

DISABILITY HOUSING RIGHTS AND BUILDING CODES OF NEW YORK

by The Committee on Legal Issues Affecting People with Disabilities*

A. INTRODUCTION

People with disabilities are protected against housing discrimination on the basis of mental or physical disability by a series of federal, state, and local human rights and civil rights laws. These laws include Section 504 of the Rehabilitation Act,¹ the Americans with Disabilities Act (ADA),² the Fair Housing Act (FHA),³ the New York State Human Rights Law (NYSHRL),⁴ and the New York City Human Rights Law (NYCHRL).⁵ Not only are people with disabilities protected from discrimination, they are also entitled to certain accommodations so that they can use and enjoy their homes.

These various human and civil rights laws have corollary building standards, which are enumerated in the various sections below. There are essential distinctions between the two, as well as amongst the federal, state and city human rights laws with regard to definition of disability, remedies, geographic scope, procedures and who has standing to enforce them which the practitioner and claimant must pay close attention to.

Because so many different laws protect the housing rights of people with disabilities, an individual who believes his or her rights have been violated must look at the various provisions of the different laws and determine which laws apply and what protections are available. For example, an individual with a disability who rents an apartment from a private landlord⁶ in New York City and requests that a ramp be built at the entrance is covered by the FHA, NYSHRL and the NYCHRL. As explained below,

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the FHA requires the tenant to pay for any such modifications, while case law interpreting the NYCHRL has held that the landlord may be required to pay for the modifications. The NYSHRL was amended in 2010 to require covered housing providers to pay for reasonable modifications to common areas. Specifically, N.Y. Exec. Law §296.18(2) states that it shall be an unlawful discriminatory practice to,

“refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling, *including reasonable modifications to common use portions of the dwelling*” (emphasis added).

In addition, various standards that apply to new construction and alteration of existing buildings have mandates with regard to accessibility, which are addressed separately below. Typically, these mandates are enforced by federal state or local governmental officials, but they accept and rely on reports of alleged violations from the public.

B. TYPES OF HOUSING FACILITIES COVERED

Collectively, these laws pertain to all types of housing, including, but not limited to, public housing, condominiums, cooperatives, rental apartments, and, to some extent, one-, two- and three-family homes.⁷ Specifically, Section 504 covers housing providers that receive federal money and the ADA covers housing funded by a State or City governmental entity, while FHA governs privately-owned housing as well as publicly funded housing providers. The NYSHRL covers both privately-owned and publicly funded housing within New York State. The NYCHRL applies to both privately-owned and publicly-funded housing within the City of New York.

C. PEOPLE COVERED

The definition of “handicap” under the FHA and Section 504 of the Rehabilitation Act requires “a physical or mental impairment, which substantially limits one or more of such person’s major life activities; a record of having such an impairment; or being regarded as having such an impairment.”⁸ The NYSHRL and NYCHRL definition of “disability” differs substantially from the federal definition above. Under both the NYSHRL and the NYCHRL, there is no requirement that the impairment “substantially limit one or more major life activities.” As such, both the NYSHRL and NYCHRL provide more comprehensive coverage of people with disabilities than the FHA.

The NYSHRL defines “disability” as:

- “a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions, which prevents the exercise of normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, or
- a record of such impairment, or
- a condition regarded by others as having such an impairment.”⁹

The NYCHRL defines “disability” as “any physical, medical, mental or psychological impairment, or a history or record of such impairment. The term ‘physical, medical, mental, or psychological impairment’ means:

- an impairment of any system of the body; including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-

urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or

- a mental or psychological impairment.”¹⁰

All three laws protect people with disabilities who currently occupy or intend to occupy a housing accommodation.

Excluded from the coverage of these laws are people who are current substance abusers. The FHA specifically excludes and those who, despite reasonable accommodations, pose “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.”¹¹

For example, a tenant who pushes or threatens other tenants may not be covered by these laws if some kind of treatment counseling or other accommodation does not stop this threatening behavior.

D. TYPES OF DISCRIMINATORY PRACTICES PROHIBITED

Under the various laws, housing providers are prohibited from discriminating against anyone in the sale or rental of a dwelling because the person has a disability. In other words, providers cannot impose application criteria, qualification criteria, security deposits, rental charges, or other eligibility standards or requirements different than those required of people without disabilities.¹² This means that:

- Housing providers cannot discourage a person with a disability from buying or renting a dwelling or indicate that a property or unit is not available for sale or rent.¹³

- Housing providers cannot advertise, post notices, or make statements so as to deny housing or access to housing to a person with a disability.¹⁴

- Housing providers are prohibited from limiting or denying a person with a disability access to recreation facilities (e.g., a swimming pool), parking privileges, or other services and facilities that are available to other tenants or owners.¹⁵
- Housing providers must not ask questions designed to determine whether an applicant or buyer or anyone associated with the applicant or buyer has a disability.¹⁶

In a case that focused on the intersection of the issues of impermissible inquires regarding disability and requests for reasonable accommodation, the Appellate Division 1st Department found evidence of discriminatory conduct where the defendant cooperative rescinded its approval of the sale of a unit to an individual with a disability upon the individual's request for a reasonable accommodation.¹⁷ xvii In *Hassapoyannes*, the plaintiff required a washing machine in his apartment in order to wash his often soiled clothing that was a result of his treatment for rectal cancer. Plaintiff made no mention of this need during his Board interview where he was informed that the cooperative's house rules prohibited installing a washer or dryer within the units. Subsequently, at closing the plaintiff made his request for reasonable accommodation to be allowed to install a washer dryer in his unit. The closing was adjourned and plaintiff was thereafter informed that the cooperative Board rescinded its approval of the sale.

