



**Disability Discrimination Audit
of the Housing Market of
Newton, Massachusetts**

FINAL REPORT

January, 2006

The Protection and Advocacy System for Massachusetts



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EXECUTIVE SUMMARY

Findings Overview

DLC's Disability Discrimination Audit of the Newton, Massachusetts housing market revealed significant barriers to equal housing opportunities for individuals with disabilities across all disability categories. Compared to home seekers without disabilities, individuals with disabilities face discrimination by private landlords, real estate agents and providers of subsidized housing at rates that meet or exceed those encountered by members of other protected categories.¹

Eighteen years after the Fair Housing Act was amended to include disability as a protected category, and twenty-three years after Massachusetts included disability as a protected category in its anti-discrimination statute, 48 percent of tests exposed evidence of discrimination. Although the rates of discrimination vary widely by type of housing sought, the audit shows that much work needs to be done to eliminate discrimination toward individuals with disabilities seeking to live in Newton.

- **Overall, evidence of discrimination was found in 48% of the 52 tests conducted.**
 - **Of tests conducted involving private, non-subsidized rental housing, evidence of discrimination was found in 54%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of differential treatment was found in 67%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of a failure to provide reasonable accommodation was found in 36%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of a failure to allow reasonable modification of a unit was found in 40%.**
 - **Of tests involving subsidized rental housing, no evidence of discrimination was found.**
 - **Of tests involving properties for sale in Newton, evidence of discrimination was found in 62.5%.**

¹ Compare results discussed herein with findings of the Fair Housing Center of Greater Boston's *Housing Discrimination Audit Report* (April 10, 2006), which summarized FHC's discrimination audit involving the protected classes of race, familial status, source of income and national origin.

I. INTRODUCTION

Study Purpose

Despite the fact that evidence shows discrimination in housing, both rental and sales, on the basis of race, country of origin, and familial status, little research has been done on discrimination in the housing market on the basis of disability. Nevertheless, the U.S. Department of Housing and Urban Development found that, in 2005, while complaints of housing discrimination involving other protected categories declined, those involving discrimination on the basis of disability did not. Of 9,254 total complaints received by HUD and state and local housing agencies, 41 percent involved allegations of disability discrimination. Moreover, HUD estimates that the number of actual complaints received represents only a small fraction of actual incidents of discrimination in housing encountered by persons with disabilities.

Housing is more than merely a roof over a person's head. The ability to freely seek out and choose one's housing, in any community, without facing actual or perceived barriers, is crucial in allowing a person or family to achieve independence, economic self-sufficiency, social acceptance, and professional and educational opportunities. As early as 1923, the U.S. Supreme Court recognized that the right to "establish a home" has long been cherished as one of the fundamental liberties embraced by the Due Process Clause of the U.S. Constitution.² In 1973 and 1990 respectively, Congress passed the Rehabilitation Act and the Americans With Disabilities Act, expanding anti-discrimination protection to include individuals with disabilities. Furthermore, in 1988 the federal Fair Housing Act was amended to expand its coverage to include discrimination based on disability. Ultimately, in 1999 the Supreme Court recognized the importance of integration and community-based housing for individuals with disabilities in its landmark decision in *Olmstead v. L.C.*³ Thus, housing discrimination encountered by an individual with a disability threatens the critical strides made since 1973 because such discrimination results in geographic segregation, which is defined as the inability of persons with disabilities to live independently in the community of their choice.

² See *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

³ 527 U.S. 581 (1999).

The community of individuals with disabilities is by far the largest minority group in the country,⁴ with members from all age levels, as well as race, ethnic, and economic backgrounds. Despite the size of this group, few Americans know or understand how severe and pervasive discrimination towards this population is. A 2002 study found that only about half of all Americans knew that a refusal to make reasonable accommodations for a person with a disability or to permit reasonable modifications in housing is illegal.⁵ With the general population of the U.S. aging in greater proportional numbers, the number of individuals requiring accommodations or modifications in housing will likewise continue to increase.⁶ Thus, it is in the best interest of municipalities to assess whether barriers to entry exist in their housing market for individuals with disabilities, and whether housing providers have the requisite knowledge of their legal obligations regarding housing discrimination. Based on such assessments, municipalities must, if necessary, take appropriate measures to eradicate obstacles and educate each group of stakeholders, including landlords, real estate agents, policy makers and people with disabilities.

