with 20 or more units must also have large kitchens and bathrooms (Access Board can change this percentage).
Federal Fair Housing Act 42 U.S.C. §3604(f)(3)	Broad discrimination protections with respect to all housing other than owner-occupied housing with 4 (or fewer) units.	Reasonable accommodations required in rules, policies, practices, or services. Tenant must pay for all physical modifications, but landlord cannot refuse permission for tenant to make reasonable modifications.	First floor and, if there is an elevator, other floors must be adaptable in apartment buildings with four or more units.

Steps to Take to Protect Yourself Against Discrimination

If you are a member of a "protected class," meaning that you are a person of color, have Section 8, receive public assistance, or fit into one of the other protected categories, you may be at risk of discrimination. There are steps you can take to protect yourself.

- § When calling a landlord, don't start out by asking if they take Section 8 or if they have a problem renting to children. Assume that landlords are going to follow the law and simply ask to see the apartment that is listed. Also ask the name of whom you are speaking with and write it down.
- § If you are asked if you have Section 8 or whether children will live with you, **answer truthfully**. If the landlord refuses to show the apartment after finding out you have children or are a member of a protected class, you may have a valid discrimination claim.
- § If a landlord or agent asks you if you want a leaded or a delead apartment, always ask to see everything that is available. "Steering" based on the presence of children is illegal, and you have the right to see all available apartments.
- § Answer all questions on a rental application truthfully. Don't lie about past evictions or who will live in an apartment. Even if the landlord is discriminating against you, lying on your application will give them a legitimate reason to turn you down.
- § Always ask to see an apartment even if the landlord says it is too small for you, not appropriate for your family, or in bad condition. It may be that the apartment is better suited to you than the landlord thinks. Also, if the landlord is discriminating against you, it will give you a chance to decide if you want the apartment anyway.
- § Continue to try to view an apartment, put in an application, or rent a unit until you get a firm turn-down from the landlord. Too often, tenants believe that when a landlord says something like, "I've never taken Section 8 before," they are being denied an apartment. Assume the landlord is not turning you down until you are clearly given a yes or no answer about renting the apartment.
- § Ask the landlord to be specific about why you were turned down for an apartment. If they say, "Someone else saw it first," try to get information about when the person saw the apartment. If the landlord

says, "You didn't qualify for the apartment," try to get information about what qualifications the landlord is looking for.

- § Do not accuse the landlord of discrimination. Such accusations do not result in a landlord's changing her mind and may ruin any chance you have to get evidence of discrimination.

Steps to Take If You Think You Have Been Discriminated Against

If you know or suspect that you have been discriminated against, it is important to act quickly. Here are steps that you can take to protect your rights.

1. Write Down the Facts Immediately

As soon as you feel you have been discriminated against, write down everything that happened. The more information, the better. Write down:

- § The date and time of day when the discrimination occurred.
- § The address and phone number of the people/company/property you dealt with.
- § The name or physical appearance of the persons to whom you spoke or whom you saw.
- § Everything you said.
- § Everything the other person said (include all the details, even if they don't seem very important).
- § If you were responding to an online ad, save a copy. You can save it by taking a screenshot (make sure to get the full screen by scrolling down and taking multiple screenshots) or by using the Print to PDF function to save a PDF copy of the page.
- § The names and addresses of anyone, such as a friend, family member, co-worker, or anyone else who witnessed your meeting or conversation with the other person.
- § Any features about that apartment that worked well for you or your family, for example it was close to your kids' school, it was a first floor unit, there was in-unit laundry.
- § How it felt to be denied the apartment or otherwise be the victim of discrimination.

Your notes are very important. First, you may not remember all the details later. Second, your notes describing exactly what happened, and written as soon as possible after the discrimination occurred, can be your strongest evidence. Third, if you want to have an organization conduct a test for you to try to figure out whether you were discriminated against, your notes will be very useful in planning the test.

2. Get a Test Done Quickly

a. What Is Testing

Testing is a method of investigating a landlord or real estate agent's behavior to help determine whether that person is illegally discriminating against you. For example, suppose a landlord denied you an apartment. Despite the reason the landlord gave for denying you housing, you think that the real reason was because you are Latino. You then contact an agency that does testing. They can send two testers to the same landlord to seek housing. One tester will be Latino and one tester will be white. In all other respects the testers will present similar characteristics. Both testers will give information similar to yours about income, number of people in the household, type and price of housing sought, and other similar information. In other words, the testers will be similar in most of the important characteristics except the characteristic that you think explains the denial of housing.

After the test is done, each tester will write down everything that happened to them. Their experiences will then be compared to see if the white tester got different and better treatment than did the Latino tester. If so, the test can be crucial evidence in proving that you were discriminated against because you are Latino.⁸⁴ Testers can be used to investigate complaints of any of the types of unlawful housing discrimination.⁸⁵

b. Getting a Tester

Try to arrange to have a test done on the very day you have had a problem. The longer you wait, the harder it will be to accurately compare the experience of a tester with your experience. Also, if what you most want is a particular apartment, the longer you delay, the better the chance that the apartment will be rented to someone else.

If you cannot find an organization to do a test for you, you can arrange your own test. For example, if you suspect you are being discriminated against because you have Section 8, quickly get someone to ask to see the apartment who says that they do not have Section 8 and has the same family size and income as you. Then compare what the landlord told each of you. Or, if you think that a landlord is refusing to rent to you because you have children, have a friend who claims to have no children ask to see and rent the

apartment. Compare the treatment each of you receives. Both you and your tester should make detailed written notes of what happens.

c. How Can a Test Help

A test can produce important proof that you have been illegally discriminated against. You can use this information to file a *complaint* against the landlord. If a test indicates that you were, in fact, discriminated against and the apartment is still available, you can go into court and ask a judge to immediately forbid the landlord or broker from renting that apartment to anyone else while your case is being heard. If you decide to do this, you should contact a lawyer right away to help you file the right court papers.

3. Get Legal Advice

It is wise to get your own lawyer to represent you or advise you about how to proceed in a case involving discrimination. A lawyer can help you file a complaint, represent you at a hearing, help you through the complaint process, and advise you about whether to file a lawsuit. A lawyer is allowed to represent you at a hearing at the Massachusetts Commission Against Discrimination (MCAD) or U.S. Department of Housing and Urban Development (HUD), or in court.⁸⁶

Also, HUD, MCAD, and most of the local fair housing commissions or committees must try to bring together you and the persons you have charged with discrimination to see if you can voluntarily work out the problem.⁸⁷ While this can sometimes lead to a quick and satisfactory settlement, the process also has its dangers. Some government officials may pressure you to accept an agreement that is not really in your best interests. A lawyer can help you protect your interests. A number of organizations provide **testing services** and **legal advice or representation** for housing discrimination complaints in government agency hearings and in court, including:

Housing Discrimination Testing Program at Suffolk University Law School

617-884-7568

Greater Boston Area

Massachusetts Fair Housing Center

800-675-7309

413-539-9796

www.massfairhousing.org

Berkshire, Franklin, Hampden, Hampshire, and Worcester Counties

Community Legal Aid

(855) 252-5342

www.communitylegal.org

Berkshire, Franklin, Hampden, Hampshire, and Worcester Counties

SouthCoast Fair Housing

774-473-9994

Barnstable, Bristol, Dukes, Nantucket, Plymouth Counties (and Rhode Island)

See the **Directory** for phone numbers of other lawyer referral services and legal services offices.

4. File a Complaint

If you think you have been discriminated against, you have the right to file a complaint directly with:

- § Massachusetts Commission Against Discrimination (MCAD),
- § U.S. Department of Housing and Urban Development (HUD),⁸⁸
- § Your local fair housing or human rights commission or committee (if there is one in your community),⁸⁹ or
- § A court.⁹⁰

When deciding where to file a complaint, keep the following things in mind:

- § The various agencies have different deadlines for filing a complaint.
- § The federal law does not protect as many people as the state law does.
- § The federal law does not apply to as many different types of housing as the state law does.
- § Each law offers different *remedies* if you win your case (see the next section in this chapter called **What You Might Win If You File a Complaint**).
- § If you intend to bring a court action and are not in a great hurry, you may want to wait for MCAD to conduct and pay for an investigation before you file a lawsuit.
- § For more information about where to file a complaint see **State and Federal Anti-Discrimination Laws Comparison**.

a. What You Might Win

If You File a Complaint

MCAD, HUD, your local fair housing commission, and the courts have the power to award you different types of *remedies*. This section tells you what you can receive. The differences can be very important to you, depending on what you want.

Compensatory Damages

If you win your case, a hearing officer or a judge can order the person who has discriminated against you to pay you money. These are called *compensatory damages* because the purpose of this money is to compensate you for your injuries.⁹¹ Your injuries can include all the costs you had because of the discrimination, including the difference in rent between the apartment you were denied and one you finally rented, moving expenses, realtor fees, time lost from work, any lost housing opportunity (for example, the difference between living in the apartment you wanted and the apartment you ended up in – or being homeless), and any emotional distress you suffered. In many cases, people discriminated against suffer only small out-of-pocket expenses, but very great emotional distress.⁹² You and your lawyer should discuss this thoroughly.⁹³

Injunction

An *injunction* is an order and does not include an award of money.⁹⁴ A hearing officer or judge may order a person who is discriminating to stop doing certain things or to take certain actions to correct a problem. For example, if the apartment you wanted is available and you still want it, the person who discriminated against you may be ordered to rent it to you. Or, this person may be required to post notices of all their vacant apartment listings or advertise in a special way. The point of an injunction is to change the way a person who has discriminated does business so they won't discriminate against you or anyone else in the future. You are permitted to get both an injunction and compensatory damages.