The cooperative in *Hassapoyannes* argued that it rescinded its approval because the plaintiff "lied" during the Board interview by not disclosing his disability, nor need for a reasonable accommodation. The court, however, ruled that federal regulations,¹⁸ as well as New York State and City Law prohibit any inquiry into whether an applicant for housing has a disability, or the nature or severity thereof.¹⁹

However, questions that are typically asked of all applicants or buyers regardless

of disability may be asked. For example, a housing provider may ask if the applicant can meet the financial requirements of ownership or tenancy. Also, the housing provider may ask if an applicant is a current substance abuser because such individuals are not protected by these laws. A housing provider can ask questions regarding disability only to determine an individual's eligibility for housing for people with disabilities, or, if special programs or services are provided, to determine which ones will be needed.²⁰

E. REASONABLE ACCOMMODATIONS

Generally, reasonable accommodations are categorized into two types: structural changes and policy changes.

1. Structural Changes

Housing providers must permit reasonable modifications of existing premises if such modifications are necessary for a person with a disability to be able to live in and use the premises. Modifications may be requested in any type of dwelling. Who pays the cost of the modifications depends on the type of housing involved and the law which is applied.²¹

a. Federally funded housing providers. If the housing provider receives federal funding, such as the New York City Housing Authority (NYCHA) or a HUD project, then the housing provider must pay for the accommodation. However, the provider does not have to take any action that would fundamentally alter the program (i.e., a program that only provides shelter would not be required to start providing supportive services) or cause undue financial and administrative burden.²² Methods of accommodation include altering the existing unit and/or building, or transferring the tenant to an accessible building and/or unit.

Housing providers who receive federal funding and operate an existing housing program must ensure it is readily accessible to and usable by individuals with disabilities. If the program had insufficient dwelling units to meet the needs of its tenants and applicants, it had to develop a plan to come into compliance with the law including making structural changes.²³ Some Public Housing Authorities (PHAs) remain inaccessible to people with disabilities and, as a result, are entering into agreements with HUD in order to come into compliance with Section 504. For example, NYCHA negotiated a Voluntary Compliance Agreement (VCA) with HUD which became effective on December 6, 1996. The VCA outlines the specific steps that NYCHA must take to ensure that tenants and applicants with disabilities have full access to their housing, including transfers to accessible apartments and retrofits to their current apartments.²⁴

b. Private housing providers. The FHA and the NYSHRL provide that it shall be an unlawful discriminatory practice for a housing provider to,

“refuse to permit, at the expense of a person with a disability, reasonable modification of existing premises occupied or to be occupied by said person, if the modifications may be necessary to afford said person full enjoyment of the premises, except that in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter’s agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.”²⁵

In the case of rental property, the landlord cannot deny permission for the modifications, but may reasonably condition permission on the renter agreeing to restore the interior of the dwelling unit to the condition that existed prior to the modification,

ordinary wear and tear excepted, upon vacating the premises, including, in some cases, setting up an escrow account, with reasonably scheduled contributions, to ensure that this occurs. Also, a housing provider may ask the renter to provide a reasonable description of the proposed modifications and assurance that the work will be done in a “workmanlike” manner with all applicable building permits being obtained.

Under this framework, three classes of modifications have been created depending on the extent of the work and whether an account, called an escrow account, needs to be established in order to restore the premises to their original condition. First, modifications which would not affect the next tenant’s use do not have to be restored, such as widening doorways. Second, some modifications will need to be restored by the tenant, but the tenant would not be required to establish an escrow account since the cost of restoration is not great. For example, raising counter tops that had been lowered and reinstalling base cabinets that had been removed could be required but an escrow account would not be necessary. The third category is modifications which need to be restored and are relatively expensive, therefore requiring the establishment of an escrow account. The best example of this type of modification is removing the roll-in-shower and reinstalling the tub/shower. Once the work is done, any money remaining in the escrow account is returned to the tenant who created the account at the time the modification was done.

When filing a complaint based upon refusal to make reasonable modifications, one needs to be careful as to which law to proceed. The FHA clearly requires an individual with a disability to pay for such modifications regardless of whether they are to the interior of the unit or in the common area. If the private housing provider is

located in New York State, the newly amended NYSHRL requires housing providers to pay for reasonable modifications made in common areas (see above). The NYCHRL has been interpreted by the courts to require the housing provider to pay for reasonably accommodating the needs of residents with disabilities.²⁶ For example, under the City law, a cooperative was required to pay the expense to build a ramp at a three step entrance so that a resident who uses a wheelchair for mobility was able to enter and leave his home,²⁷ and a landlord was required to replace a non-compliant ramp with one that complies with the building code standard for wheelchair accessible ramps,²⁸ and a housing cooperative was required to build a ramp at the front entrance of its building to accommodate a shareholder using a wheelchair rather than install a lift to a basement entrance.²⁹ In a recent case under appeal, a cooperative was ordered to make the main entrance to its building accessible so as to effectuate the purpose of the NYCHRL to ensure that all people are able to use the rights, privileges and advantages in a manner that is equal and unsegregated, unless doing so would create an undue hardship or is architecturally infeasible. In doing so, the Commission on Human Rights levied damages and a fine for the co-ops delay in complying.³⁰

