

American Jurisprudence, Second Edition

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E. Ytreberg, LL.B.**IX. Discrimination In Housing****A. Rights and Liabilities****1. Fair Housing Act****b. Acts Prohibited**

Topic Summary; Correlation Table; References

§ 393. Discrimination in sale or rental terms and services--Reasonable accommodation requirements

The Fair Housing Act provisions prohibiting discrimination on the basis of handicap in the purchase or sale of, or provision of services to, properties [FN94] affirmatively require reasonable accommodations for residences of the handicapped,[FN95] including newly-built group homes.[FN96] The statute does not, however, require reasonable accommodation for health care facilities. [FN97] The duty of reasonable accommodation for handicapped persons, under the Fair Housing Amendments Act, is confined to rules and policies that hurt handicapped people by reason of their handicap, rather than those that hurt them solely by virtue of what they have in common with other people, such as a limited amount of money to spend on housing.[FN98] Reasonable accommodation requirements apply to municipalities, as well as to health, safety, and land use regulations and policies.[FN99]

Practice Guide:

With respect to the interpretation of the phrase "reasonable accommodation," as used in 42 U.S.C.A. § 3604(f)(3)(B), a district court properly relies on the case law developed under 29 U.S.C.A. § 794, rather than on the more restrictive standard of religious accommodation developed under Title VII of Civil Rights Act of 1964.[FN1]

Recommendation:

If a landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide accommodation to the tenant's disability in rules, policies, practices, and services pursuant to the Fair Housing Act (FHA), it is incumbent upon the landlord to request documentation or open dialogue to avoid liability under the FHA for refusing to provide such accommodation.[FN2]

However, an apartment complex's participation in the Section 8 housing program cannot be deemed an "accommodation" required under the Fair Housing Amendments Act (FHAA) provision proscribing housing discrimination against disabled individuals, regardless of reasonableness, because the FHAA addressed accommodation of disabilities, not economic disadvantages.[FN3]

Under 42 U.S.C.A. § 3604(f)(3)(B), landlords may be required to assume reasonable financial burdens in accommodating handicapped residents.[FN4]

CUMULATIVE SUPPLEMENT**Cases:**

City intentionally discriminated against group home for recovering alcoholics and drug addicts based on disabil-

ity, in violation of Fair Housing Amendments Act (FHAA) and Americans with Disabilities Act (ADA), by seeking to enforce certain zoning regulations and require alterations in effort to reduce number of home's residents; neighborhood residents had history of hostility toward group home and had put pressure on mayor and other city officials, city rarely took enforcement actions against boarding houses in residential neighborhoods, city failed to acknowledge letters from home's operator explaining home's policies and procedures, and other evidence of bias existed. *Tsombanidis v. West Haven Fire Dept.*, 352 F.3d 565 (2d Cir. 2003).

Congress acted within its Commerce Clause authority in enacting provision of Fair Housing Amendments Act (FHAA) requiring reasonable accommodations in rules to afford handicapped persons equal opportunities to rent or buy dwellings; sale or rental of residential housing was economic/commercial activity, Congress manifested intent to prohibit discrimination in national housing market, legislative action resulting in passage of provision recognized pattern of discrimination affecting interstate housing market, connection between provision and interstate commerce was not too attenuated, and it would not serve federalism to allow local communities to discriminate against disabled persons. *Groome Resources Ltd., L.L.C. v. Parish of Jefferson*, 234 F.3d 192 (5th Cir. 2000).

Landlord was not required under Fair Housing Act to accommodate tenant suffering from depression and schizophrenia by moving him or his upstairs neighbor to another apartment within complex following numerous complaints by neighbor about tenant's incessant yelling, screaming, and door slamming, where neighbor refused to move, and it was likely that tenant's behavior would have disturbed whomever was neighboring tenant. *Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039 (6th Cir. 2001).

Request by limited-mobility tenant on top floor of walk-up apartment building, that landlord accommodate her by permitting her to move to ground-floor apartment in same building, was within scope of potential accommodations under Fair Housing Act Amendments (FHAA); Act's definition of "dwelling," applicable to FHAA's requirement for accommodation of handicapped person "to afford such person equal opportunity to use and enjoy a dwelling," extended to entire building, and request comported with purpose of FHAA to make housing broadly available to disabled persons. *Bentley v. Peace and Quiet Realty 2 LLC*, 367 F. Supp. 2d 341 (E.D. N.Y. 2005).

Fair Housing Act Amendments (FHAA) accommodation requested by limited-mobility tenant on top floor of rent-stabilized walk-up apartment building, that landlord permit her to move to ground-floor apartment in same building, was within FHAA's scope of potential accommodations even though tenant requested that she pay same rent in new apartment as in old one rather than higher amount permitted by law; requested accommodation was framed by nature of tenant's handicap, i.e. tenant sought accommodation that directly related to her handicap, and cost to landlord in being unable to charge higher rent for new apartment presented fact question as to reasonableness of that accommodation. *Bentley v. Peace and Quiet Realty 2 LLC*, 367 F. Supp. 2d 341 (E.D. N.Y. 2005).