Attorney's Fees

Although a private or nonprofit organization or legal services attorney may represent you at no cost, if you win your case a court or the hearing officer may order the losing side to pay your attorney their fees. These fees would include all the time and expense your attorney spent investigating, preparing, and arguing your case. Awards of attorney's fees and costs are important since they help make it possible for private attorneys to represent victims of discrimination.

Punitive Damages

Punitive damages are money damages that a court orders someone to pay to you in order to punish the person who has discriminated against you for her conduct and to prevent her and others from conducting similar behavior in the future.⁹⁵ Only a court can award you punitive damages. To

get punitive damages, your attorney will usually have to show that a person intentionally discriminated against you.⁹⁶ Since the purpose is punishment, the size of a punitive damage award will be based primarily on the financial condition of the person who discriminated against you. Usually, the more money the person you sue has, the larger the award.⁹⁷

If you win your case at an MCAD or HUD hearing, you cannot receive punitive damages. However, the hearing officer may impose a civil penalty on the discriminator, which is paid into the government treasury.⁹⁸

b. Filing a Complaint at MCAD

The Massachusetts Commission Against Discrimination (MCAD) is a state government agency that enforces state discrimination laws. If you choose to file with the MCAD, you must file a complaint at MCAD within 300 days of being discriminated against.⁹⁹

The MCAD accepts complaints in person or online.

As of the time of this writing, you cannot call and schedule an in-person intake in advance. These are first-come, first-serve, and the MCAD takes intakes starting at 9:15am and takes the last intake for the day in mid-afternoon. You should expect that an intake appointment will take around 2 hours.

The MCAD offices are located as follows:¹⁰⁰

MCAD Boston Headquarters

617-994-6000

1 Ashburton Place, Ste. 601, Boston, MA 02108

Monday – Friday: 9:00 am - 5:00 pm.

MCAD Worcester Office

508-453-9630

18 Chestnut Street, Rm. 520, Worcester, MA 01608

Monday – Friday: 9:00 am - 5:00 pm.

MCAD Springfield Office

413-739-2145

436 Dwight Street, Rm. 220, Springfield, MA 01103

Monday – Friday: 9:00 am - 5:00 pm.

When you go to MCAD, bring with you all documents that may be useful to MCAD in evaluating your case, including all notes you have made, copies of application forms, and newspaper ads. Once you file a complaint with MCAD, MCAD will also file your complaint at HUD if the discrimination violates federal law. In this case, you would be protected by both state and

federal laws. Regardless of whether you file at MCAD, at HUD, or both, your case will be handled by MCAD unless:¹⁰¹

- § You have missed the 300-day filing deadline at MCAD, but not the one-year deadline for filing at HUD;
- § The housing is located in an area with a local fair housing agency that has been certified by HUD to handle complaints, in which case HUD will refer the complaint to this local agency.¹⁰² HUD may, however, decide to handle the complaint itself if the local agency requests or consents to this or the local agency does not begin to investigate the complaint within 30 days of receiving it.

MCAD staff must then investigate your case and send you and the person against whom you brought the complaint a report of its findings.¹⁰³ If MCAD concludes that you have probably been discriminated against, you will have 20 days to choose whether to: (1) have a hearing at MCAD, or (2) file a lawsuit in state or federal court.¹⁰⁴

MCAD will also invite you and the person against whom you have brought the complaint to a conciliation session to see if you can work out an agreement. In court, a lawyer from the Massachusetts Attorney General's office will represent the government on your behalf.

If you choose to have a hearing at MCAD, an MCAD attorney will be assigned to present your case. If you have your own attorney, they can argue your case at MCAD.

Filing a Complaint at HUD

HUD's Office of Fair Housing and Equal Opportunity in Boston handles discrimination complaints for all of Massachusetts. You have one year from the time you feel you were discriminated against to file a discrimination complaint at HUD.

You can file a complaint with HUD's Office of Fair Housing and Equal Opportunity using their online form, by calling their hotline, via email or via regular mail:

File online [here](#) at:

<https://portalapps.hud.gov/FHEO903/Form903/Form903Start.action>¹⁰⁵

Call: 617-994-8300 (Main Office number)
TTY – 617-565-5453
Fax: 617-565-7313

Email: ComplaintsOffice01@hud.gov

Mail: U.S. Dep't of HUD
10 Causeway Street
Attn: Intake Branch
Boston, MA 02222

Information about the various ways to file can be found on their [website](http://www.hud.gov/fairhousing/fileacomplaint) at:
www.hud.gov/fairhousing/fileacomplaint

HUD is required to provide the person against whom you are filing a copy of your complaint.

If HUD investigates your complaint and concludes that you have probably been discriminated against, you must choose within 20 days whether to: (1) have a HUD hearing, or (2) file a case in court.¹⁰⁶ The person against whom you file a complaint also has the right to go to court. In court, the U.S. Attorney General's office will represent the government on your behalf.

Filing a Complaint with Your Local Fair Housing Commission

Many localities have human rights or fair housing commissions or committees. Only a few of these have enforcement powers. Even if a local commission or committee has no enforcement authority, it is still worth considering filing a complaint there. Agency personnel can often help you draft your complaint, can take care of filing it for you at MCAD or HUD, and can often informally investigate it. They may also help negotiate with a landlord or real estate firm on your behalf. To find out whether your community has a local fair housing agency, contact your city or town hall.

Filing a Complaint in Court

If you want to file a lawsuit against your landlord or whoever has discriminated against you, you can also choose to file a case directly in state or federal court.¹⁰⁷ If you decide to go to court, it is best to have your own lawyer.

In **state court**, you must file a lawsuit within one year from the time you feel you were discriminated against.¹⁰⁸

If you want to file a case in **federal court**, there are several things you need to consider. First, you must be alleging a violation of federal law. That is, you must believe that you were discriminated against because of your race, national origin, color, religion, sex, familial status, or mental or physical disability. Second, you must file your case within two years from the time you feel you were discriminated against.¹⁰⁹ Federal court has many rules that

must be followed by everyone who uses these courts. Therefore, it is best to have your own lawyer in federal court.

Fighting Discrimination Is the Government's Job

The job of attorneys at HUD, MCAD, the U.S. Attorney's office, and Massachusetts Attorney General's office is to represent the interests of the government on your behalf.¹¹⁰

Be very aware that your interests and those of the state or federal government may be different. For example, the government may be primarily interested in having the person who has discriminated change their practices and less interested than your own attorney would be in getting you compensated for your injury. Therefore, when you file a complaint, you should always try to get your own attorney to represent you in an agency proceeding or in any court action.

Endnotes

1. Federal Laws

[Title VIII of the Civil Rights Act of 1968](#) (the federal Fair Housing Act), [42 U.S.C. §3601](#) et seq. The Fair Housing Act was amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 13(a), 102 Stat. 1636 (1988), which became effective March 12, 1989. These amendments added "familial status" and disability to the nondiscrimination provisions of the Fair Housing Act and greatly expanded the enforcement sections. See H. Comm. on the Judiciary, Fair Housing Amendments Act of 1988, H. Rep. No. 100-711 (1988), reprinted in 1988 U.S.C.C.A.N. 2173; 134 Cong. Rec. H6491-6501 (daily ed. Aug. 8, 1988); 134 Cong. Rec. S10532-10569 (daily ed. Aug. 2, 1988); 134 Cong. Rec. H4898-4932 (daily ed. June 29, 1988) for a full presentation of the Congressional intent behind the amendments. The Fair Housing Act was most recently amended in 1995. Specifically, [§3607](#) was amended by the [Housing for Older Persons Act of 1995](#), Pub. L. No. 104-76, § 1, 109 Stat. 787 (1995). Current provisions of the Act prohibit the following discriminatory practices against the groups protected by the Fair Housing Act: refusing to sell, rent, negotiate for, "or otherwise make unavailable or deny" a dwelling; discriminating in the "terms, conditions, or privileges of a sale or rental of a dwelling or in the provision of services or facilities in connection therewith"; making or publishing any discriminatory statement in regard to a sale or rental; misrepresenting the availability of a dwelling; inducing a person to sell or rent any dwelling by representations about the presence of members of a protected class in the neighborhood; discriminating in access to real estate services; and coercing, intimidating, threatening or interfering with a person's exercise of their fair housing rights. [42 U.S.C. §§3604](#), 3605, [3606](#), [3617](#).

The HUD regulations implementing the federal Fair Housing Act are at [24 C.F.R. §§100](#) et seq.

Title VIII permits a complaint to be filed within two years in a U.S. district court or in state court or within one year at HUD. [42 U.S.C. §3610\(a\)\(1\)\(A\)\(i\)](#); [42 U.S.C. §3613\(a\)\(1\)\(A\)](#). If a timely complaint is filed with HUD, then the two-year court limitations period is tolled during the time that the HUD complaint is pending. [42 U.S.C. §3613\(a\)\(1\)\(B\)](#).

Certain single-family homes and all owner-occupied two-, three-, and four-family dwellings are exempted under [42 U.S.C. §3603\(b\)](#), [24 C.F.R. §100.10\(c\)](#). This exemption does not apply to any "statement or advertisement" that is made, printed, or published or caused to be made printed, or published, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination on the grounds prohibited by [Title VIII](#), [42 U.S.C. §§3603\(b\)](#), [3604\(c\)](#). Oral statements as well as written statements and advertisements are covered by this provision limiting the exemption for single-family homes and two-, three-, and four-family dwellings under Title VIII. See *Mayers v. Ridley*, 465 F.2d 630, 649 (D.C. Cir. 1972) (en banc) (Wilkey, J., concurring); see also *id.* at 633 (Skelly Wright, J., concurring) and [24 C.F.R. §§100.75\(b\)](#), [100.75\(c\)\(2\)](#). Note also that there is no exemption from Title VIII for discrimination by those engaged in the business of selling, brokering, or appraising residential real property, [42 U.S.C. §§3605\(a\)](#), [3605\(b\)\(2\)](#) and [3606](#). Thus, although on occasions a landlord may be exempt from the provisions of Title VIII, their broker will never be.

