

Reasonable Accommodations

According to the
Virginia Fair Housing Law

Disabilities

Under the Virginia Fair Housing Law

Part 1

In the community of people with disabilities...

- ...there is a phrase that is used to bring people's attention to a fate that is often inevitable. According to Annaham's Disability 101 Blog, that term used to get the attention of listeners by activists for those with disabilities is:
 - *"AB" is an abbreviation for able-bodied; "TAB" is a slightly more to-the-point abbreviation meaning "Temporarily Able-Bodied." TAB refers to the inevitable—namely, that most of us will face disability at some point in our lives; whether it comes sooner or later varies depending upon one's circumstances.*



Most people move to a neighborhood...

- ...then find services.



While some are expected to find services...

- ...then find housing!



Fair Housing Law

- **Federal Fair Housing Act Of 1968**
- **Virginia Fair Housing Law - 1972**



The Fair Housing Act

- The Fair Housing Act protects people from discrimination when they are renting, buying, or securing financing for any housing. The prohibitions specifically cover discrimination because of race, color, national origin, religion, sex, **disability** and the presence of children.



The Virginia Fair Housing Law (§ 36.96.1)

It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of

- race,
- color,
- religion,
- national origin,
- sex,
- elderliness,
- familial status,
- or handicap,

and to that end to prohibit discriminatory practices with respect to residential housing by **any person or group of persons**, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.



The Most Misunderstood of the Protected Classes under VFHL

DISABILITY

Disability Complaints in 2015

55%



Mental Disabilities

- Approximately 1 in 5 adults in the U.S. – 43.8 million or 18.5% experiences mental illnesses in a given year.
- Approximately 1 in 25 adults in the U.S. – 10 million or 4.2% experience a serious mental illness in a given year that substantially interferes with or limits one or more major life activities.

What laws address Disability?

- ADA – Americans with Disabilities Act
- FHA – Fair Housing Act
- VFH – Virginia Fair Housing Law, &
- **Section 504 of the Rehabilitation Act of 1973**
(for federally funded properties)



The Use of the Term “Disability” v. “Handicap”

- Though some laws use the word “handicap”, the term “disability” in the ADA draws the same definition verbatim as “handicap”. The term “disability” is more acceptable.



Fair Housing Protection

AGAINST DISABILITY
DISCRIMINATTION



Dissecting the...

DEFINITION OF DISABILITY

The definition of disability...

- (i) a physical or mental impairment that substantially limits one or more of such person's major life activities;
- (ii) a record of having such an impairment;
- Or, (iii) being regarded as having such an impairment.

Under the fair housing law

- The definition of handicap (disability) is very broad
(<http://www.talentmgt.com/articles/the-broadening-definition-of-disability>)
- A specific diagnosis of mental disorder is not necessary
- If a resident is perceived as having a disability, it triggers FH protection against discrimination.

Another indicator that a resident has a disability...

- If a resident (**under age 65**) is receiving SSI or SSDI benefits, in most cases, that is enough to meet the definition of disability.



DISABILITIES

**WHO IS PROTECTED UNDER THE
FAIR HOUSING LAW?**

THE FAIR HOUSING PROTECTION AGAINST DISABILITY DISCRIMINATION

- Covers not only home seekers with disabilities but also buyers and renters without disabilities, living with or associated with individuals with disabilities .



The protection under the FHA...

- ... applies not only to the homeowner or identified lessee, it also applies to the denial of housing opportunities to applicants with children, parents, friends, spouses, roommates, patients, subtenants, or any others associated, who have disabilities.

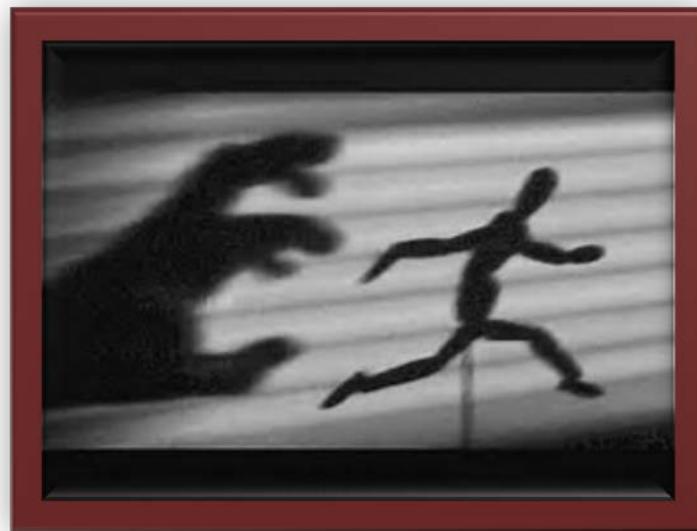
REMINDER!

