



Disability Rights in Housing

TOOLKIT

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WHAT LAWS PROTECT RESIDENTS WITH DISABILITIES?

The Fair Housing Amendments Act (FHA) protects people from discrimination when they are renting, buying, or securing financing for any housing. The prohibitions specifically cover discrimination because of race, color, religion, sex, familial status, national origin, and disability. 42 U.S.C. § 3601 et seq.

Section 504 of the Rehabilitation Act (Section 504) states that no qualified individual with a disability shall be “excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.” This includes housing that receives federal financial assistance. 29 U.S.C. § 794.

The Colorado Anti-Discrimination Act (CADA), like the FHA, protects people with disabilities from discrimination in housing practices, such as renting, selling, or leasing. Colo. Rev. Stat. § 24-34-501 et seq. However, CADA also provides protection from discrimination based on sexual orientation.

Title III of the Americans with Disabilities Act (ADA) offers protection from discrimination based on disability for people with disabilities. The law covers places of public accommodation that may exist in areas of housing, such as a leasing office open to the public or a public parking area. 42 U.S.C. § 12101 et seq.

WHAT IS A DISABILITY?

Under the civil rights protections listed above, the term *disability*¹ means:

- 1) A physical or mental impairment that *substantially limits* one or more of an individual’s major life activities; or
- 2) A *record of* such an impairment; or
- 3) Being *regarded as* having such an impairment.

42 U.S.C. § 3602(h).

¹ The FHA uses the term “handicap” rather than the term “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

1) Substantial Limitation: A physical or mental impairment that substantially limits one or more major life activities is not meant to be a demanding standard, but should instead be construed broadly in favor of expansive coverage. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. Major life activities include activities such as walking, breathing, and caring for oneself and also include major bodily functions, such as bladder and brain functions.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures (with the exception of “ordinary eyeglasses or contact lenses”). 42 U.S.C. § 12102(4)(E). For example, a person with an amputated leg would still be substantially limited in the major life activity of walking even though a prosthetic leg could significantly cure their limitations.

2) Record of Such an Impairment: The term “record of such an impairment” means you have a history of, or have a record of having, a mental or physical impairment that substantially limits one or more major life activities.

3) Regarded as Having Such an Impairment: To determine whether a person is regarded as having a disability, the focus for establishing coverage is on how a person has been *treated* based on a real or perceived impairment regardless of whether the person has an actual disability.

It is important to note that a person who is covered by the law because of being regarded as a person with a disability is not entitled to reasonable accommodations. Therefore, you must show that you have either an actual or record of disability in order to qualify for reasonable accommodations.

WHAT HOUSING IS COVERED BY THE FHA?

The FHA covers all housing *except*:

- Any single-family house sold or rented by an owner, unless such private individual owner owns more than three such single-family houses at any one time; or
- Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner maintains and occupies one of such living quarters as his residence (meaning duplexes, triplexes and quadraplexes if the owner lives in one of the units).

For more details, see 42 U.S.C. § 3603(b).

WHAT ARE MY RIGHTS AS A RESIDENT WITH A DISABILITY?

The FHA prohibits discrimination against individuals with disabilities. This means that in the sale or rental of housing, a covered person or entity may not take the following actions on the basis of race, color, national origin, religion, sex, familial status, or disability:

- Refuse to rent or sell housing;
- Refuse to negotiate for housing;
- Set different terms, conditions, or privileges for the sale or rental of a dwelling;
- Advertise any preference or limitation;
- Make housing unavailable;
- Deny a dwelling; or
- Deny anyone access to or membership in a facility or service related to the sale or rental of housing.

The FHA² also requires housing providers to make reasonable accommodations for individuals with disabilities and to allow individuals with disabilities to make reasonable modifications to a housing unit. Both of these are discussed in greater detail below.

Additionally, the FHA provides that it is illegal for anyone to threaten, coerce, intimidate, or interfere with anyone who is exercising a fair housing right or assisting others who are exercising that right. The FHA also protects residents from retaliation for having made a complaint, testifying, assisting, or participating in any manner in a proceeding under the FHA.

WHAT ARE REASONABLE ACCOMMODATIONS?³

Reasonable accommodations are changes, exceptions, or adjustments to a rule, policy, practice, or service that may be necessary for an individual with a disability to have an equal opportunity to use and enjoy a dwelling. A “nexus” between the requested accommodation and the resident’s disability must exist.

² Colorado has similar statutory law—the Colorado Anti-Discrimination Act—but for ease of reading, we will refer only to the FHA.

³ U.S. DEP’T OF JUSTICE AND U.S. DEP’T OF HOUSING JOINT STATEMENT: REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT (May 17, 2004), *available at* <http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf>

The housing provider will have to cover costs of any reasonable accommodation.