[Civil Rights Act of 1866](#), [42 U.S.C. §1982](#). Section 1982 protects American citizens against discrimination on the basis of race or color only. However, the U.S.

Supreme Court has defined racial discrimination under §1982 broadly so that it will encompass many national origin claims and some religion claims. See *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987). Section 1982 covers all housing—unlike state and federal fair housing laws, which exempt some units in small buildings. This law is not directly enforced by federal agencies, so victims of discrimination must sue in court, which may award compensatory and punitive damages as well as equitable relief and attorney's fees. This remedy is useful because the applicable statute of limitations for filing a §1982 action in federal or state court in Massachusetts is most likely three years, longer than that allowed for initial filings under the federal Fair Housing Act or G.L. c. 151B. Cf. *Johnson v. Rodriguez*, 943 F.2d 104, 107 (1st Cir. 1991), reh'g and reh'g en banc denied (1st Cir. Oct. 9, 1991), cert. denied, 502 U.S. 1063 (1992) (relying on *Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987) to hold that Massachusetts' three-year personal injury statute of limitations applies to §1981 claims). But see *Sims v. Order of United Commercial Travelers of America*, 343 F. Supp. 112, 115 (D. Mass. 1972) (applying Massachusetts' six-year contract statute of limitations to §1982 claims, but prior to Supreme Court's decision in *Goodman*).

Civil Rights Act of 1866, 42 U.S.C. §1981. Section 1981 protects the rights of racial and ethnic minorities to make and enforce contracts, including leases. In contrast to §1982, the victim need not be an American citizen. The statute of limitations is three years. *Johnson v. Rodriguez*, 943 F.2d 104, 107 (1st Cir. 1991), reh'g and reh'g en banc denied (1st Cir. Oct. 9, 1991), cert. denied, 502 U.S. 1063 (1992).

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq. (2000). "No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The HUD implementing regulations are at 24 C.F.R. §1.1 et seq. Title VI itself requires intentional discrimination, but the HUD regulations may be satisfied by a showing of "disparate impact." *Alexander v. Choate*, 469 U.S. 287, 293 (1985), construing *Guardians Ass'n v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 584 (1983).

This law is often more difficult to use than Title VIII (which also covers federally financed as well as private housing). It applies only to housing that has some federal financial assistance (such as federally financed public housing, Section 8 project-based or HUD-subsidized housing). While there is a private right of action under Title VI against state or local agencies that receive federal funds, see *Guardians Association v. Civil Service Commission of New York City*, 463 U.S. 582, 593-97, 624-28, 635-36 (1983), courts are not in agreement as to whether a private right of action is available against HUD or other federal agencies. See generally *Clients' Council v. Pierce*, 711 F.2d 1406, 1424 (8th Cir. 1983), reh'g and reh'g en banc denied (8th Cir. Sept. 15, 1983). Also, a private right of action is not available to enforce the federal regulations promulgated pursuant to Title VI. See *Alexander v. Sandoval*, 532 U.S. 275 (2001).

State Laws

G.L. c. 151B prohibits discrimination primarily in employment, housing, and some consumer and credit transactions. Ch. 151B, §§4(3B), (3C), (6)-(8), (10)-(11), (13), and (18) concern discrimination in housing against various protected groups.

Massachusetts Equal Rights Act, G.L. c. 93, §102(a), was enacted in 1989 and prohibits discrimination on the basis of race, color, creed, national origin, or sex in the making and enforcing of contracts and the purchase and renting of property. G.L. c. 93, §103 prohibits age and handicap discrimination and was added in 1990. For a general discussion of the Massachusetts Equal Rights Act, see 45 Mass. Prac. §§12.1-12.8 (John F. Adkins (John F. Adkins, et al. 3d ed.).

Massachusetts Civil Rights Act, G.L. c. 12, §11H, protects all persons from threats, intimidation, or coercion which interfere with rights secured by state or federal laws. For a general discussion of the Massachusetts Civil Rights Act, see 45 Mass. Prac. §§11.1-11.21 (John F. Adkins, et al. 3d ed.).

Massachusetts Consumer Protection Act, G.L. c. 93A, §§1-11, protects consumers from unfair or deceptive acts in the conduct of any "trade or commerce." Due to this qualification, small landlords may be exempt. See *Billings v. Wilson*, 397 Mass. 614 (1986); *Sayah v. Hatzipetro*, 397 Mass. 1004 (1986) (rescript); *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987) (rescript). A complaint must be filed within four years after the cause of action accrues.

2. In this chapter, we focus on owners (and their employees and agents) and brokers or real estate agents who illegally discriminate in renting housing. The federal and state fair housing laws and court decisions prohibit discrimination by several other entities involved in housing, such as federal, state, and local governments, newspaper advertisers, banks and mortgage companies, insurance companies, appraisers, local governments that enact discriminatory zoning laws, and public housing authorities that refuse to administer certain housing subsidies. Discrimination in housing sales, financing, advertising, insuring, and appraising is also illegal. However, space constraints compel us to concentrate on owners and agents as these are the people tenants are most likely to deal with.

3. **Federal Laws**

Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. §794 (Supp. IV 2004), prohibits discrimination on the basis of disability in programs and activities conducted by HUD or that receive financial assistance from HUD. 29 U.S.C. §794(a) provides that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." This law applies only to housing that receives federal financial assistance such as federally aided public housing or HUD- subsidized housing. The law also applies to state-aided or subsidized housing if the public housing agency receives any federal money for housing (which almost all do). See also HUD §504 regulations (at 24 C.F.R. §§8.1 et seq.) and FAQs, available at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq.

Title II of the Americans with Disabilities Act of 1990, codified at 42 U.S.C. §12132, bans disability discrimination in services of state and local governments, whether or not they receive federal financial assistance.

State Laws: G.L. c. 151B prohibits discrimination in housing and requires covered housing providers to make reasonable accommodations or modifications. See Ch. 151B, §§4(3B), (3C), (6)-(8), (10) and (13).

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4. *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218, 2020 Fair Empl. Prac. Cas. (BNA) 220638, 104 Empl. Prac. Dec. (CCH) P 46540 (2020); see also U.S. Department of Housing and Urban Development, Memorandum of the Assistant Secretary for Fair Housing and Equal Opportunity, *Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act* (Feb. 11, 2021)(that “the Fair Housing Act's sex discrimination provisions are comparable to those of Title VII and that they likewise prohibit discrimination because of sexual orientation and gender identity”), at https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf. This memo was likely rescinded pursuant to Executive Order titled “Initial Rescissions of Harmful Executive Orders and Actions” which rescinded Executive Order 13988. However, even prior to the U.S. Supreme Court’s decision in *Bostock*, some—but not all—federal courts interpreted the FHA to protect against discrimination based on sexual orientation or gender identity. See, e.g., *Smith v. Avanti*, 249 F.Supp.3d 1194, 1200-01 (2017) (relying on sex stereotyping theory following *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250–1, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989)); *Wetzel v. Glen St. Andrew Living Community, LLC*, 901 F.3d 856, 862 (7th Cir. 2018) (importing holding that “discrimination based on sexual orientation qualifies as discrimination based on sex” from Title VII to FHA).
 5. M.G.L. c. 151B, §§4(6), (7), prohibits discrimination in housing based on a tenant's "age," but the statute's protections do not apply to "minors nor to residency in state-aided or federally-aided housing developments for the elderly nor to residency in housing developments assisted under the federal low income housing tax credit and intended for use as housing for persons 55 years of age or over or 62 years of age or over, nor to residency in communities consisting of either a structure or structures constructed expressly for use as housing for persons 55 years of age or over or 62 years of age or over if the housing owner or manager register biennially with the department of housing and community development." The federal Fair Housing Act does not include "age" as a protected category.
 6. The federal Fair Housing Act applies to "dwellings," which include any building "occupied as, or designed or intended for occupancy as, a residence by one or more families . . ." 42 U.S.C. §3602(b). The state anti-discrimination law applies to "housing accommodations," which include any building "which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings." G.L. c. 151B, §1(9).
 7. The federal Fair Housing Act has been interpreted to apply to various residences that were temporary in nature. See, e.g. *United States v. Hughes Memorial Home*, 396 F. Supp. 544 (W.D.Va. 1975) (children's home); *United States v. Columbus Country Club*, 915 F.2d 877 (3d Cir 1990), *reh'g and reh'g en banc denied* (3d Cir. 1990), cert. denied, 501 U.S. 1205 (1991) (summer homes) but see *Weisenberg v. Town Board of Shelter Island*, 404 F. Supp. 3d 720, 728-29 (E.D. N.Y. 2019) (holding that vacation properties to be rented for less than two weeks are not dwellings subject to the Fair Housing Act); *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995) and *Defiore v. City Rescue Mission of New Castle*, 995 F. Supp. 2d 413 (W.D. Pa. 2013) (homeless shelter); *Red Bull Associates v. Best Western Intern., Inc.*, 686 F. Supp. 447 (S.D. N.Y. 1988), order aff'd, 862 F.2d 963 (2d Cir. 1988) (providing long-term lodging to unhoused individuals); *Lauer Farms v. Waushara County Bd. of Adjustment*, 986 F. Supp. 544