The housing provider's obligation to pay for modifications that provide accessibility is balanced by requiring that the request be reasonable. In *Pelton v. 77 Park Ave. Condominium*, the court ruled that the condominium association met its obligation to reasonably accommodate plaintiff where it had spent \$13,000.00 to purchase a lift to provide access over the steps leading to the building elevators, and where the condominium requested and received shareholder approval to undertake a \$130,000.00

assessment for structural alterations to provide accessibility.³¹ Under all of the above mentioned laws, a housing provider must not require an additional security deposit or fee for allowing a structural modification to the dwelling unit or common use areas. A distinction between NYCHRL and NYSHRL is that there is no distinction made under City law between interior and common area retrofits needed to accommodate a resident.

2. Modifications in Rules, Policies, Practices, or Services

All of the laws evaluated here require housing providers to make reasonable accommodations in rules, policies, practices, or services necessary to give people with disabilities an equal opportunity to use and enjoy their home.³² Examples of modifications that are required include:

- Allowing a tenant who is blind to have a guide dog or a person who is deaf to have a hearing dog even though the building has a “no pet” policy.³³
- Reserving an accessible parking space for a tenant with a mobility

impairment that is close to an accessible route even when other tenants must park on a first come - first served basis.³⁴ In a case brought under the New York State Human Rights Law, a court held that the parking space must be for the individual with the disability who owns the unit or space, and not that individual’s caretaker.³⁵

- Waiving a rule that requires tenants’ guests to pay a guest fee, if such a fee renders the services of a visiting home attendant unaffordable to a tenant with a disability and thus denies him/her the equal opportunity to use and enjoy the dwelling.³⁶

Also, housing providers must reasonably accommodate the needs of applicants with disabilities. For example, if an applicant has been hospitalized or in an institution for the past few years and does not have a rent history, a reasonable accommodation may

be for the housing provider to accept timely payment of other monthly bills (e.g., storage, credit cards, insurance payments) to establish a history of prompt payment.

F. ZONING & OTHER LAND USE REGULATIONS

Landlords and other property owners are not the only entities required to make reasonable accommodations. Municipalities are also required to make reasonable accommodations in zoning and other land use regulations that may limit the ability of individuals with disabilities to live in or properly use their residence of choice. Congress ensured that the Fair Housing Act would prohibit discriminatory land use practices.³⁷ Relying on the legislative history, a federal court in Connecticut enjoined a municipality from requiring a special use permit for a residence for people with HIV since the town's classification of the home as a charitable institution for zoning purposes constituted disparate treatment and was contrary to the well-settled principal that zoning is concerned with use of property, not its ownership.³⁸ Similarly, in New York State, the Second Circuit reversed dismissal of discrimination claims based on the failure of a zoning board to issue a special use permit for half-way houses for recovering alcoholics.³⁹ Laws that attempt to limit the establishment of group homes for people with disabilities by requiring minimum distances between the homes or prevent saturation in a particular community have been found facially invalid under the FHA. Numerous federal courts have recognized that such laws could never be imposed on members of any racial, religious, or ethnic group to prevent them from living in a community of their choice; thus people with disabilities similarly may not be banned from living in a particular community or neighborhood.⁴⁰

The FHA also applies to individual homeowners who request reasonable

accommodations from local ordinances that would otherwise prevent access to their homes.⁴¹

G. REQUIREMENTS FOR NEW CONSTRUCTION OF HOUSING FACILITIES

Section 504 of the Rehabilitation Act, FHA, the ADA, the NYSHRL, the New York State Building Code and the New York City Building Code have varying requirements for making new housing facilities accessible to people with disabilities.

Note well: Practitioners should be aware, however, that the City Building Code and not the State Building Code applies within the boundaries of New York City.

1. Section 504

Regulations promulgated under Section 504 require that any housing facility built since 1988 that has more than five units, have 5 percent of its units accessible to people with mobility impairments and an additional 2 percent accessible to people with hearing and vision impairments.⁴² The regulations also address accessibility requirements for common areas, including laundry facilities, mail boxes, and community rooms. accommodations under the city's new policy; and Include a category for "group homes" in the city's business license law.

2. Fair Housing Act

The FHA applies to housing facilities with four or more units if built after March 1991. The following accessible design features apply to all units in buildings with elevators and to all ground floor units in buildings without elevators:

- All doors into and within all premises must be wide enough to allow passage by people in wheelchairs.
- All premises must contain an accessible route into and through the

dwelling unit.

- All light switches, electrical outlets, thermostats and environmental controls must be located in an accessible location.
- Reinforcements in the bathroom walls for later installation of grab bars around toilet, tub and shower must be provided.
- Usable kitchens and bathrooms must be provided so that a person who uses a wheelchair can maneuver about the space.⁴³

Also, at least one building entrance must be on an accessible route and all public and common use areas must be readily accessible.

Many courts have heard cases dealing with newly constructed housing that has failed to comply with the new construction requirements of the FHA. Courts in Illinois⁴⁴ and Maryland⁴⁵ have held architects liable in construction of new housing developments. The Courts have said that even though the regulations say “design and construct” it has to be interpreted broadly to mean any entity involved in the design or construction of multifamily housing otherwise it would be absurd to think one entity could do the design and another the construction and thus both be insulated from liability.