Background

The Disability Law Center is a statewide private non-profit organization that is federally mandated to protect and advocate for the rights of individuals with disabilities. Since 1978 the Law Center has provided a full range of legal assistance to people with disabilities in Massachusetts, including legal representation, regulatory and legislative advocacy, and education and training for individuals with disabilities, housing providers, employers and service providers on the legal rights of people with disabilities.

Between May and November 2006, DLC conducted a fair housing audit in the

⁴ The 2000 U.S. Census found that there are more than 50 Million Americans with disabilities. See U.S. Census Bureau: *Disability Status: 2000*, (March 2003) at www.census.gov/prod/2003pubs/c2kbr-17.pdf. In Massachusetts, 11.3 percent of the population between the ages of 16 and 74 have a disability. See Center For Labor Market Studies, Northeastern University: *The Disabled Population in Massachusetts, Its Current Size, Demographic/Socioeconomic Characteristics, Employment and Poverty Status, and Projected Outlook*, (November 2006).

⁵ See M. Abravanel and M. Cunningham, *How Much Do We Know: Public Awareness of the Nation's Fair Housing Laws* (2002), Washington D.C.: U.S. Department of Housing and Urban Development.

⁶ The 2000 U.S. Census reported that almost 42% of adults aged 65 and older have one or more disabilities. See *id.* The Administration on Aging projects that by 2030 individuals aged 65 and older will make up approximately 20% of the total U.S. population. See *Administration on Aging*, "Statistics: Aging into the 21st Century," (October 2003) at www.aoa.gov/prof/Statistics/future_growth/aging_21.asp.

city of Newton, Massachusetts. The goal of the Disability Discrimination Audit was to study Newton's housing market for discrimination against people with disabilities and provide the Newton Fair Housing Task Force and the Mayor's Committee For People With Disabilities with a summary of the audit's findings and recommendations on ensuring fair housing for all persons regardless of physical or mental impairment.

II. LEGAL FRAMEWORK

Individuals with disabilities are protected from housing discrimination in Massachusetts under both federal and state law. The Fair Housing Act of 1968 ("FHA"),⁷ Section 504 of the Rehabilitation Act of 1973, Title II of the Americans With Disabilities Act and chapter 151B of the Massachusetts General Laws together prohibit discrimination in virtually all forms of housing,⁸ whether privately or publicly administered, funded or subsidized. In addition, all parties associated with a property and/or real estate transaction must comply with fair housing laws. This includes landlords, sellers, real estate agents, real estate companies with whom agents are affiliated, brokers, and lenders.

Differential Treatment

It is unlawful under each of the above laws to withhold, deny, make unavailable, or refuse to rent, lease or sell a dwelling because of the disability of the tenant, prospective tenant, buyer or prospective buyer. Specific examples of unlawful discriminatory conduct include:

- Making untruthful representations that dwellings are unavailable;
- Making statements that discourage rentals or purchases;
- Refusing to negotiate for sale or rental;
- Steering individuals with disabilities to or away from certain neighborhoods, types of housing or specific dwellings;
- Imposing different sales prices, rents or fees;

⁷ The FHA was amended in 1988 to include disability as a protected category.

⁸ The FHA exempts owner-occupied buildings with four or fewer units. Chapter 151B exempts owner-occupied buildings with two or fewer units. Thus, a 3-family, owner-occupied building would be covered by chapter 151B but not by the FHA. A two-family building not occupied by the owner of the building would be covered by both the FHA and chapter 151B.

- Imposing different qualifications, conditions, application procedures, or screening and selection standards;
- Refusing to rent to a person because of their association with an individual with a disability, such as a family member;
- Providing different services to individuals with disabilities;
- Inquiring about the existence, nature or severity of a disability, unless occupancy of a particular unit is specifically tied to one's status as a person with a disability, as in certain publicly-funded housing programs; and
- Segregating individuals with disabilities to certain areas of buildings or of apartment complexes.