With regard to enforcement against mentally disabled public housing tenants, waiver or modification of drug use prohibitions was beyond the scope of the reasonable accommodation/modification requirements imposed on New York City Housing Authority (NYCHA) by Rehabilitation Act, Americans with Disabilities Act (ADA), and Fair Housing Amendments Act (FHAA). *Blatch ex rel. Clay v. Hernandez*, 360 F. Supp. 2d 595 (S.D. N.Y. 2005).

City's denial of conditional use application to allow construction of residential treatment facility for recovering drug addicts and alcoholics in residentially zoned area violated provision of Fair Housing Act (FHA) requiring municipalities to provide reasonable accommodations to handicapped persons; there was a great need for group facility to be located in residential neighborhood so that recovering individuals could re-integrate into community, there was no other facility within the city, and city had based its denial solely on complaints of neighborhood residents. *Corporation of Episcopal Church in Utah v. West Valley City*, 119 F. Supp. 2d 1215 (D. Utah 2000).

No reasonable accommodation would diminish direct threat to health and safety of other tenants that handi-

capped tenant posed, and thus eviction of tenant was permitted under Fair Housing Amendments Act (FHAA), where property manager, who had extensive experience with handicapped tenants, testified that she did not believe any reasonable accommodation would reduce risks, and tenant's evidence regarding possible accommodations dealt only with parking and controlled access door issues, but made no mention of any accommodations that would minimize threat he posed to other tenants due to emotional outbursts, verbal threats, nude appearance, and other offensive conduct. Civil Rights Act of 1968, § 804(f), as amended, 42 U.S.C.A. § 3604(f); SDCL 21-16-1. *Arnold Murray Const., L.L.C. v. Hicks*, 2001 SD 7, 621 N.W.2d 171 (S.D. 2001).

Under Fair Housing Amendments Act (FHAA), Congress did not intend accommodations for a handicapped tenant to be attempted or implemented if there is no reasonable expectation that the accommodation will protect the other tenants from the risks to health and safety posed by the handicapped tenant, and thus if a handicapped tenant is a direct threat to the health and safety of other tenants, the landlord is obligated to either reasonably accommodate the tenant's handicap or show that no reasonable accommodation will eliminate or acceptably minimize the risk posed. Civil Rights Act of 1968, § 804(f), as amended, 42 U.S.C.A. § 3604(f). *Arnold Murray Const., L.L.C. v. Hicks*, 2001 SD 7, 621 N.W.2d 171 (S.D. 2001).

Federal Fair Housing Act (FFHA) requires accommodation for persons with handicaps if accommodation is reasonable and necessary to afford handicapped persons equal opportunity to use and enjoy housing. Civil Rights Act of 1968, §§ 801-901, as amended, 42 U.S.C.A. §§ 3601-3631. *In re Kenna Homes Co-op. Corp.*, 210 W. Va. 380, 557 S.E.2d 787 (2001).

[END OF SUPPLEMENT]

[FN94] §§ 391, 392.

[FN95] 42 U.S.C.A. § 3604(f)(3), (4).

[FN96] 42 U.S.C.A. § 3604(f)(3)(C).

[FN97] *Gamble v. City of Escondido*, 104 F.3d 300, 19 A.D.D. 740 (9th Cir. 1997).

A Court of Appeals must view the reasonable accommodations requirement of the Fair Housing Amendments Act (FHAA) in light of the countervailing legislative concerns of assisting the handicapped and the need to impose reasonable boundaries in accomplishing that purpose, keeping in mind the principle that satisfaction of the FHAA's reasonable accommodation requirement can and often will involve some costs. *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 17 A.D.D. 817 (3d Cir. 1996) (denial of conditional use permit requested by nursing home developer).

[FN98] *Hemisphere Bldg. Co., Inc. v. Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999).

[FN99] *San Pedro Hotel Co., Inc. v. City of Los Angeles*, 159 F.3d 470 (9th Cir. 1998).

The conclusion of the district court that a township satisfied the FHA's mandate that "reasonable accommodations" be provided to handicapped persons, when the township authorized nursing home construction within its hospital support zone, but denied a variance to build a nursing home in a residential zone, was clear error, where no evidence supported the claim that nursing homes were out of place in residential zones, and planned residential retirement communities were permitted in the residential zone. *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 17 A.D.D. 817 (3d Cir. 1996).

But the reasonable accommodation provision of the Fair Housing Amendments Act did not require the court to balance the interest of a village in adhering to its zoning ordinance against the interest of handicapped people in be-

ing able to obtain affordable housing, in a developer's action alleging that a zoning requirement which would make housing more expensive to the handicapped was unlawful under the Act, since the requirement at issue would raise cost of housing for anyone. *Hemisphere Bldg. Co., Inc. v. Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999).

[FN1] *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 9 A.D.D. 547, 148 A.L.R. Fed. 709 (2d Cir. 1995) (parking policies).

[FN2] *Jankowski Lee & Associates v. Cisneros*, 91 F.3d 891, 19 A.D.D. 619 (7th Cir. 1996), as amended, (Aug. 26, 1996) (parking policies).

[FN3] *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998).

[FN4] *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293 (2d Cir. 1998); *U.S. v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 6 A.D.D. 175 (9th Cir. 1994), appeal after remand, 107 F.3d 1374, 20 A.D.D. 658, 36 Fed. R. Serv. 3d 1176 (9th Cir. 1997).

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