3. Americans with Disabilities Act

The United States Department of Justice issued revised ADA regulations governing Title II, 28 CFR 35.151, on September 15, 2010. Under Title II, housing programs operated by public entities that design and construct or alter residential units for sale to individual owners should comply with the 2010 Standards, including the requirements for residential facilities in sections 233 and 809. These requirements will ensure that a minimum of 5 percent of the units, but no fewer than one unit, of the total

number of residential dwelling units will be designed and constructed to be accessible for people with mobility disabilities. The 2010 Standards also address accessible common use areas. Also, at least 2 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide communication features.

4. New York State Human Rights Law

The NYSHRL also requires that newly constructed buildings meet certain design requirements so that they are accessible to and usable by people with disabilities. This section of the law covers multi-family dwellings that were constructed for first occupancy after March thirteenth, nineteen hundred ninety-one. The NYSHRL requires these buildings be designed and constructed in accordance with the accessibility requirements for multi-family dwellings found in the New York State's Building Code.

Specifically the law requires that,

- public use and common use portions of the dwellings are readily accessible to and usable by people with disabilities;
- all doors are designed to allow passage into and within all premises and are sufficiently wide to allow passage by people in wheelchairs;
- all premises within the units contain an accessible route into and through the dwelling;
- light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
- there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, in conformity with the New York State Building Code.⁴⁶

5. New York City Building Code

The New York City Building Code applies to all residential multiple dwellings containing three or more apartments that were built after 1987. If the building has an elevator, then all the apartments must be either usable or adaptable. An adaptable unit is an apartment that is located on an accessible route and has features that can easily be converted for the use of a person with a disability. A usable apartment is one that is also on an accessible route and is currently usable to a person with a disability. Non-elevator buildings must have at least one and not less than 25% of its apartments usable or adaptable on the ground floor.⁴⁷

H. REQUIREMENT FOR THE ALTERATION OF EXISTING HOUSING

1. Section 504

Section 504 requires that any facility existing with fifteen or more units that undergoes an alteration costing 75 percent or more of the replacement cost of the entire facility, comply with the new construction requirements. All other alterations of dwelling units must be made to the maximum extent feasible until five percent of the units are accessible. Alterations to the common use areas must be made accessible to the maximum extent feasible.⁴⁸

2. Fair Housing Act & New York State Human Rights Law

Neither the FHA, nor the NYSHRL has any provision for the creation of accessible housing when an existing housing facility undergoes any type of alteration no matter how extensive.

3. Americans with Disabilities Act

See discussion under Section F. 3.

4. New York City Building Code

A housing provider must meet full compliance with the accessibility provisions of the 2008 New York City Building Code when the cost of the alterations, rehabilitation, construction, repairs, or additions within a 12-month period is more than fifty percent of the cost of replacing the building with one of similar size. A housing provider must also meet full compliance with the accessibility provisions for the entire building if the building's main use or dominant occupancy classification changes. This rule applies even if there is no construction, alteration, repairs, rehabilitation, or additions to the building. For example, if a building changes from a business occupancy (e.g., a bank) to a residential occupancy, the housing provider must make the building accessible.

If the alteration, addition, repair, rehabilitation, or construction costs less than fifty percent of the cost of replacing the building, only those areas being altered have to be made accessible. Section 28-101.4.3 of the 2008 Building Code allows the applicable accessibility provisions from the 1968 Building Code to be used.

Minor repairs, such as painting, wall papering, and re-tiling, are exempt. Also, if there is a change in the way the space is being used, then that space must be made accessible regardless of any work being done. For example, if the housing provider converts a doctor's office in a commercial building to an apartment for residential use, the apartment, its entrance, and, potentially, the path of travel to the apartment and the building entrance must be made accessible pursuant to the 1968 Code.

I. GUIDE, HEARING, SERVICE, AND EMOTIONAL SUPPORT ANIMALS

The New York State Civil Rights Law sets forth the rights of people with disabilities accompanied by guide, hearing, or service dogs. The law provides that an individual with disabilities cannot be denied admittance to or the equal use and

enjoyment of any public or private housing accommodation solely because the person has a disability and is accompanied by a guide, hearing, or service dog.⁴⁹ An individual with a disability may not be charged any additional fees for the right to have such a dog.⁵⁰

The term guide, hearing, or service dog means a dog which is properly harnessed and has been or is being trained by a qualified person to aid and guide a person with a disability.⁵¹

§296.14 of the N.Y. Executive Law prohibits housing providers to discriminate against a blind person, hearing impaired person, or a person with a disability on the basis of his or her use of a guide, hearing or service dog. Guide, hearing and service dogs are defined as follows:

- A guide dog means any dog that is trained to aid a person who is blind by a recognized guide dog training center or professional guide dog trainer, and is actually used for such purpose.⁵²

- A hearing dog means any dog that is trained to aid a person with a hearing impairment by a recognized hearing dog training center or professional hearing dog trainer, and is actually used for such purpose.⁵³

- A service dog means any dog that is trained to work or perform specific tasks for the benefit of a person with a disability by a recognized service dog training center or professional service dog trainer, and is actually used for such purpose.⁵⁴