The protection covers all individuals including children!



The Fair Housing Act

- Does not allow for exclusion of individuals from housing based on fear, speculation or stereotype about a particular disability or person with disabilities in general.



Are there any groups that are NOT protected under “disability”?

- Juvenile offenders and sex offenders, by virtue of that status, are **not** persons with disabilities protected by the Act.



Housing That Is Covered

Under the Virginia Fair Housing Law

What entities may be subjected to regulations under several laws?

- Public Housing
- Some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and
- Housing at places of education.

Are there any housing providers who are not required to follow the law?

- Yes!!!



Virginia Fair Housing Law Exemptions (§ 36-96.2)

- An owner with three (3) or less single family homes.
- An owner residing in an “owner occupied” building consisting of 4 units or less (Mrs. Murphy).
- An owner of a single family home rented or sold without the use of a real estate agent or broker.

Exemptions (cont'd)

- Religious organizations (non-public) housing, without discriminating based on race, color, national origin, sex, familial status, **handicap** & elderliness.
- Educational institutions (housing) exempt from sex/gender discrimination.
- Elderly communities are exempt from “familial status” discrimination.

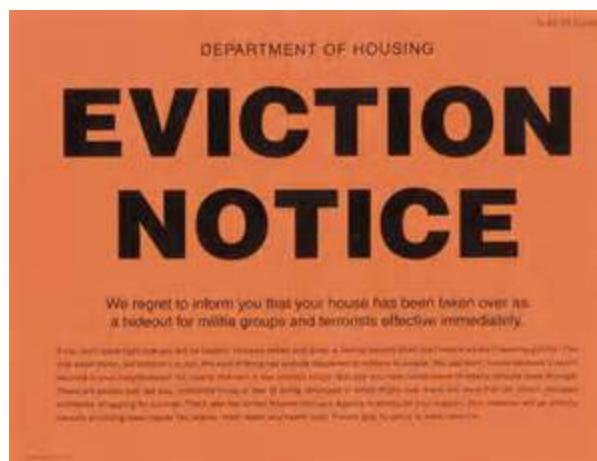
Virginia Fair Housing Law Exemptions (§ 36-96.2)

It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.



Evicting a Tenant with Disabilities

If you're a housing provider and one of your tenants violates his/her lease, and if you **know or suspect** that they have a disability, you may not automatically evict the tenant. As a housing provider, before you evict any tenant with a disability, you must first ask him/her if there is an accommodation that you can make that would alleviate or modify the behavior that caused the lease violation.



Tenants Giving You The Runaround?



The Virginia Fair Housing Law & People with Disabilities -

REASONABLE ACCOMMODATIONS

Reasonable Accommodations

Disability laws state the following in reference to reasonable accommodations:

- **The Virginia Fair Housing Law:** Changes in rules, policies, practices, or services that are necessary for a person with a disability to have an equal opportunity to “use and enjoy” housing
- **Section 504:** (*applies to federally funded property*) Changes to rules or policies AND structural changes that are necessary for a person with a disability to “use and enjoy” housing.

Rationale Behind Reasonable Accommodations

- Because rules, policies, services, and practices, when applied across the board may have a different effect on people with disabilities than on others, treating those with disabilities exactly the same, would result in the denial of their right to have “equal opportunity to use and enjoy housing”.

A “Reasonable Accommodation” – simply stated is...

- A **CHANGE, EXCEPTION OR ADJUSTMENT** TO ANY RULE, POLICY SERVICE OR PRACTICE to ensure equal use and enjoyment of housing for people with disabilities.



REASONABLE ACCOMMODATIONS

FINANCIAL RESPONSIBILITIES

\$\$\$\$The Million Dollar Question \$\$\$

- Who pays for the Reasonable Accommodations requested by the residents?



Who is financially responsible for providing Reasonable Accommodations?

- “The courts have ruled that if there is some cost involved in providing the reasonable accommodation, that cost would be incurred by the housing provider... as long as the request does not cause a financial burden.”



Private v. Federally Funded Properties

- **On Federally Funded Properties:**
 - All changes, whether paper or structural are considered “Reasonable Accommodations” due to the stricter Section 504 of the 1973 Rehabilitation Act.
- **On Privately Funded Properties:**
 - Structural Changes are considered “Reasonable Modifications”.