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- (E.D. Wis. 1997) (temporary structures for housing migrant farm workers); *Wetzel v. Glen St. Andrew Living Community, LLC*, 901 F.3d 856, 859 (7th Cir. 2018), petition for certiorari dismissed, 139 S. Ct. 1249 (2019) and *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1102, 17 A.D.D. 817 (3d Cir. 1996) (nursing home); *Wilson v. Phoenix House*, 978 N.Y.S.2d 748 (N.Y. Sup. 2013) (residential drug treatment facility).
8. There are many examples. See, e.g., *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032 (2d Cir. 1979); *Crowell v. Lantzakis*, 80-BPR-0009 (MCAD 1983); *Gardner v. Pianka*, 2006 WL 2918563 (MCAD 2006), 28 MDLR 189 (2006); *Ortega v. Papalia*, 2013 WL 3357137 (MCAD 2013)
 9. Demanding higher rents or more stringent terms or prices from applicants in protected classes is prohibited by 42 U.S.C. §3604(b). See *United States v. Long*, remanded on other grounds, 537 F.2d 1151 (4th Cir. 1975), cert. denied, 429 U.S. 871 (1976). Delaying minority applications also constitutes the imposition of more stringent terms. See *Williamsburg Fair Housing v. N.Y.C. Housing Auth.*, 493 F. Supp. 1225 (S.D.N.Y. 1980), aff'd without opinion, 647 F.2d 163 (2d Cir. 1981); *Luna v. Lynch*, 82-BPR-0083 (MCAD 1985). HUD has rejected the argument that different security deposits should be permitted for tenants with children or a physical disability (Preamble II, 24 C.F.R. ch. 1, subch. A, app. 1 at 54 Fed. Reg. 3239 [Jan. 23, 1989]). See also 42 U.S.C. §3604(f)(2); 24 C.F.R. §§100.60(b)(3), (b)(4), 100.65 (b)(1); and U.S. Dep't of Justice & U.S. Dep't of Hous. & Urb. Devel., Joint Statement on Reasonable Accommodations Under the Fair Housing Act (May 17, 2004) at 9.
 10. False representation of non-availability is also prohibited. See 42 U.S.C. §3604(d); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 374-75 (1982); *Seaton v. Sky Realty Co.*, 491 F.2d 634, 635-36 (7th Cir. 1974); *Davis v. Mansards*, 597 F. Supp. 334, 343 (N.D. Ind. 1984).
 11. A management firm that published a brochure that contained virtually no Black people as photo models showed a racial preference in violation of 42 U.S.C. §3604. See *Saunders v. General Servs. Corp.*, 659 F. Supp. 1042 (E.D. Va. 1987). The provision is not limited to advertising. HUD regulations specifically include oral and written statements made by a person engaged in the rental of a dwelling. See 24 C.F.R. §100.75(b), (c). See also *Mayers v. Ridley*, 465 F.2d 630, 649 (D.C. Cir. 1972) (en banc). State law similarly prohibits discriminatory oral or written notices or statements would also be violations under state law, see G.L. c. 151B, §4(7B) (mirroring the language of Title VIII).
 12. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-75 (1982); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 111-15 (1979); *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1529 (7th Cir. 1990); *Fair Hous. Congr. V. Weber*, 993 F. Supp. 1286, 1293 (C.D. 1997); *Heights Cmty. Cong. V. Hilltop Realty, Inc.*, 774 F.2d 135, 140 (6th Cir. 1985).
 13. A landlord's policy of evicting families with children from one of their buildings had a "substantially greater adverse impact on minority tenants." See *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 988 (4th Cir. 1984).
 14. 42 U.S.C. §3604(a), (f)(1). Refusal to negotiate may also involve the pretense that no units are available. The courts have made clear that these avoidance techniques are condemned. See, e.g., *Trafficante v. Metropolitan Life Ins. Co.*,
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- 409 U.S. 205, 207-08 (1972) (declined to follow for different reason); *United States v. Youritan Construction Co.*, 370 F. Supp. 643, 648 (N.D. Cal. 1973) ("laws prohibiting discrimination in housing because of race prohibit not only, for example, overt racial rejection of applicants, but subtle behavior as well."), *aff'd as modified*, 509 F.2d 623 (9th Cir. 1975). State law explicitly prohibits a refusal to negotiate. See G.L. c. 151B, §4(6), (7).
15. Discrimination in the provision of access to any service relating to the renting or selling of homes is prohibited. See 42 U.S.C. §3606, 24 C.F.R. §100.90, 24 C.F.R. ch.1, subch. A, app. I at 522 (1989). Discrimination in the provision of brokerage services is also prohibited by state law. See G.L. c. 151B, §4(6), (7), (11).
 16. 42 U.S.C. §3617; G.L. c. 12, §§11H and 11I. Section 3617's protection extends to persons who have "aided or encouraged" others in the exercise of their Title VIII rights. See *Smith v. Stechel*, 510 F.2d 1162, 1164 (9th Cir. 1975). See, by way of analogy, *Redgrave v. Boston Symphony Orchestra, Inc.*, 399 Mass. 93, 99-100 (1987) (acquiescence in a third party's desire to repress speech did amount to threats, intimidation, or coercion under G.L. c. 12, §§11H and 11I).
 17. See HUD regulations implementing the disability provisions of Title VIII at 24 C.F.R. §100.204; G.L. c. 151B, §4(7A); *Whittier Terrace Assocs. v. Hampshire*, 26 Mass. App. Ct. 1020 (1989) (rescript); *City Wide Assocs. v. Penfield*, 409 Mass. 140 (1991); *Peabody Properties Inc. v. Jeffries*, Hampden Housing Court, 88-SP-7613-S (Abrashkin, J., Jan. 6, 1989); *Lawrence Housing Authority v. Baez*, Northeast Housing Court, 92-SP-00025 (Kerman, J., Oct. 28, 1992).
 18. See *Fair Housing Rights Center in Southeast'n Penn. v. Morgan Props. Mgt. Co.*, 2018 WL 3208159 (E.D. Pa. June 29, 2018).
 19. The theory of this type of fair housing violation is a "disparate impact" theory and is where a policy or practice which may appear to be neutral, adversely or disparately affects one group of people of a protected class more than another. In 2015, the Supreme Court held that a policy or practice that was neutral on its face, but disproportionately harmed protected groups in practice could be discriminatory under the federal Fair Housing Act. *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S.Ct. 2507 (June 25, 2015).
 20. April 4, 2016 HUD Guidance on Use of Criminal Records by Housing Providers https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf; this proposed rule was withdrawn by HUD on Jan 22, 2025 (Docket No. FR-6362-N-02). But courts have applied disparate impact analysis to criminal records bans, finding that criminal records bans that sweep too broadly, such as blanket bans, could have a disparate impact on communities of color and violate the FHA. See, e.g., *Lyman v. Montclair at Partridge Creek, LLC*, 2023 WL 6096678, *1-5 (E.D. Mich. 2023); *Fortune Society v. Sandcastle Towers Housing Development Fund Corp.*, 388 F. Supp. 3d 145, 172-77, 109 Fed. R. Evid. Serv. 953 (E.D. N.Y. 2019); *Connecticut Fair Housing Center v. Corelogic Rental Property Solutions, LLC*, 369 F. Supp. 3d 362, 378 (D. Conn. 2019), and *Connecticut Fair Housing Center v. CoreLogic Rental Property Solutions, LLC*, 478 F. Supp. 3d 259, 286-303 (D. Conn. 2020); *Jackson v. Tryon Park Apartments, Inc.*, 2019 WL 331635, *3-5 (W.D. N.Y. 2019); *Sams v. Ga West Gate, LLC*, 2017 WL 436281, *5 (S.D. Ga. 2017). See

above Section 6 Special Issues Relating to Tenant Screening and Criminal Records for more information and references.

21. See *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 207-08 (1972).
22. Massachusetts law prohibits discrimination in housing because a child or children will occupy the rented premises, but exempts: (1) two-family owner-occupied buildings; (2) buildings with three or fewer units if one unit "is occupied by an elderly or infirm person for whom the presence of children would constitute a hardship"; and (3) a temporary rental (less than one year) of the owner's principal place of residence. G.L. c. 151B, §§4(11)(1)-(11)(3). These exemptions, however, do not apply to §4(7B)'s ban on discriminatory statements and advertising, nor do they apply to persons whose business includes engaging in residential real estate-related transactions. See 804 C.M.R. §§2.01(4)(b)-(4)(c).

The federal Fair Housing Act, 42 U.S.C. §§3602(k), 3604, and 3606, forbids housing discrimination based on "familial status." "Familial status" was added by the Fair Housing Amendments Act of 1988. The federal law does not apply to owner-occupants of one- to four-family homes (the so-called "Mrs. Murphy" exemption). 42 U.S.C. §3603(b)(2); 24 C.F.R. §100.10(c)(2). The rental or sale of a single-family house by an owner who has not sold a house within the previous 24 months, who does not own more than three single-family houses, who does not use a real estate agent or broker to sell or rent the house, and who does not use a discriminatory advertisement, is also exempt from the Act. 42 U.S.C. §3603(b)(1); 24 C.F.R. §100.10(c)(1). Similar to Massachusetts law, the Fair Housing Act's ban on discriminatory statements and advertising (contained in 42 U.S.C. §3604(c)) is not subject to these exemptions. 42 U.S.C. §3603(b). Moreover, even where a landlord does have an exemption, the landlord's broker may not legally discriminate against children. See 42 U.S.C. §3605.
23. See 42 U.S.C. §3602(k); 804 C.M.R. §2.02(2); see also *Gorski v. Troy*, 929 F.2d 1183, 1187-90 (7th Cir. 1991). See also, G.L. c. 186, § 16, stating that any lease or rental agreement that terminates the contract if the tenant has or will have a child is void and against public policy.
24. See G.L. c. 151B §4(11)(2). A landlord is also allowed to exclude children where a dwelling contains three apartments or less and one of the units is occupied by an elderly or infirm person for whom the presence of children would constitute a hardship. G.L. c. 151B, §4(11)(1). The law also allows children to be excluded when a landlord temporarily leases (for up to one year) a single-family residence or unit that the landlord ordinarily occupied as their principal residence. G.L. c. 151B §4(11)(2).
25. See 42 U.S.C. §§3607(b)(1)-(3). The Massachusetts law prohibiting housing discrimination against families with children does not specifically exempt housing for older person, see G.L. c. 151B §4(11); however, the prohibition against housing discrimination based on age does contain such a limitation. See G.L. c. 151B §§4(6)-(7).
26. See 42 U.S.C. §3604(c); G.L. c. 151B, §4(7B).
27. See 42 U.S.C. §3605; G.L. c. 151B, §4(3B).