The requirement to reasonably accommodate a person with a disability by permitting use of an emotional support animal is subject to a showing that the harboring of the animal meets the reasonable accommodation standard — that it is a reasonable accommodation to the rules, policies, practices, or services, which is “necessary to afford a person with a disability equal opportunity to use and enjoy a

dwelling”.⁵⁵

In emotional support animal cases, the complainant must be able to show that he or she has a disability, that he or she was otherwise qualified for the tenancy, that because of the disability it was necessary to keep the animal in order to use and enjoy the apartment, and that reasonable accommodations can be made to allow the animal. Medical or psychological expert testimony or evidence must be provided to show that the animal is required in order to use and enjoy the apartment.⁵⁶

New York City Human Rights Law protects the use of service animals, without making a distinction between service dogs and other service animals. In addition, NYCHRL does not make a distinction between service animals that have and have not been trained. The City Human Rights Commission, however, has declined to move to protect the use of service animals, the possession of which is illegal within New York City's boundaries.

J. NEW YORK RENT-STABILIZED AND RENT-CONTROLLED APARTMENTS

“Eligible disabled tenants” of a rent-stabilized or rent-controlled apartment are entitled to certain protections from eviction. The definition of “an eligible disabled person” is a tenant and/or spouse of a tenant who has an impairment resulting from anatomical, physiological, or psychological conditions demonstrable by medically acceptable clinical and laboratory diagnostic techniques that are expected to be permanent, and prevent the tenant from engaging in substantial, gainful employment.⁵⁷

Even though their building is being converted to cooperative or condominium ownership under a legal Eviction Plan, tenants who are classified as “eligible disabled persons” may refuse to purchase their apartments and remain in occupancy as fully

protected rent-stabilized tenants with lease renewal privileges. The tenant's disability must be certified as of the date the Attorney General accepts the Eviction Plan. To take advantage of this protection, an eligible tenant with a disability in New York City must elect, on forms provided by the Attorney General, to become a non-purchasing tenant within sixty days of the Final Offering Plan being presented to the tenants.⁵⁸ There are no formal election requirements outside of New York City.⁵⁹

Also, an owner cannot evict a tenant with a disability or the spouse of a tenant with a disability from a rent-stabilized apartment in New York City for the purpose of owner occupancy unless the owner provides an equivalent or superior apartment at the same or lower rent in an area near the tenant's current apartment.⁶⁰ In rent-controlled apartments, an owner cannot evict a tenant with a disability for purposes of owner occupancy.⁶¹

Finally, family members with disabilities are entitled to the right to renew the lease of the named tenant after the tenant has died or left the rent-stabilized or rent controlled apartment as long as the person with a disability occupied the apartment as his/her primary residence for at least one year prior to the named tenant's death or departure.⁶²

K. ENFORCEMENT

1. Section 504 of the Rehabilitation Act

Any person who believes that he/she has been subjected to discrimination because of his/her disability by a federally-funded housing provider may file a complaint with the nearest HUD office. Complaints must be filed within 180 days from the date the discriminatory act occurred. If the complaint is mailed, it is deemed filed on the date it is

postmarked. All other complaints are deemed filed on the date they are received by HUD. Each complaint must contain the following information:

- the name and address of the person filing the complaint;
- the name and address of the housing provider alleged to have violated the law; and
- a description of the discriminatory action, including the dates on which it occurred.

HUD is required to acknowledge that it received the complaint and to conduct a preliminary investigation. Once the preliminary investigation is completed, HUD will determine to either accept or reject the complaint. If the complaint is accepted, HUD will notify the housing provider that a complaint has been filed and allow the provider an opportunity to respond.

HUD initially attempts to resolve the complaint informally. If this fails, HUD issues a “letter of finding” describing the violation, appropriate remedies, and the right to review. If neither party requests a review at this point, HUD will issue a formal complaint. Where there is proof that housing discrimination has occurred, HUD will issue a charge on behalf of the aggrieved individual and become a party in the case. Within 20 days of HUD’s issuance of the charge, either party can request that the case be filed in federal district court. If this occurs, HUD will notify the United States Attorney General and the Department of Justice will prosecute the case. If the case does not go to court, it will remain at HUD and proceed through the administrative process. Once this administrative process has begun, a party cannot file suit in court. If a decision is rendered in favor of the aggrieved party, the following types of relief may be granted: an

order that the discriminatory housing practice stop, or a reasonable accommodation be made; reimbursement for any expenses incurred by the complaining individual; reimbursement of attorney's fees; and assessment of civil penalties.⁶³

Without exhausting the administrative remedy previously discussed, an aggrieved individual may file a lawsuit in federal district court within three years of the alleged discriminatory action. Penalties for a violation of the law may include withdrawing of federal funding from the housing provider, ordering the housing provider to remove the barrier or make the reasonable accommodation, awarding of any expenses incurred by the complaint, and awarding of attorney's fees.⁶⁴

2. Fair Housing Act

Any person who believes he/she has been discriminated against based on disability in either privately-owned or government-funded housing covered by the FHA may file a complaint with the nearest HUD office. Complaints must be filed within one year from the date the discriminatory act took place and may be filed in person, over the telephone, or by mail. If the information is given over the telephone, the HUD office will put the complaint in writing and send it to the complainant for signature. Each complaint must contain the following information:

- the name and address of the complaining party;
- the name and address of the person who committed the alleged violation;
- a description and the address of the dwelling involved; and
- a concise statement of the facts, including pertinent dates.