REASONABLE ACCOMMODATIONS

On private properties include:

- Reserved” Parking Spaces
- Assistance, Emotional Support and Companion Animals
- Additional Rooms for Medical Equipment
- Requests for a Ground Floor Unit
- Strobe lighted Smoke Detectors and/or Doorbell
- Live-in Aides
- Doorknobs



On Federally Funded Properties include:

- All of the “paper” changes offered on private properties, plus any requested structural modifications that will give the resident equal use of housing.



Disabilities

Under the Virginia Fair Housing Law

Part 2

The Need for Verification of a Disability

According to the Joint Statement on
Reasonable Accommodations

According to the Joint Statement on Reasonable Accommodations ('cont'd)

In a response to a request for an accommodation, if the disability is not obvious,

- A housing provider may request reliable disability-related information that
 - (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities),
 - (2) describes the needed accommodation,
 - and (3) shows the relationship between the person's disability and the need for the requested accommodation.

Reliable Sources Named in the Joint Statement

- A doctor or 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 also provide verification of a disability.
- *In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.*

Can a housing provider deny a Reasonable Accommodation?



A Reasonable Accommodation request may be denied if:

- The request was not made by or on behalf of a person with a disability or if there is no disability related need for the accommodation, or
- A request for a reasonable accommodation is not reasonable

Not Reasonable or Unreasonable Accommodations

A request for a reasonable accommodation may be rejected if it is unreasonable:

- The test under both the VFH law and Section 504 is whether the accommodation would pose an undue financial and administrative hardship *OR*;
- The accommodation would fundamentally alter the nature of the program.
 - “Fundamentally Alter the Nature of the Program” means the resident requests something outside the scope of the program’s mission or undermines the reason for the program’s existence.

Important Reminders

- Requests for “Reasonable Accommodations” should be treated on a “case by case” bases.
- A careful consideration of some factors need to be taken into consideration, such as:
 - the cost of the requested accommodation,
 - the financial resources of the provider,
 - the benefits that the accommodation would provide to the requester, and
 - the availability of alternative accommodations that would effectively meet the requester's disability-related needs.



THE MOST REQUESTED REASONABLE ACCOMMODATIONS

ASSISTANCE, EMOTIONAL SUPPORT AND COMPANION ANIMALS

According to the law, what can a provider do before granting an individual's request for an assistance animal?

The housing provider may ask the following questions:

- (1) Does the person seeking to use and live with the animal have a disability — *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

Assistance Animals



Life with an Assistance Animal

- <http://www.bing.com/videos/search?q=judy+with+sophie+the+service+monkey+video&&view=detail&mid=1B395EE88A862AAB5A131B395EE88A862AAB5A13&FORM=VRDGAR>



Assistance, Emotional Support and Companion Animals

- Pay no deposit or rent.
- No specialized training, certificate is required. (Only verification that animal provides a “necessary” service related to the resident’s disability.)
- They can be any size, breed or weight.
- Must not be a threat to other residents or property.
 - *“A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct — not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused.”*

The Insurance Companies and “Vicious Breeds”



**NO VICIOUS BREEDS
ALLOWED**



Assistance, Emotional Support and Companion Animals (cont'd)

- Requires residents to follow “pet rules” that may include: noise control, leash, license, shot records, clean up after.
- Resident must have control of and take care of the animal.
- Residents are responsible for damages to property.



Document! Document! Document!

Thorough documentation help protect housing and shelter providers from allegations of misconduct, it also helps provide residents and guests with a sense of fairness and equity.

- Under the Virginia Fair Housing Law, a person has one(1) year or **365** days to file a complaint, and two (2) years or **730** days to file a lawsuit.



Fair Housing Settlements and Judgments

- The sky is the limit!



Recent Fair Housing Coach Published

DISABILITY CASES

Oklahoma Landlords Charged with Discriminating Against Disabled Veteran

In early February, HUD announced that it has charged the landlords of a rental home in Oklahoma with violating fair housing law by denying the reasonable accommodation requests of a resident, a veteran with disabilities.

The case came to HUD's attention when a combat veteran with a mental disability filed a complaint against the owners of the house he was renting for refusing to waive their pet deposit fee for his emotional support animal. According to HUD's charge, the resident provided the owners and management company with medical documentation attesting to his need for the animal, but they denied his request to waive a \$250 pet deposit. HUD's charge will be heard by an administrative judge unless any party elects to take the case to court.

Property Manager Accused of Discriminating Against Prospects with Disabilities

HUD Administrative Law Judge recently ruled against a Minnesota property manager accused of refusing to rent to prospects because of their disabilities. The judge ordered the manager to pay \$27,000 to the prospects, \$16,000 as a civil penalty, and \$1,000 in other court sanctions.