In other words, antidiscrimination statutes forbid "differential treatment" in terms, conditions and privileges of housing based on the disability of a buyer or renter, or based on the disability of a person who is associated with a buyer or renter, such as a family member.

Reasonable Accommodation

In addition, antidiscrimination statutes forbid refusals on the part of housing providers to remove unnecessary barriers to equal housing opportunities. One such barrier might be a rule, policy or practice of a housing provider. Discrimination under the fair housing laws includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling." See, 42 U.S.C. § 3604(f)(3)(B). The only requirement is that there be a causal connection between the individual's disability and the need for the accommodation. So long as the requested accommodation does not constitute an undue financial or administrative burden, or fundamentally alter the nature of the housing or service, the housing provider must provide the accommodation.

In general, it is a landlord's or real estate agent's obligation to bear the cost of an accommodation. Furthermore, a housing provider may not charge an extra fee or require an additional deposit as a condition of granting a reasonable accommodation.

Reasonable accommodations may be necessary at all stages of the housing

process, including during a housing search, during the application process, during a tenancy, or to prevent eviction. If the requested accommodation is unreasonable, the housing provider may propose a substitute accommodation. In so doing, he or she should give primary consideration to the accommodation requested by the tenant. According to the Department of Justice ADA Technical Assistance Manual, II-7.1100:

It is important to consult with the individual to determine the most appropriate auxiliary aid or service, because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.

Examples of reasonable accommodations include:

- Waiving no-pet rules for tenants who use assistance or support animals;
- Providing and paying for auxiliary aids for applicants and tenants with impaired sensory, manual or speaking skills where needed to facilitate effective communication; e.g. Braille or taped materials for individuals who are blind and sign language interpreters for individuals who are deaf;
- Assigning an accessible parking space close to the entrance to a building or unit for a tenant with a mobility impairment, regardless of whether parking spaces are generally available on a first come, first served basis;
- Allowing a tenant with a mental impairment who is afraid to leave his unit to mail his rent check instead of paying his rent in person;
- Providing assistance, or allowing an applicant to receive assistance from the person of her choice, in filling out a rental application form.

Physical Modifications to Existing Housing

A second such barrier to equal housing opportunities for individuals with disabilities may be physical or architectural in nature. Where such barriers exist, reasonable structural modifications must be made to allow persons with disabilities the full enjoyment of the housing and related facilities. See 42 U.S.C. § 3604(f)(3)(A).

Examples of reasonable modifications include:

- Installing a ramp into a building where the entrance has five or fewer steps;
- Lowering the entry threshold of a unit;

- Installing grab bars in a bathroom;
- Installing raised numbers or a flashing-light doorbell;
- Lowering a cabinet.

The law requires that an owner not withhold permission to make such reasonable modifications. The cost of physical modifications are generally paid for by the tenant, *with the following exceptions under Massachusetts law*: public housing units, privately owned assisted housing and public or private multifamily and contiguously located housing of ten or more units.

Places of Public Accommodation

In addition to the non-discrimination, reasonable accommodation and reasonable modification protections afforded to people with disabilities under state and federal fair housing laws, places of public accommodation must also refrain from creating barriers to equal housing opportunities during the housing search process. Real estate offices and building management offices are examples of places of public accommodation because they are service establishments whose operations affect commerce. As places of public accommodation under Massachusetts law and Title III of the Americans with Disabilities Act, agents may not discriminate against an individual with a disability, must provide services in the most integrated setting possible and must make reasonable modifications in policies, practices and procedures to ensure equal access to individuals with disabilities.

A call or visit to a real estate agent is frequently the first step in the process of finding housing. Often, a discriminatory barrier encountered at this early stage, whether of a physical or attitudinal nature, or involving communication access, will discourage a person with a disability from continuing to seek housing through that agency, and may even dissuade the individual from seeking housing in a particular town or city altogether.