Some states and localities have Fair Housing Laws which are similar to the FHA and are deemed "substantially equivalent." If so, the agency assigned to enforce the state

or local law may receive the discrimination complaint in lieu of HUD. If an aggrieved party is unsure of whether such a state or local law exists, he/she should file the complaint with the HUD regional office. HUD will refer it to the state or local agency if appropriate.⁶⁵ The New York State Human Rights law has been deemed substantially equivalent to FHA.

Complaints that are not referred to a “substantially equivalent” state or local agency must be investigated by HUD within 100 days to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred. During the investigation, HUD is also directed to engage in conciliation (voluntary) efforts with the parties. If HUD does not complete the investigation within the 100 days, HUD must simply notify, in writing, the people involved in the complaint and state the reason for the delay. Once the investigation is complete and if conciliation efforts have failed, HUD will make a determination of whether or not reasonable cause exists. If HUD finds reasonable cause, it will issue a formal charge on behalf of the complainant.⁶⁶

Once a formal charge has been issued, either party has 20 days to choose to have the case brought in federal district court, where the complainant will be represented by the Department of Justice as well as by his/her own attorney. If the case is not removed to court, it will proceed through a pre-hearing discovery phase and then be presented before an Administrative Law Judge (ALJ) appointed by HUD within 120 days after the charge is filed. The ALJ is required to make a decision within 60 days after the hearing. The ALJ’s decision is subject to review by HUD and ultimately by the courts. HUD does not have to strictly abide by these time frames.⁶⁷

When making a determination of whether to remove the case to federal district

court or pursue the administrative remedy with HUD, a party should be aware that the remedies are different. Both forums provide for injunctive relief, such as ordering the housing provider to allow for the modifications or to change rules and policies, and actual damages, such as out-of-pocket expenses, attorney's fees, and emotional distress. However, the forums have different rules on monetary awards. Courts may award punitive damages to the complainant in whatever amount is appropriate, whereas an ALJ can only award civil penalties, which are paid to the government, to vindicate the public interest. The amount of the civil penalties that an ALJ can award is limited by the law to \$10,000 for a first offense, \$25,000 for a second offense committed within a five-year period, and \$50,000 if two or more offenses have been committed within seven years of the charge. An ALJ is not authorized to award punitive damages.⁶⁸

A complainant may bring an action directly in federal district court within two years from the date the discriminatory act took place. FHA does not require the complaining party to exhaust the administrative remedies outlined above before a case is filed in court.⁶⁹

3. Americans with Disabilities Act

An individual who believes he/she has been subjected to discrimination on the basis of disability by a state or city housing provider may file a complaint within 180 days from the date of the alleged discriminatory action. The complaint may be filed with the appropriate federal agency (e.g., HUD) or in federal district court. In order to file a case in court, the complainant does not have to exhaust the administrative remedies.⁷⁰

The complainant is entitled to all of the remedies available under Section 504, including compensatory damages. Also, attorney's fees, including litigation expenses, are

available to the prevailing party other than the United States. The prevailing party is the party that is successful and may be either the person complaining or the state or local housing provider against whom the action was brought (defendant). However, a prevailing defendant may only recover attorney's fees if the court finds the action was brought in bad faith.⁷¹

4. New York State Human Rights Law

Any person who believes he/she has encountered an unlawful discriminatory housing practice based on the person's disability may file an administrative complaint within 1 year after the discriminatory action occurred with the New York State Division of Human Rights or file a lawsuit in State Supreme Court within three years of the discriminatory action. The individual must choose between an administrative complaint or a court action because, once the case has been initiated in either forum, it cannot be brought in the other forum.⁷²

The state law permits an individual to recover compensatory damages, including out-of-pocket expenses, and compensation for mental anguish, emotional distress, and humiliation. In cases of housing discrimination, the NYSHRL permits an aggrieved person to be awarded compensatory and punitive damages. Punitive damages are capped at \$10,000.⁷³ The New York State Division of Human Rights can also assess civil fines and penalties in an amount not to exceed \$50,000, to be paid to the State by a respondent found to have committed an unlawful discriminatory act, or not to exceed \$100,000 to be paid to the State by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious.⁷⁴

With respect to cases of housing discrimination only, the commissioner or the court may in its discretion award reasonable attorney's fees to any prevailing or substantially prevailing party; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous.⁷⁵

5. City Human Rights Law

The New York City Human Rights Commission has concurrent jurisdiction with the New York State Division of Human Rights over housing discrimination claims within New York City.⁷⁶ Thus, an aggrieved individual may pursue an administrative complaint before either the New York State Division or New York City Commission (but not both), or file a civil action in state court. Administrative actions based on the City's law must be filed within one year of the alleged discriminatory act,⁷⁷ while actions filed directly in court must be filed within three years of the alleged discriminatory act.⁷⁸

When pursuing an action under the City's law, an aggrieved individual can seek compensatory damages, injunctive relief, and civil or criminal penalties. One advantage to utilizing the City law is that the housing provider may be required to pay for structural modifications that are needed to allow the person with disabilities to access his/her home, including ramps to front entrances, accessible parking spaces, or accessible laundry facilities.⁷⁹

6. New York State Civil Rights Law

A housing provider found guilty of violating Section 47-b (1) or (2) of the New York State Civil Rights Law two or more times within a two year period may be fined \$1,000.⁸⁰

7. New York City Building Code

The New York City Building Code contains no private right of action. However, complaints of building code violations may be made to the New York City Department of Buildings (DOB) which may result in an order by DOB that the building remain vacant until the requirements of the building code are met. Individual remedies must be sought under the various civil rights laws.