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28. The Massachusetts Lead Poisoning Prevention and Control statute is at [G.L. c. 111, §190](#). The law requires all owners of residential buildings to remove or cover lead paint in places where a child under the age of six lives or seeks to live. The law specifically applies to an owner who tries to avoid lead paint liability by discriminating against a family with children, even if that family does not yet reside in the apartment or house. [G.L. c. 111, §199A](#).
- [G.L. c. 151B, §4\(11\)](#) specifically obligates the Mass. Commission Against Discrimination or a court which finds discrimination against families with children because of the presence of lead paint to refer such cases to the director of the Childhood Lead Poisoning Prevention Program which is located in Boston.
29. G.L. c. 111, §197(h) states that an owner undertaking lead abatement work may “reasonably delay the commencement of [a] tenancy” by up to 30 days. However, federal law prohibits providing housing on different terms and conditions, 42 U.S.C. §3604(b). The date a property is available for rental is a term and condition of the tenancy/rental. To the extent that the Massachusetts Lead Law conflicts with the requirement of the federal FHA, the federal statute preempts state law. See *Astralis Condo. Ass’n v. Sec’y, U.S. Dep’t of Hous. & Urb. Dev.*, 620 F.3d 62, 70 (1st Cir. 2010); see also *Warren v. Delvista Towers Condo. Ass’n, Inc.*, 49 F.Supp. 3d 1082, 1088-89 (S.D. Fla. 2014).
30. However, depending on the reason for the question, it may be possible for a landlord or their agent to inquire about the age of children who may be tenants. At least one court has upheld the decision of a HUD Administrative Law Judge who concluded that the Fair Housing Act was not violated when a real estate agent asked a prospective tenant about the number and age of their children in order to secure a quiet neighbor for an existing elderly tenant. *Soules v. U.S. Dept. of Housing and Urban Development*, 967 F2d 817 (2nd Cir. 1992).
31. Two federal acts require landlords, including landlords with units paid for by Section 8 vouchers, to inspect apartments in which children live or will live for lead paint. See 42 U.S.C. §§4821-4846 (the Lead-Based Paint Poisoning Prevention Act) and 42 U.S.C. §4851 (Residential Lead-Based Paint Hazard Reduction Act of 1992). See also Voucher Program Guidebook: Housing Choice, U.S. Dept. of Housing and Urban Development, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook.
- The EOHLC policy was, in part, a reaction to the holding in the case of *Ayala v. Boston Housing Auth.*, 404 Mass. 689 (1989), which held that the Boston Housing Authority had a duty to inspect a Section 8 unit for lead paint and might be liable for a child's poisoning in a unit that it failed to inspect. The court also held that the tenants were third-party beneficiaries of the contracts between BHA and the landlord and could thus sue for breach of those contracts. If a landlord denies you housing because you are a Section 8 recipient and the rules of the program demand that they delead the unit, then they may be discriminating on the basis of your receipt of a rental subsidy in violation of G.L. c. 151B, §4(10), which prohibits discrimination " ... because of any requirement of such ... rental assistance or housing subsidy program." If the discrimination was based on the receipt of rental assistance, then the exemption for owner-occupants of two-family homes does not apply. No owner can discriminate on this basis.

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32. See [G.L. c. 111, § 197](#) (requiring landlords to remove, abate, or contain lead paint in a unit rented to a family with children under six years of age.) As noted in n.29, state law states that if there is not yet an executed lease, the landlord may delay the start of the tenancy, no longer than thirty days, to delead the apartment, [G.L. c. 111, § 197\(h\)](#), however, this provision cannot justify a violation of 42 U.S.C. §3604(b).
33. It is also illegal for landlords to refuse to accept Section 8 or any rental assistance subsidy. See [G.L. c. 151B, § 4\(10\)](#).
34. [42 U.S.C. §3604\(b\)](#), as amended by the 1988 Act, explicitly forbids discrimination against any person "in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of ... familial status." In *Glover v. Crestwood Lake Section 1 Holding Corps.*, 746 F. Supp. 301, 309-10 (S.D.N.Y. 1990), the court held that a landlord's refusal to rent a one-bedroom unit to a person with a child, or a two-bedroom unit to a person with three children, violates the Fair Housing Act since the landlord had rented these apartments to childless households of the same size.
35. See [42 U.S.C. §3607\(b\)\(1\)](#); [G.L. 151B, §4\(11\)](#). Also, see the State Sanitary Code, 1054 C.M.R. §410.420(D), requiring 150 feet of floor space for the first occupant, and 100 square feet for each additional occupant with 50 square feet per person for shared bedrooms
36. A national study sponsored by the U.S. Department of Housing and Urban Development (HUD), found that African-American and Latine/Hispanic people looking for rental apartments are still discriminated against in cities across the country. Turner et al., *Housing Discrimination Against Racial and Ethnic Minorities 2012* (Washington, DC, HUD 2013), available at ; see also Langowski et al, *Qualified Renters Need Not Apply Race and Voucher Discrimination in the Metro Boston Rental Housing Market* (July 2020) (finding that evidence of discrimination based on race in 71% of tests), available at https://www.suffolk.edu/-/media/suffolk/documents/news/2020/law-news/rental_housing_study_july2020.pdf?la=en&hash=B0FFFF5916ECA23DFD054170DA223780EDA571241.
37. All of the 2020 Census data relating to Massachusetts can be found at <https://www.sec.state.ma.us/census2020/index.html>. See also *Race, Place, and Segregation: Redrawing the Color Line in Our Nation's Metros*, a study by the Civil Rights Project, the John F. Kennedy School of Government at Harvard University, CommUNIRY 2000, and The Leadership Council for Metropolitan Open Communities (2002), available at: http://www.civilrights.org/publications/community2000/metro_open_comm.html.
38. See, e.g., *Soules v. U.S. Dept. of Housing and Urban Development*, 967 F.2d 817, 824 (2d Cir. 1992) (inquiries about an applicant's race may violate the Fair Housing Act because "[t]here is simply no legitimate reason for considering an applicant's race"). However, it may be permissible to ask applicants about their citizenship status, if such inquiries are performed uniformly on all applicants. *Espinoza v. Hillwool Square Mutual Ass'n.*, 522 F. Supp. 559 (E.D. Va. 1981) (finding that the Fair Housing Act does not per se prohibit citizenship requirements but where a citizenship requirement is pretext for national origin discrimination, it is unlawful). For more see Immigration status and affordable
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housing at <https://www.masslegalhelp.org/housing-apartments-shelter/public-subsidized-housing/immigration-status-and-affordable-housing>.

39. G.L. c. 151B, §4(10).
40. See *Diliddo v. Oxford Street Realty*, 450 Mass. 66 (2007). In *Diliddo*, the Supreme Judicial Court held that a one-month termination provision in an alternative housing vouching program (AHVP) lease was a "requirement" of the AHVP program which the landlord's agent could not reject for financial reasons. In so holding, the Court refused to read into the statute an exception that would allow landlords to reject participants in housing subsidy programs whose requirements might cause the landlord economic harm. See also *Clemons v. Niedzwiecki*, Western Housing Court, 15-CV-0488 (Fein, J., July 25, 2016) (holding that Chapter 151B's prohibition against denying housing because the tenant received a housing subsidy or because of the rules of a housing subsidy program includes a prohibition against refusing to rent to tenants because of the particular agency that administers their voucher).
41. See the regulation for the Section 8 Tenant Based Assistance: Housing Choice Voucher Program, 24 C.F.R. §982.304, *Illegal Discrimination: PHA Assistance to Family*. This section states: "A family may claim that illegal discrimination because of race, color, religion, sex, national origin, age, familial status or disability prevents the family from finding or leasing a suitable unit with assistance under the program. The PHA must give the family information on how to fill out and file a housing discrimination complaint." See also 24 C.F.R. §982.53, describing the equal opportunity requirements under the Section 8 program. Finally, note that the Equal Opportunity Housing Plan must, in accordance with the requirements of Executive Order 11063, 27 FR 11527, reprinted as amended in 42 U.S.C.S. §1982, "promote the abandonment of discriminatory practices" and "prevent discrimination."
42. Ch. 151B, §1(16), (17), and §4(3C), (4A), (6)-(7B). In federal law, the key provisions are in the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, §13(a), 102 Stat. 1636 (1988), codified at 42 U.S.C. §§3601 et seq. Both the state and federal law add persons with disabilities to the list of those protected against discrimination. Both laws, with the state law being generally stronger, provide that landlords must make "reasonable accommodations" to persons with disabilities so that they can rent and enjoy housing on an equal basis with those who are not disabled.
- Another federal law protecting disabled people from housing discrimination, but only in "federally assisted" housing, is Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. §794.
43. G.L. c. 151B, §4(7A)(1); 42 U.S.C. §3604(f)(3)(A).
44. "[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2); see also *Adjarthey v. Cent. Div. of Hous. Ct. Dep't*, 481 Mass. 830, 847, 120 N.E.3d 297, 314 (2019) (citing *McDonough*, 457 Mass. at 514, 528, 930 N.E.2d 1279, quoting *Tennessee v. Lane*, 541 U.S. 509, 516, 524, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004)) (noting that disability rights laws "exist to address the 'pervasive unequal treatment' of individuals with

disabilities,” who “have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society.””