III. AUDIT METHODOLOGY

Testing Overview

Testing is an effective method of investigation used to study the existence and extent of housing discrimination in a chosen housing market by using testers who pose as prospective tenants or home buyers. The Disability Law Center's fair housing audit was designed and conducted using a group of "subject testers" from six different protected disability categories, each of whom was paired with a nondisabled "control tester." Paired tests were conducted to determine whether barriers to obtaining housing for persons with disabilities exist in the City of Newton in the form of differential treatment towards persons with disabilities (treating an individual with a disability less favorably than a similarly-situated home seeker without a disability). In addition, non-paired tests were conducted to investigate whether housing discrimination exists in the form of failure to permit reasonable modifications to ensure accessibility of housing units, or failure to make reasonable accommodations to ensure both full and equal participation in the housing search process and an equal ability to use and enjoy a dwelling. In such tests, it is not necessary to compare the experience of the tester with a disability with a non-disabled tester because differential treatment is not necessary to prove discrimination based on a failure to provide reasonable accommodation or reasonable modification. The act of denial itself is evidence of illegal discrimination.

Test subjects were chosen randomly based on advertised availability of housing. In determining whether or not real estate agencies, landlords or subsidized housing providers discriminate against persons with disabilities, DLC implemented a testing strategy with distinct tests for differential treatment, reasonable accommodations and reasonable modifications. Some individual tests combine elements of testing for differential treatment with testing for willingness to make reasonable accommodations or allow modifications. For example, a paired test to determine whether testers have been treated differently may also include a non-paired element in which the tester with a disability makes a request for reasonable accommodation or reasonable modification of a unit.

In testing for differential treatment, DLC matched each subject tester with a disability with a non-disabled control tester, who was comparable to the subject tester in

terms of demographic information and given a comparable profile with respect to income and housing needs. Following preliminary inquiries by the testing coordinator to ensure unit availability, each pair tested a housing provider, with the subject tester inquiring about housing early in the day, and the control tester following up with similar requests later the same day or on the following business day. Reasonable accommodation and reasonable modification tests involved either, 1) the subject tester contacting a housing provider regarding available units and inquiring as to the landlord's willingness to reasonably modify the unit, or make an accommodation regarding unit policies due to their specific needs resulting from their disability, or 2) the subject tester requesting an accommodation from a real estate agency in order to allow them to participate fully and equally in the housing search process.

Testers were trained to obtain and record information and provide feedback regarding disability-related inquiries or comments made, general information provided, references requested, deposits sought, readiness to accept applications or follow-up inquiries and willingness of test subjects to show available units and make reasonable accommodations and/or modifications. Each tester received a Test Assignment Form in advance of the scheduled test and completed a detailed Post-Test Questionnaire at the conclusion of the test. DLC testing coordinators provided necessary oversight, monitoring and support during the testing phase and collected and organized the data received according to defined treatment indicators.

It is important to note that the DLC Disabilities Discrimination Audit should not be considered "enforcement testing" – that is, testing specifically designed to obtain admissible evidence in support of litigation efforts. Tests have been conducted for research and recommendation purposes only.

Tester Characteristics

Testers were paired so that the tester with a disability, or subject tester, and the control tester (the tester who does not have a disability) are similar in demographic characteristics, such as gender, age and income, as well as in housing needs, such as unit size and desired rent. Testers were generally instructed to indicate that they wanted to move to Newton due to its proximity to Boston and reputation as a desirable place to live.

It is most often the case that, given two candidates for an available unit, any credible realtor would want to recommend a landlord or owner rent to the more qualified candidate. Thus, the subject tester with a disability is often given a salary which is slightly higher than that of the control tester, and also a slightly better credit report than the control tester. In designing tests in such a way, evidence of discrimination revealed by the test is more reliable, because test coordinators are able to observe that the tester with a disability is treated as a less qualified candidate than the control tester even though the background assigned for their test appears to make him or her the more desirable tenant.

Testers were trained regarding the protections afforded to individuals with disabilities by federal and state housing discrimination laws. Testers were also trained concerning the testing process, reporting requirements and the importance of maintaining confidentiality and objectivity throughout the testing program. Significantly, testers were cautioned not to approach a test with preconceived notions or to draw any conclusions on their own regarding either the results of a completed test or the reasons why a particular test subject was chosen. At the conclusion of a test, testers were required to complete and submit a detailed questionnaire describing their experiences, and to conduct a post-test debriefing with the testing coordinator to ensure comprehensiveness and accuracy of test data.