1. 29 U.S.C. § 794.
2. 42 U.S.C. § 12101 et seq.
3. See *Id.* § 3601 et seq.
4. N.Y. Exec. Law § 296.
5. N.Y.C. Admin. Code § 8-101 thru 8-131.
6. A private landlord would not include one that receives governmental financial assistance, or owns a residential building that was constructed with the use of government funding.
7. 42 U.S.C. § 3601(b); 24 C.F.R. § 100.10(c)(2); N.Y. Exec. Law § 296(2-a); N.Y. Exec. Law § 296(5)(a); N.Y.C. Admin. Code § 8-107(5)(a)(4).
8. 42 U.S.C. §3602(h)(1)-(3).
9. N.Y. Exec Law 292(21).
10. N.Y.C. Admin Code §8-102(16).
11. 42 U.S.C. § 3604(f)(9), 24 C.F.R. § 100.202(d).
12. 42 U.S.C. § 3604, N.Y. Exec. Law § 296(5) N.Y.C. Admin. Code § 8-107(5).
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Hirschman v. Hassapoyannes*, 811 N.Y.S. 2d 870 (2005) (NY Sup. Ct. NY County); *aff'd* 859 N.Y.S. 2d 150, (1st Dept. 2008).
18. 24 CFR 100.2020(c).
19. N.Y. Exec. Law §296.5(a)(3); N.Y.C. Admin. Code § 8-107(5)(a)(3).
20. *Cason v. Rochester Housing Authority*, 748 F. Supp. 1002 (W.D.N.Y. 1990).
21. *Id.*
22. 29 U.S.C. § 794, 24 and C.F.R. §§8.24, 8.25; *Alexander v. Choate*, 469 U.S. 287, 300 n.20 (1985); *Duco v. Goldschmidt*, 687 F.2d. 644, 649 (2d Cir. 1982).
23. 24 C.F.R. § 8.24.
24. *Rivera v. NYCHA*, 94 Civ. 4366 (PKL)(S.D.N.Y. 1995).
25. 42 U.S.C. § 3604(f)(3); 24 C.F.R. § 100.203; N.Y. Exec. Law § 296(18). The New York State Human Rights Law requires that such reasonable modifications conform with the requirements of the New York State Uniform Fire Prevention & Building Code.
26. N.Y.C. Admin. Code § 8-107(15).

27. *United Veterans Mut. Hous. No. 2 Corp. v. New York City Comm. on Human Rights*, 616 N.Y.S.2d 84 (App. Div. 2nd Dept. 1994).
28. *Torres v. Prince Management Corp. et al.*, Oath Index #301/98, (August 14, 1997), aff'd sub nom. *Prince Management Corp v. Varela*, N.Y.L.J., July 29, 1998 at 22, col. 5 (Sup. Ct. N.Y.Co.).
29. *New York City Comm'n on Human Rights ex rel. Ronnie Ellen Raymond v. 325 Cooperative, Inc. and Board of Directors, 325 Cooperative Inc.*, Index No. 1423/98, 1999 WL 156021 (N.Y.C. Comm. Hum. Rts. Jan. 12, 1999), aff'd, 1999 WL 152526.
30. *John Rose v. Co-op City of New York d/b/a/ Riverbay Corporation and Vernon Cooper*. OATH Index No. 1831/10. Those interested in this matter should track the appeal to Bronx Supreme Court under Index No. 260832/10 (Brigantti-Hughes, J.).
31. 825 N.Y.S. 2d 28 (1st Dept. 2006).
32. 42 U.S.C. § 3604(f)(3)(b); N.Y. Exec Law § 296(18)(2); N.Y.C. Admin. Code §8-107(15).
33. 24 C.F.R. § 100.204(b); *Bronk v. Ineichen*, 54 F. 3d 425 (7th Cir. 1995).
34. *Shapiro v. Cadman Towers, Inc.*, 844 F. Supp.116 (E.D.N.Y. 1994), aff'd, 51 F.3d 328 (2d Cir. 1995).
35. *Lindsay Park Housing Corp .v. New York State Division of Human Rights*, 866 N.Y.S. 2d 771 (2d Dept. 2008).
36. *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413 (9th Cir. 1994).
37. H.R. Rep. No. 100-711, at 24 (1988).
38. *Stewart B. McKinney Foundation, Inc. v. Town Plan & Zoning Comm'n*, 790 F. Supp 1197 (D. Conn. 1992).
39. *Regional Economic Community Action Program Inc. v. City of Middletown*, 294 F.3d 35,(2nd Cir. 2002). *United States v. City of Satsuma, Alabama*, (S.D. Ala.), Civil Action No. 1:08-CV-00242-KD-C (n.o.s.). The United States Justice Department settled a lawsuit against the city of Satsuma, Ala., and the city's Board of Adjustment, alleging housing discrimination against individuals with disabilities. Under the consent decree, which was approved by the U.S. District Court for the Southern District of Alabama on Sept.16, 2010, the city agreed to pay \$59,000 in damages to the operator of a group home for three women with intellectual disabilities and the trustees of the three residents, as well as a \$5,500 civil penalty to the government. As part of the settlement, the city also adopted amendments to its zoning ordinance and business license law that: Establish a reasonable accommodation policy by which a resident with a disability, or a housing provider on behalf of a resident with a disability, may seek a reasonable accommodation from the city; Modify the zoning ordinance's definition of "family" to expressly provide that people with disabilities, including residents of group homes, will not be excluded from the definition, regardless of whether the group home is for-profit or non-profit; Require city officials to issue a business license when it is necessary to effectuate reasonable accommodations under the city's mew policy; and Include a category for group homes in the city's business license law.
40. *Larkin v. State of Michigan Dep't of Soc. Servs.*, 89 F.3d 285 (6th Cir. 1996); *Horizon House Dev. Servs., Inc.*, 804 F. Supp. 683; *ARC of NJ Inc. v. State of NJ*, 950 F. Supp. 637 (D.N.J. 1996); *U.S. v. City of Chicago Heights*, 161 F. Supp. 2d 819 (N.D. Ill. 2001). *But see, Forest City Daly Hous., Inc. v. Town of N. Hempstead*, 175 F.3d 144 (2d Cir. 1999).
41. *Dadian v. Village of Wilmette*, 269 F. 3d 831 (7th Cir. 2001).
42. 24 C.F.R. § 8.22.
43. 24 C.F.R. § 100.205.
44. *U.S. v. Hartz Construction*, 1998 U.S. Dist. LEXIS 97; *Doering v. Pontarelli Builders*, 2001 U.S. LEXIS 18842.