Example: *A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.*

The housing provider must grant the requested accommodation unless it would cause an undue financial burden on the housing provider or would fundamentally alter the nature of the provider's operations. This is a case-by-case determination, and the FHA suggests that the provider and the resident should engage in an interactive process to reach an agreement. If there is an undue burden or fundamental alteration with the requested accommodation but an alternative, reasonable accommodation would effectively meet the requester's disability-related needs, the provider must grant it.⁴

WHAT ARE REASONABLE MODIFICATIONS?⁵

Reasonable modifications are structural changes made to existing premises in order to afford a person with a disability full enjoyment of the premises. They include structural changes to the interior or exterior of dwellings and to common and public use areas. ***The resident is responsible for paying the cost of the modification.****

To show that a modification is necessary, there must be a nexus between the requested modification and the individual's disability. Modifications typically found to be reasonable include widening doorways to make rooms more accessible for persons who use wheelchairs; installing grab bars in bathrooms; and altering a walkway to provide access to a public or common use area. This list is not exhaustive.

⁴ U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING JOINT STATEMENT: REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT (May 17, 2004), available at <http://www.hud.gov/offices/fheo/library/hudjointstatement.pdf>

⁵ U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING JOINT STATEMENT: REASONABLE MODIFICATIONS UNDER THE FAIR HOUSING ACT (March 5, 2008), available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7502.pdf

*If the housing provider is a housing authority or a recipient of federal financial assistance (not including recipients of Low Income Housing Tax Credits and private owners accepting Section 8 vouchers), the housing provider must pay for reasonable modifications. HUD has posted further information at <http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm>

Example: *A resident, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the resident's disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the resident's expense.*

The resident is obligated to restore those portions of the interior of the dwelling to their previous condition only where "it is reasonable to do so" and where the housing provider has requested the restoration. In general, if the modification does not affect the housing provider's or subsequent resident's use or enjoyment of the premises, the resident cannot be required to restore the modification to its prior state.

WHAT IS THE PROCESS FOR REQUESTING REASONABLE ACCOMMODATIONS?

The FHA does not require a request for a reasonable accommodation to be made in any particular manner or at a particular time. A resident or applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. This request can be made by a family member or someone else who is acting on her behalf.

It is helpful to have the request made in writing. However, housing providers must give appropriate considerations to all reasonable accommodation requests, even if made orally.

WHAT MEDICAL INFORMATION MUST THE RESIDENT PROVIDE TO THE HOUSING PROVIDER?

If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also obvious or known, then the housing provider may not request any additional information. If the disability is known or obvious but the need for the accommodation is not, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example: *A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.*

For guidance on service and assistance animals in housing, please see “Resource Guide – Requirements for Service and Assistance Animals” available on our website.

If a person’s disability is not obvious and that person is requesting a reasonable accommodation, the housing provider may ask for disability-related information that:

1. is necessary to verify that the person has a physical or mental impairment that substantially limits one or more major life activities or a record thereof,
2. describes the needed accommodation, and
3. shows the relationship between the person’s disability and the need for the requested accommodation (called a “nexus”).

A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability may provide verification of a disability.⁶ Typically an individual’s medical records or detailed information about the resident’s disability is not necessary.

WHAT SHOULD I DO IF I BELIEVE I WAS DISCRIMINATED AGAINST?

If you suspect you have been the subject of housing discrimination, you may file a complaint with the Department of Housing & Urban Development (HUD) or with the Colorado Civil Rights Division (CCRD) **within one year** after the alleged denial. You may file a complaint with HUD/CCRD by phone, by mail, online (HUD), or in person (CCRD). Additionally or alternatively, you may file a lawsuit in court **within two years** of the alleged denial.

Make sure you are aware of deadlines for filing the charges. **Failure to file before the deadline may cause you to lose your right to file a claim or lawsuit.**

⁶ U.S. DEP’T OF JUSTICE AND U.S. DEP’T OF HOUSING JOINT STATEMENT: REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT, at 14, available at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

**WHERE CAN I FILE A CHARGE OF HOUSING DISCRIMINATION BASED ON
DISABILITY?**

**Colorado Civil Rights Division
(CCRD)**

1560 Broadway, Suite 1050
Denver, CO 80202
Phone: (303) 894-2997
Toll Free: (800) 262-4845
V/TTY: (711) 894-2997

askdora.colorado.gov (click Civil Rights) V/TTY: (303) 672-5248

There are satellite offices in Pueblo and Grand Junction, but all intakes must be initiated by contacting the Denver Office.

**U.S. Department of Housing and Urban
Development, Office of Fair Housing
and Equal Opportunity (HUD)**

1670 Broadway, 25th Floor
Denver, CO 80202
Phone: (303) 672-5437
Toll Free: (800) 877-7353

Complaints made to HUD regarding Colorado housing are often referred to CCRD for investigation.

HOW QUICKLY MUST I FILE IN ORDER TO PROTECT MY LEGAL RIGHTS?

If you are filing with **CCRD**, you must file within **1 year** from the date the discrimination occurred.

If you are filing with **HUD**, you must file within **1 year** from the date the discrimination occurred.