45. See *Kachadorian v. Larson*, 87 Mass.App.Ct. 1111, *2 (Mar. 23, 2015) (Appeals Court Rule 1:28.).
46. [Ch. 151B, §1\(16\), \(17\), and §4\(3C\), \(4A\), \(6\)-\(7B\)](#). In federal law, the key provisions are in the [Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, §13\(a\), 102 Stat. 1636 \(1988\)](#), codified at [42 U.S.C. §§3601 et seq.](#) Both the state and federal law add persons with disabilities to the list of those protected against discrimination. Both laws provide that landlords must make "reasonable accommodations" to persons with disabilities so that they can rent and enjoy housing on an equal basis with those who are not disabled.

Another federal law protecting disabled people from housing discrimination, and providing for affirmative rights to accommodations is Section 504 of the Rehabilitation Act of 1973, codified at [29 U.S.C. §794](#). Section 504 only applies in "federally assisted" housing.

47. [G.L. c. 151B, §4\(7A\); 42 U.S.C. §3604\(f\)](#).
48. State law, at [G.L. c. 151B, §1\(17\)](#), uses the same definition of "handicap" as the federal Fair Housing Act does. The federal Fair Housing Act and implementing regulations define "handicap" as (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 impairment. [42 U.S.C. §3602\(h\); 24 C.F.R. §100.201](#). Section 504 has a similar definition. See [29 U.S.C. §§705\(9\)\(B\), 705\(20\)](#).

Note that the federal law does not include as a "handicap" the current illegal use of or an addiction to a controlled substance. [42 U.S.C. §3602\(h\)\(3\), 24 C.F.R. §100.201](#). This should be differentiated from alcohol use disorder. To the extent someone is disabled due to alcohol use disorder, that disability remains covered by the fair housing laws. Moreover, individuals with substance use disorder would not be excluded if they do not currently use illegal drugs. See House Judiciary Comm., Fair Housing Amendments Act of 1988, H.R. Rep. No. 711, 100th Cong., 2d Sess. 25, 28-29, reprinted at 1988 U.S. Code Cong. & Admin. News 2173, 2183-84.) The question of what constitutes “current” has not been squarely answered by legislation or the courts as of this edition. See *United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance"); see also *Peabody Properties, Inc. v. Sherman*, 418 Mass. 603, 638 N.E.2d 906, 6 A.D.D. 464 (1994) (finding exclusion applied where tenant had recent conviction for possession with intent to distribute, and citing congressional record stating “The current use provision was “not intended to be limited to persons who use drugs on the day of, or within a matter of days or weeks before, the action in question.”). Many of the cases evaluating what is “current illegal drug use” have been in the context of local efforts to exclude sober homes or recovery programs. See, e.g., *Pacific Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1156, 28 A.D. Cas. (BNA) 1344 (9th Cir. 2013) (“It is well established that persons recovering from drug and/or alcohol addiction are disabled under the FHA and therefore protected from housing discrimination.”); *Toucan Partners, LLC v. Hernando*

County, Fla., 571 Fed. Appx. 737, 742 n.4 (11th Cir. 2014) (noting that “those recovering from drug addiction are protected under the [Fair Housing Act]”); *Lakeside Resort Enterprises, LP v. Board of Sup'rs of Palmyra Tp.*, 455 F.3d 154, 156 n.5 (3d Cir. 2006), as amended, (Aug. 31, 2006) (noting with approval Fair Housing Act cases holding that “recovering alcoholics and drug addicts are handicapped, so long as they are not currently using illegal drugs”).

Also, the federal law is explicit that discrimination protections are not to extend to any individual whose tenancy would constitute a "direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." [42 U.S.C. §3604\(f\)\(9\)](#); [24 C.F.R. §100.202\(d\)](#). In contrast, the state law, [G.L. c. 151B](#), includes no language exempting such persons from protection against discrimination. The Massachusetts Supreme Judicial Court has held that a public housing authority may evict a tenant who requests a reasonable accommodation but poses a threat to others, but before doing so it must show that an attempt to accommodate the tenant has failed or that there is no reasonable accommodation that will acceptably minimize the risk to other residents. *Boston Housing Authority v. Bridgewater*, 452 Mass. 833, 841 (2009).

49. It is also illegal to refuse to rent to a person because they might need reasonable accommodations to the premises or to refuse to allow a tenant to make reasonable modifications to their apartment. Both the federal law ([42 U.S.C. §3604\(f\)\(3\)](#) and [24 C.F.R. §100.203](#)) and state law ([G.L. c. 151B, §4\(7A\)](#) and [804 CMR §2.03\(3\)](#)) require owners to allow disabled tenants to make reasonable modifications to their units at their own expense. This might include widening a doorway, installing a grab bar, putting in a louder doorbell, or lowering the light switches. However, the state law goes further for publicly assisted, multiple-dwelling or other larger housing developments. In those forms of housing, reasonable modifications must be paid for by the owner (in the case of public housing, this is subject to appropriation), but modifications are not considered reasonable if they would impose undue hardship on the owner. Also, reasonable modifications do not include ramping for more than five steps or installing a wheelchair lift. [G.L. c. 151B, §4\(7A\)\(1\)](#) and [\(7A\)\(3\)](#). Under §504, the only limit on provision of reasonable accommodations including structural modifications is undue financial and administrative burden. See [24 C.F.R. §20 et seq.](#) Thus, §504, if available, may be the better route for structural modifications in certain situations.

State law says that a modification is not required "if it would impose an undue hardship upon the owner. ... Factors to be considered shall include, but not be limited to, the nature and cost of the accommodation or modification needed, the extent to which the accommodation or modification would materially alter the marketability of the housing, the overall size of the housing business of the owner ... and the ability of the owner ... to recover the cost ... through a federal tax deduction." [G.L. c. 151B, §4\(7A\)\(3\)](#).

50. HUD has also issued lengthy guidance on when a tenant may be entitled to an assistance animal (sometimes called an emotional support animal) or a service animal. See HUD, Office of Fair Hous. & Equal Opportunity, Notice FHEO-2020-01 (Jan. 28, 2020), available at

<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>.

Service animals are defined by the Americans with Disabilities Act (ADA) to be: “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.” 28 C.F.R. §§ 35.104; 36.104.

Assistance animals, or *emotional support animals*, are animals that provide support to a disabled person – whether it be physical or emotional support – but do not need to specifically be dogs. HUD describes assistance animals as “other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.” FHEO-2020-01, p. 1.

51. [Boston Hous. Auth. v. Bridgewater](#), 452 Mass. 833, 841 (2009); [Glendale Assocs. v. Harris](#), 97 Mass.App.Ct. 454 (2020); [Moretalaro v. Boston Hous. Auth.](#), 99 Mass.App.Ct. 1 (2020); [Peterborough Hous. Assocs., LP v. Garnier](#), 99 Mass.App.Ct. 1114 (2021) (M.A.C. Rule 23.0).
 52. 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).
 53. *Id.*
 54. See [City Wide Assocs. v. Penfield](#), 409 Mass. 140, 143-44 (1991).
 55. 42 U.S.C. §3604(f)(9); [Andover Housing Authority v. Shkolnik](#), 443 Mass. 300, 312 (2005) (neighbors' rights need not be "sacrificed 'on the altar' of reasonable accommodation") (quoting [Groner v. Golden Gate Gardens Apartments](#), 250 F.3d 1039, 1046 (6th Cir. 2001)). In [Andover Housing Authority v. Shkolnik](#), 443 Mass. 300 (2005), the Supreme Judicial Court held that a public housing authority did not violate the Fair Housing Act and M.G.L. c. 151B when it evicted a tenant with an alleged mental disability for excessive noise, and that the tenant's requested withdrawal or delay of eviction proceedings was not reasonable. Relying on language appearing in §504 of the Rehabilitation Act (but not in the Fair Housing Act or M.G.L. c. 151B), the Court focused on whether the tenant was a "qualified" handicapped person and concluded he was not. According to the Court, "[i]n the public housing context, a 'qualified' handicapped individual is one who could meet the authority's eligibility requirements for occupancy and who could meet the conditions of a tenancy, with a reasonable accommodation or modification in the authority's rules, policies, practices, or services. Here, the tenants made no showing that, even if eviction proceedings were withdrawn or delayed, they could comply with the terms of their lease by not disturbing their neighbors." 443 Mass. at 310-311 (internal citations omitted).
- But see [Boston Housing Authority v. Bridgewater](#), 452 Mass. 833, 850 (2009) (“before a public housing authority may terminate the lease of a disabled tenant . . . because he poses ‘a significant risk to the health or safety of others’ that

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- cannot be eliminated by a reasonable accommodation . . . the housing authority ‘must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk’”) (internal citations omitted).
56. See *Rodriguez v. Montalvo*, 337 F. Supp. 2d 212, 215-16 (D. Mass. 2004).
57. 42 U.S.C. §3604(f)(3); G.L. c. 151B, §4(7A)(1). Under Massachusetts law, an owner must pay for reasonable accommodations "in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units...." G.L. c. 151B, §4(7A)(1).
58. 29 U.S.C. §794.
59. See G.L. c. 151B, §4(7A).
60. *United States v. California Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1418 (9th Cir. 1994).
61. *Boston Housing Authority v. Bridgewater*, 452 Mass. 833, 847-48 (2009) (“ To make a reasonable accommodation request, no “magic” words are required.”); 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) (noting that a housing provider cannot require use of a specific form, that the requester need not “mention the [FHA] or use the words “reasonable accommodation”” so long as a reasonable person would understand that a reasonable accommodation is being requested).
62. 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) (“[H]ousing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider’s preferred forms or procedures for making such requests.”).
63. *Id.*
64. *Id.* (“If a person’s disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester’s disability or the disability-related need for the accommodation.”).
65. *Glendale Assocs. v. Harris*, 97 Mass. App. Ct. 454, 463 (2020).
66. *Boston Housing Authority v. Bridgewater*, 452 Mass. 833, 847-48 (2009).
67. See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005).
68. U.S. Dep’t of Hou. & Urb. Dev., Office of Fair Hous. & Equal Opportunity, Memorandum on Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence

Against Women Act (VAWA)(Feb. 9, 2011), available at <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF>.