45. *Baltimore Neighborhoods Inc., v. Rommel Builders*, 3 F. Supp. 2d 661 (D. Md. 1998); *Baltimore Neighborhoods, Inc. v. LOB, Inc.*, 92 F. Supp. 2d 456 (D. Md. 2000).
46. N.Y. Exec. Law §296.18(3).
47. N.Y.C. Admin. Code § 27-292.8.
48. 24 C.F.R. § 8.23.
49. N.Y. Civ. Rights Law § 47.
50. N.Y. Civ. Rights Law § 47-b(2).
51. N.Y. Civ. Rights Law § 47-b(4).
52. N.Y. Exec Law §296.31.
53. N.Y. Exec Law §296.32.
54. N.Y. Exec Law §296.33.
55. N.Y. Exec. Law. §296.2-a(d) & § 296.18 .
56. *One Overlook Avenue Corp. v. N.Y. State Div. of Human Rights* , 777 N.Y.S. 2d 696 (2d Dept. 2004), lv. denied 806 N.Y.S.2d 165; *Kennedy Street Quad v Nathanson*, 879 N.Y.S. 2d 197 (2d Dept. 2009); *105 Northgate v. Donaldson*, 863 N.Y.S.2d 469 (N.Y. App. Div. 2d Dept. 2008); *One Overlook Ave. Corp. v. New York State Division of Human Rights*, 777 N.Y.S. 2d 696 (N.Y. App. Div. 2nd Dept. 2004).
57. N.Y. Gen. Bus. Law § 352-eeee.
58. Id.
59. N.Y. Gen. Bus. Law § 352-eee.
60. N.Y.C. Admin. Code § 26-511.
61. N.Y.C. Admin. Code § 26-408, N.Y. Unconsol. Laws Ch. 249 § 5.
62. N.Y. Unconsol. Laws Ch. 249 § 5; *Rent Stabilization Ass'n v. Higgins*, 630 N.E. 2d 626 (1993).
63. 24 C.F.R. § 8.56.
64. 29 U.S.C. § 794.
65. 42 U.S.C. § 3610.
66. See Id. § 3610(g).
67. See Id. § 3610(f).
68. See Id. § 3612.
69. 42 U.S.C. § 3613.
70. 28 C.F.R. § 35.170.

71. 28 C.F.R. § 35.175.

72. N.Y. Exec. Law § 297.

73. N.Y. Exec. Law §297(4)(c)(iii)-(iv).

74. N.Y. Exec. Law §297(4)(c)(vi).

75. N.Y. Exec. Law §297(10).

76. N.Y. Gen. Mun. Law § 239-s; *Hurwitz v. New York City Comm'n on Human Rights*, 142 Misc. 2d 214, 221, 535 N.Y.S. 2d 1007, 1012 (1988).

77. N.Y.C. Admin. Code § 8-109.

78. N.Y.C. Admin. Code § 8-502.

79. *United Veterans Mut. Hous. No. 2 Corp. v. New York City Comm. on Human Rights*, 616 N.Y.S. 2d 84 (App. Div. 2nd Dept. 1994); *Torres v. Prince Management Corp. et al.*, Oath Index #301/98, (August 14, 1997), *aff'd sub nom. Prince Management Corp v. Varela*, N.Y.L.J., July 29, 1998 at 22, col. 5 (Sup. Ct. N.Y.Co.); *New York City Comm'n on Human Rights ex rel. Ronnie Ellen Raymond v. 325 Cooperative, Inc. and Board of Directors, 325 Cooperative Inc.*, Index No. 1423/98, 1999 WL 156021 (N.Y.C. Comm. Hum. Rts. Jan. 12, 1999), *aff'd*, 1999 WL 152526.

80. N.Y. Civ. Rights Law § 47-c.