You do not need to and should not file with both agencies. However, to protect your legal rights to file an administrative complaint of discrimination, you **must** file with HUD or CCRD within these timeframes; failure to do so will result in your inability to file a claim with either agency.

If you are filing a private lawsuit, you must file within **2 years** from the date the discrimination occurred. You do not need to file with HUD or CCRD in order to file a private suit under the Fair Housing Act or the Colorado Anti-Discrimination Act.

WHAT IS THE PROCESS FOR FILING A CHARGE WITH HUD/CCRD?

As the charging party, you should be prepared to provide the who, what, when, where and how of the discrimination. For example, your charge should include:

- Your name, address, and telephone number;
- The name and address of the housing or property where the problem occurred;

- The property owner’s information, if known;
- The name, address, and telephone number of the person or company who discriminated against you; and
- The last date of alleged discrimination.

When you file a charge of disability discrimination with HUD or CCRD, you will be assigned a charge number. If your charge appears to appropriately allege discrimination, an investigator will be assigned and will have primary responsibility for handling your complaint. The housing provider that you filed a charge against will have the opportunity to respond to your statements alleging discrimination. Therefore, HUD or CCRD may request that you submit additional information related to your charge. You may be offered the chance to mediate with the housing provider, but mediation will occur only if you and the housing provider voluntarily agree to it.

After the claim has been investigated, HUD/CCRD will determine if there is “reasonable cause” to substantiate discrimination and may initiate further agency action. If HUD/CCRD finds there is “no reasonable cause” to substantiate discrimination, HUD/CCRD will close the case and you may file your complaint of discrimination in court. If HUD/CCRD finds that there is “reasonable cause,” they may choose to pursue a civil action against the housing provider in front of an Administrative Law Judge.

During the investigation, the 2-year deadline for filing a private lawsuit is tolled, allowing you to file a case in court after the investigation is completed, if you so decide.

For additional information on this process, visit:

- <https://www.colorado.gov/pacific/dora/civil-rights/filing-a-charge> (CCRD), and
- <https://portal.hud.gov/hudportal/HUD?src=/programoffices/fairhousing/equalopp/complaint-process> (HUD)

Housing Lawyer Referral List

The attorneys listed below have identified themselves as having knowledge of housing law and an understanding of disability.

Disability Justice neither receives nor pays any compensation from/to these attorneys for their placement on this list.

Hernandez and Associates

1801 York Street

Denver, CO 80206

(303) 536-5134

<https://www.hdezlaw.com/civil-rights-law/>

Specialties: Employment Law, Civil Rights, Housing Discrimination

Rathod | Mohamedbhai LLC

2701 Lawrence St

Denver, CO 80205

(303) 578-4400

<http://www.rmlawyers.com>

Specialties: Civil Rights, Disability Discrimination, Employment Law

Highlands Law Firm

501 South Cherry Street

11th Floor

Denver, CO 80246

(720) 722-3880

<https://www.highlandslawfirm.com/>

Specialties: Civil Rights, Disability Discrimination

Eric Maxfield Law LLC

3223 Arapahoe Ave, Ste 300

Boulder, CO 80303

(303) 502-7849

<https://ericmaxfieldlaw.com/>

Specialties: Employment Law, Housing Law, Civil Rights

Internet Resources

Department of Justice

- U.S. Department of Justice: www.justice.gov
- Housing and Civil Enforcement: <https://www.justice.gov/crt/housing-and-civil-enforcement-section>

Department of Housing and Urban Development

- HUD: <https://portal.hud.gov/hudportal/HUD>
- HUD Colorado: <https://portal.hud.gov/hudportal/HUD?src=/states/colorado>
- Disability Rights in Housing:
<https://portal.hud.gov/hudportal/HUD?src=/programoffices/fairhousing/equalopp/disabilities/inhousing>

Colorado Civil Rights Division

- CCRD: <https://www.colorado.gov/pacific/dora/civil-rights/housing-discrimination>

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**Sample Letter Requesting a Reasonable
Accommodation from Your Housing Provider**

[Date]

Mr. / Ms. **[Name of Building Manager]**
[Housing Provider Name]
[Address]

Dear Mr. / Ms. **[Name of Building Manager]**:

I live at **[address]** in **[unit number]** and have lived there since **[date]**. I am a qualified individual with a disability, as defined by the Fair Housing Amendments Act of 1988.

Our building's rules state **[insert rule you wish to have an exception to]**. Because of my disability, I need the following accommodations: **[list accommodations]**. Please let me know what, if any, additional information you need in order to better understand my disability and the limitations it imposes.

Under the Fair Housing Amendments Act, it is unlawful discrimination to deny a person with a disability a reasonable accommodation of an existing building rule or policy if such accommodation may be necessary to afford such person full enjoyment of the premises.

If you have any questions about my request, you can contact me in writing or by phone. However, I ask that you respond in writing to this request within two weeks of the date of this letter. Thank you very much.

Sincerely,
[Your name]
[Your full address]
[Your phone number]

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