The ruling stems from a HUD charge, filed last year, accusing the property manager of violating fair housing law by making discriminatory statements to the prospect and her roommate, and refusing to rent to them because they have mental disabilities.

The complaint alleged that the prospect tried to rent a single family home for herself and a roommate, each of whom had mental disabilities. Before the manager knew about their disabilities, she said that he agreed to rent them the home and gave them a key. She said she went to the home, along with her parents and roommate, to give him a security deposit and begin the process of moving in, but the manager allegedly said that they couldn't rent the property because of their disabilities. Among other things, he allegedly said that the owner "did not want a bipolar in the house."

Reminder...

- **FAIR HOUSING IS NOT AN OPTION... IT IS THE LAW!**



Presenter



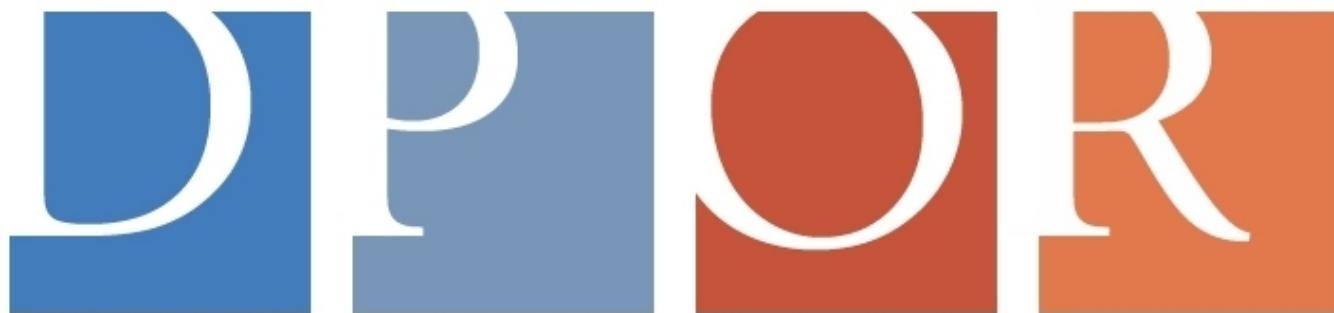
Mahalia I. Dryden-Mason aka MALLY

Fair Housing Training Specialist

Mally.Mason@dpor.virginia.gov

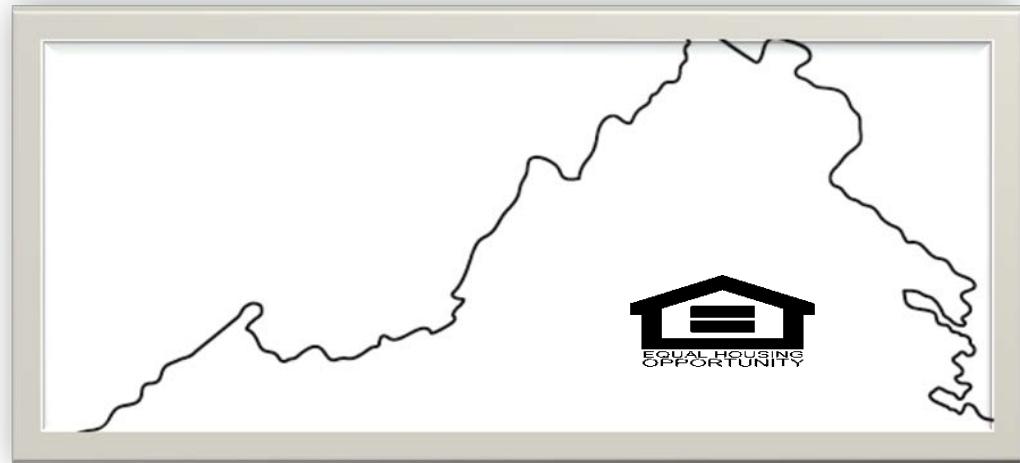
(804) 367-4873

Agency



Department of Professional and Occupational Regulation

**The Virginia Fair Housing Law
protects you – but you must report illegal
or unfair housing practices!**



1-888-551-FAIR (3247)

Please Note!

This presentation is a personal interpretation regarding the provisions of and protections in the Virginia Fair Housing Law and Federal Fair Housing Act. It is a working and ever-evolving product tailored for personal use by the presenter. The information contained in and presented during the presentation is not to be construed as legal advice or instruction issued by the Virginia Fair Housing Office, the Department of Professional and Occupational Regulation or the Commonwealth of Virginia. Therefore, use by other persons, groups or agencies is not advised.

(MIDM – Created 3-2017)