69. Massachusetts law provides certain protections for victims of domestic violence allowing them to break a lease early and request that the locks be changed (for a reasonable fee). *G.L. c. 186, §§24, 26*. In both cases, the landlord may request proof that the individual is a victim of domestic violence, such as a copy of a court prevention of abuse order or a police report. The law also provides that if a victim of domestic violence exercises his right to terminate his lease early due to domestic violence, a future landlord cannot use that as a reason not to rent to him, nor can a housing subsidy provider use that as a basis to deny rental assistance. *G.L. c. 186, §25*.
70. 34 U.S.C. § 12491(b)(1); see also 24 C.F.R. §§ 5.2001-5.2011.
71. M.G.L. c. 151B, §§4(6), (7), (7B), (8).
72. *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218, 2020 Fair Empl. Prac. Cas. (BNA) 220638, 104 Empl. Prac. Dec. (CCH) P 46540 (2020).
73. U.S. Department of Housing and Urban Development, Memorandum of the Assistant Secretary for Fair Housing and Equal Opportunity, Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act (Feb. 11, 2021)(that “the Fair Housing Act’s sex discrimination provisions are comparable to those of Title VII and that they likewise prohibit discrimination because of sexual orientation and gender identity”), at https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf. This memo was likely rescinded pursuant to Executive Order titled “Initial Rescissions of Harmful Executive Orders and Actions” which rescinded Executive Order 13988. *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218, 2020 Fair Empl. Prac. Cas. (BNA) 220638, 104 Empl. Prac. Dec. (CCH) P 46540 (2020).
74. Langowski, Berman, Holloway & McGinn, *Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Market*, 29 Yale J.L. & Feminism 321 (2018); see also Urban Institute, *A Paired-Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals* (2017).
75. A housing provider violates the federal Fair Housing Act when the provider’s policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate. *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S.Ct. 2507, 2522-23 (June 25, 2015) (holding that a policy may be considered discriminatory if it “function[s] unfairly to exclude minorities from certain neighborhoods without any sufficient justification”); see also *Burbank Apts. Tenant Ass’n v. Kargman*, 474 Mass. 107 (2015). Where a policy or practice that restricts access to housing on the basis of criminal record has a disparate impact on individuals of a particular race, national origin, or other protected status, such policy or practice is unlawful under the Fair Housing Act. See [U.S. Department of Housing and Urban Development Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#) (April 4, 2016). See also [U.S. Department](#)

of Housing and Urban Development, Notice PIH 2015-19, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions (Nov. 2, 2015) (prohibiting landlords who receive federal funding from relying on arrest records only to deny admission to or evict tenants).

76. See *Louis v. SafeRent Solutions, LLC*, 985 F.Supp.3d 19, 39 (D. Mass. July 26, 2023) (plaintiffs sufficiently pled disparate impact claim that a scoring system relying heavily on credit history disproportionately impacted voucher holders and other protected classes).
77. See City Life Vida Urbana, *Evictions in Boston: The Disproportionate Effects of Forced Moves on Communities of Color* (2020); see also Peter Hepburn et al., *Racial and Gender Disparities among Evicted Americans*, *Sociologic Science*, Dec. 16, 2020, at 649-53 (“Black individuals were overrepresented in the evicted defendant population. They made up 19.9 percent of all adult renters but 32.7 percent of all eviction filing defendants. Four out of every five black renters in our sample (81.0 percent) lived in a county in which the share of eviction filings against black renters was higher than the share of the renting population that was black. All other racial/ethnic groups were underrepresented, with the largest absolute difference among white renters. White renters made up 51.5 percent of all adult renters but only 42.7 percent of all eviction filing defendants.”); Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women*, ACLU (Mar. 30, 2017), <https://www.aclu.org/news/womens-rights/unfair-eviction-screening-policies-are-disproportionately> (“[S]tudies demonstrated that people of color made up about 80 percent of those facing eviction in several cities, and women were 62 percent of the tenants facing eviction in Chicago and 70 percent of the tenants in Philadelphia.”).
78. This section addresses only the disability laws regarding **private housing**. The laws regarding public and subsidized housing are different and can be more complicated.
- In addition, sometimes a person will have a CORI (or a poor credit report) because they are survivor of domestic violence. If this is the case, you should explain the circumstances to the landlord. It may be sex discrimination to deny someone housing based on a CORI or poor credit report that is the result of someone’s being a victim of domestic violence. U.S. Dep’t of Hous. & Urb. Dev., *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)* (Feb. 9, 2011).
79. See endnote 20 above.
80. *Id.*
81. Much work has been done on the ways in which the lack of appropriate, affordable, available medical care and supportive services for people with serious mental illness results in unconscionably high levels of incarceration for this population. See, e.g., Peter Insel, *Healing: Our Path from Mental Illness to Mental Health* (2022).

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82. [42 U.S.C. §3602\(h\)](#); *Peabody Properties, Inc. v. Sherman*, 418 Mass. 603 (1994).
83. The fair housing laws do not give a definition of *current use of illegal drugs*. What constitutes **current** versus **former** use – and thus entitled to coverage as a disability under the fair housing laws – is a fact-specific question. See, e.g., *Peabody Properties, Inc. v. Sherman*, 418 Mass. 603 (1994) (citing *United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir.1992) (holding that the applicable fact in the case was that the tenant was alleged to have possessed a controlled substance with intent to distribute, and thus the question of whether the tenant was or was not “currently” using was not at issue). But see *Fowler v. Borough of Westville*, 97 F. Supp. 2d 602, 608–09 (D.N.J. 2000) (finding that use four months’ previous was removed enough to not constitute “current” use). The Americans with Disabilities Act may provide some guidance on how courts may analyze the question. It defines current use of drugs as “illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.” [28 C.F.R. §35.104](#). In addition, state regulations regarding state-aided public and subsidized housing states that “[a] person's illegal use of a controlled substance within the preceding 12 months shall create a presumption that such person is a current illegal user of a controlled substance, but the presumption may be overcome by a convincing showing that the person has permanently ceased all illegal use of controlled substances. This disqualification of current illegal users of controlled substances shall not apply to applicants for housing provided through a treatment program for illegal users of controlled substances.” [760 CMR §5.08\(1\)\(k\)](#).
84. Fair housing testing has been held to be legal by every court that has dealt with the issue, including the U.S. Supreme Court, which unanimously sanctioned testing by holding that testers who receive false information about the availability of housing have standing to sue under the Fair Housing Act. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-79 (1982); see also *Northside Realty Assocs., Inc. v. United States*, 605 F.2d 1348, 1355 (5th Cir. 1979); *Meyers v. Pennypack Woods Home Ownership Ass'n*, 559 F.2d 894, 897-98 (3rd Cir. 1977) (§1982 case); *SouthCoast Fair Hous. v. Krishna Priya Inc.*, No. 20-NPR-00872, 2023 Mass. Comm’n Against Discr., LEXIS 14 (Dec. 1, 2023). See also *FDA v. Alliance for Hippocratic Medicine*, ___ S. Ct. ___ (2024) (noting that “Contrary to what the medical associations contend, the Court’s decision in *Havens Realty Corp. v. Coleman* does not stand for the expansive theory that standing exists when an organization diverts its resources in response to a defendant’s actions. *Havens* was an unusual case, and this Court has been careful not to extend the *Havens* holding beyond its context. So too here.”).
- Many courts have said that testing is often the most reliable evidence in a housing discrimination case even though testers “misrepresent” themselves.
- Testing has been challenged on the basis that testers “acted under false pretenses.” This was rejected by the U.S. Court of Appeals for the Tenth Circuit, which said “it would be difficult indeed to prove discrimination in housing without this means of gathering evidence.” *Hamilton v. Miller*, 477 F.2d 908, 909 n.1 (10th Cir. 1973); see *Education/Instruction, Inc. v. Copley Management & Dev. Corp.*, 1 Fair Hous.-Fair Lend. (P-H) ¶15,530 (D. Mass. Mar. 30, 1984). The federal district court for the district of Massachusetts in the *Education/Instruction* case asserted that the use of testers was crucial to the

enforcement of the Fair Housing Act and, therefore, any state act that obstructs the use of testers must be held invalid by virtue of the operation of the Supremacy Clause.

85. Also note that HUD funds testing programs under its Fair Housing Initiatives Program, authorized in §561 of the Housing and Community Development Act of 1987, [Pub. L. No. 100-242, §561, 101 Stat. 1815, 1942-44 \(1988\)](#), codified at [42 U.S.C. §3616a\(b\)\(2\)\(A\)](#).
86. [G.L. c. 151B, §5](#); [804 C.M.R. §1.13\(5\)\(b\)](#); [24 C.F.R. §103.15](#).
87. [42 U.S.C. §3610\(b\)](#); [804 C.M.R. §§1.06, 1.09](#); [24 C.F.R. §103.300-335](#).
88. [42 U.S.C. §3610](#).
89. Although many localities have human rights or fair housing commissions or committees, only a few of these have enforcement powers. At the time of this writing, only the Boston Fair Housing Commission and the Cambridge Human Rights Commission have "substantial equivalency" status from HUD under the federal fair housing law.
90. As a matter of practice, most fair housing cases present a mixture of federal and state law which can be included in one court case. See endnote 2 for the federal and state claims that can be raised.
91. [42 U.S.C. §§3612\(g\)\(3\), 3613\(c\)\(1\), 3614\(d\)\(1\)](#); [G.L. c. 151B, §9](#).
92. See, e.g., *Williams v. Hardy*, 98-BPR-1732, 2001 WL 1602770 (MCAD Nov. 13, 2001), affirmed by full commission, 2003 WL 403145 (MCAD Jan. 14, 2003) (tenant awarded \$50,000 in emotional distress damages in Section 8 discrimination case where, as a result of landlord's conduct, tenant feared homelessness, sought therapy, and had to move to substandard apartment); [MCAD & Richard Blake v. Brighton Garden Apts., 08-BPR-03481 \(MCAD May. 28, 2014\)](#) (tenant awarded \$25,000 in emotional distress damages after landlord refused to accommodate his emotional support dog as an accommodation for his disability); *Love v. Boston Housing Authority*, 18 MDLR 158 (11/15/96), affirmed by full commission, 200 WL 33665439 (10/16/00) (tenant awarded \$100,000 in emotional distress damages in race discrimination case where tenant endured racial harassment from neighbors, racist graffiti on his door and his car, and the housing authority refused to investigate his claims of harassment or to transfer him). See generally John P. Belman, *Housing Discrimination Practice Manual* §6.1, at 6-1 to 6-14 (2005).
93. See [Larry Heinrich, Ph. D., *The Mental Anguish and Humiliation Suffered by Victims of Housing Discrimination*, 26 *J. Marshall L. Rev.* 39 \(1992\)](#).
94. [42 U.S.C. §3613\(c\)\(1\)](#) authorizes the court in a Title VIII suit brought by an individual homeseeker to issue any permanent injunction or other order that it "deems appropriate." The district court has broad discretion, so that not all cases in which liability is found will result in such an order. See [Heights Community Congress v. Hilltop Realty, Inc., 774 F.2d 135, 144 \(6th Cir. 1985\)](#), cert. denied, 475 U.S. 1019 (1986).

[42 U.S.C. §1982](#) provides no explicit method of enforcement, but the Supreme Court held that this does not prevent a federal court from fashioning an effective

equitable remedy. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 414 n.13 (1968). Since 1968, the lower courts have awarded fair housing plaintiffs in §1982 cases the same relief as is available in private Title VIII cases. See *Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975); *Smith v. Sol D. Adler Realty Co.*, 436 F.2d 344, 350 (7th Cir. 1970).

42 U.S.C. §1981 is generally accorded the same treatment in terms of relief available as §1982. In *Runyon v. McCrary*, 427 U.S. 160, 190 (1976) (Stevens, J. concurring), it was stated that "it would be most incongruous to give these two statutes a fundamentally different construction."

G.L. c. 151B, §9 provides for the court to issue injunctive relief. The court can award the same relief as under Title VIII. G.L. c. 93, §102(b) provides for the court to award injunctive and other appropriate equitable relief. G.L. c. 12, §11H provides for the court to award "injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured [by the constitution]." G.L. c. 12, §11I contains remedies similar to §11H.

Emotional distress damages are, however, unavailable under Section 504. See *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S.Ct. 1562, 1571-72 (2022).

95. The previous limit of \$1,000 punitive damages under Title VIII was eliminated in 1988. The court is now authorized to award punitive damages in whatever amount is appropriate. See 42 U.S.C. §3613(c)(1). Since 1988, punitive damage awards under Title VIII have sometimes been very high. See *Littlefield v. McGuffey*, 954 F.2d 1337, 1348-50 (7th Cir. 1992) (upholding jury award of \$100,000 to single plaintiff). Guidance regarding the size of an appropriate award should be sought from 42 U.S.C. §§1981 and 1982 cases which were not constrained by the previous limitation. See *Marable v. Walker*, 704 F.2d 1219, 1220-21 (11th Cir. 1983); *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184, 190-91 (7th Cir. 1982).

G.L. c. 151B, §9 authorizes the court to award actual and punitive damages. For the conduct that will justify the award of punitive damages, see *Smith v. Wade*, 461 U.S. 30, 56 (1983) (quoting Restatement (Second) of Torts §908(1) (1979) (§1983 case)). See also *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 266 (1981); *Ciccarelli v. School Dept. of Lowell*, 70 Mass. App. Ct. 787, 795-97 (2007).

96. *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184, 191 (7th Cir. 1982) (decided that the most important issue in deciding whether to award punitive damages is whether the defendant's actions were intentional). The size of the award should serve the twin goals of deterrence and punishment, and therefore the defendant's financial resources are relevant. See, e.g., *Miller v. Apartments and Homes of N.J., Inc.*, 646 F.2d 101, 111 (3d Cir. 1981).
97. *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184, 191 (7th Cir. 1982); *Grayson v. S. Rotundi & Sons Realty Co.*, 1 Fair Hous.–Fair Lend. ¶15,516 (E.D.N.Y. September 5, 1984); *Miller v. Apartments and Homes of N.J., Inc.*, 646 F.2d 101, 111 (3rd Cir. 1981).
98. If the respondent has not been adjudged to have committed any discriminating housing practice during the last five years, the civil penalty cannot exceed \$10,000. If the respondent has committed one discriminatory housing practice

during the five years before this case was filed, the civil penalty cannot exceed \$25,000; if they have committed two or more discriminatory housing practices during the seven years before this case was filed, the civil penalty cannot exceed \$50,000. See [42 U.S.C. §3612\(g\)\(3\)](#); [G.L. c. 151B, §5](#).

99. [G.L. c. 151B, § 5](#), 2nd paragraph, 36th sentence.

While M.G.L. c. 6, § 56 requires a MCAD office in the city of Fall River, there was no MCAD office in Fall River or the surrounding region at the time of this writing.

101. [42 U.S.C. §3610\(f\)](#).

102. [42 U.S.C. §3610\(f\)\(1\)](#).

103. The MCAD must complete its investigation of a complaint alleging housing discrimination within 100 days of receiving the complaint, unless it is impracticable to do so. [804 CMR §1.13\(3\)](#).

104. [G.L. c. 151B, §5](#).

105. You can file the complaint online or print out a copy and mail the completed form to HUD. If you print out the form and file it yourself, be sure to write in ink; do not use pencil. Also, on question 3, be sure to list not only the landlord but **everyone** you talked to at the landlord's office or at the place where you applied for housing. Note: Under *NAACP v. Secretary of Housing & Urban Dev.*, 817 F.2d 149, 155 (1st Cir. 1987), HUD has an affirmative duty to "use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases."

106. [42 U.S.C. §3612\(a\)](#). If it is not possible to complete the investigation in 100 days, the complainant and respondent must be notified in writing of the reasons for the delay. See [42 U.S.C. §3610\(a\)\(1\)\(C\)](#).

107. Note that, unlike with employment discrimination, there is no requirement for complainants to "administratively exhaust" prior to filing in court – that is, a victim of housing discrimination is not required to file at HUD or the MCAD, but may file directly in court. [42 U.S.C. §3613\(a\)\(2\)](#); [G.L. c. 151B, §9](#) 2nd paragraph, 3rd sentence.

108. [G.L. c. 151B, §9](#).

109. [42 U.S.C. §3613\(a\)\(1\)\(A\)](#).

110. See [G.L. c. 151B, §5](#); [42 U.S.C. §3614](#).

Legal Research Tools

Bazelon Center for Mental Health Law, *What "Fair Housing" Means for People with Disabilities* (1999), <https://www.bazelon.org/wp-content/uploads/2017/01/What-Fair-Housing-Means.pdf>.

Congressional Research Service, *Fair Housing—The Law in Perspective* (updated 2016), <https://crsreports.congress.gov/product/pdf/RL/95-710>.

Fair Housing Amendments Act of 1988: A Selected Resource Guide. Published by HUD Office of Fair Housing and Equal Opportunity, March 1991. Provides abstracts of many articles about the 1988 amendments. Copies are available for \$3. Contact HUD User at 800-245-2691.

Housing Discrimination—Law and Litigation, by Robert G. Schwemm. Published by Clark Boardman and Co., 2002. A looseleaf volume providing a comprehensive discussion of the law in this area, with yearly supplements. Available on Westlaw and LEXIS with regular updates.

Housing Discrimination Practice Manual, by John Relman. Published by Clark Boardman (2002). A step-by-step guide to litigating fair housing cases. Available on Westlaw and LEXIS with regular updates.

Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 Am. U. J. Gender Soc. Pol'y & L. 377 (2003).

Legal Rights of Individuals with Disabilities, Volume One (2002), edited by Stanley J. Eichner and Christine M. Griffin. Includes chapters about "Housing Rights" and about "Enforcing Fair Housing Rights to Live in the Community of Choice." Available from MCLE, 10 Winter Place, Boston MA 02108, 800-966-6253.

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