For the Newton Housing Disability Discrimination Audit, subject testers were individuals with disabilities that included 1) an individual who is a wheelchair user; 2) an individual with mental illness; 3) an individual who is blind; 4) an individual who is deaf; 5) an individual who has a developmental disability; and 6) an individual with a mobility impairment.

IV. AUDIT RESULTS

Summary of Findings

DLC conducted its testing program between June and November 2006. A total of 52 tests were conducted. Some tests were strictly conducted to determine whether evidence of differential treatment was found; other tests included elements of both differential treatment and reasonable accommodation/modification.⁹ Each property or entity tested was covered under one or more of the applicable anti-discrimination laws discussed above. Each tester assignment, and the selection of properties and/or real estate agents tested during the audit, was random and dependent on unit availability at the time of test design. Over the course of the audit, testers conducted tests of private and subsidized rental properties and properties for sale in city of Newton.

The Disability Discrimination Audit revealed that individuals with disabilities encounter significant barriers to entry into the Newton housing market, especially the private, non-subsidized rental market.

- **Overall, evidence of discrimination was found in 25 of the 52 tests conducted, or 48%.**
- **Within the rental market (both private and subsidized), 44 tests were conducted, revealing evidence of discrimination in 20 (45%).**
- **Of 7 tests involving subsidized rental housing, no evidence of discrimination was found.**
- **Of 37 tests conducted involving private, non-subsidized rental housing, evidence of discrimination found in 54%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of differential treatment was found in 67%.**
 - **Within private, non-subsidized rental housing, evidence of discrimination in the form of a failure to provide reasonable accommodation was found in 36%.**

⁹ For example, in a paired test for differential treatment in rental housing, the subject tester would obtain data which would be compared to that obtained by the control tester. Additionally, in the same test, the subject tester would request a reasonable accommodation or a reasonable modification. In designing tests in this fashion, DLC was able to conduct a greater number of overall tests than if each accommodation or modification test had been conducted separately.

- **Within private, non-subsidized rental housing, evidence of discrimination in the form of a failure to allow reasonable modification of a unit was found in 40%.**
- **Of 8 tests involving properties for sale in Newton, evidence of discrimination was found in 62.5%.**
 - **80% of sales tests for differential treatment revealed evidence of discrimination.**
 - **33% of sales tests for reasonable accommodation revealed evidence of discrimination.**

Two of the most significant forms of discrimination faced by individuals with disabilities in the Newton housing market are differential treatment (being treated less favorably and/or being provided inferior information or services than nondisabled individuals) and real estate offices which offer services that are not fully accessible.

The audit found evidence of discrimination in violation of federal and state fair housing laws in the form of unequal treatment compared to nondisabled individuals, lack of awareness on the part of housing providers regarding reasonable accommodations for home seekers with disabilities, and unwillingness to make reasonable modifications to a unit to ensure equal opportunity to use and enjoy a home. Differences in treatment were found at all stages of the housing search process, from initial calls placed to set up an appointment, through meetings and interactions with housing providers, to follow-up contacts with testers.

The audit also revealed significant barriers to entry due to potential violations of federal and state laws which protect individuals with disabilities from discrimination in places of public accommodation, such as real estate agencies. Examples of such violations include lack of physical access to offices combined with a failure to make a reasonable accommodation or modify a practice or procedure for an individual with a disability, as well as differential treatment of individuals with disabilities.

With respect to subsidized housing, the environment within Newton appears to be more welcoming towards individuals with disabilities. In each of the tests for differential treatment, reasonable accommodation and reasonable modifications conducted, the subject tester and control tester were treated equally and provided similar information,

and no evidence was found of an unwillingness to make accommodations or modifications. Not a single tester was informed that subsidized housing units were currently available, and some testers were told of wait lists of up to seven years for subsidized units. Finally, testing in housing sales revealed evidence of discrimination in the form of differential treatment at a rate comparable to that found in the rental market.

Representative samples of DLC's findings are discussed below.

Testing for Differential Treatment in Rental Housing

Overview

In paired tests for differential treatment, both the subject tester and control tester were instructed to inquire about similar units and collect data designed to reveal to the test coordinator whether differential treatment occurred or whether other forms of discrimination were encountered, such as discriminatory statements or violations of the public accommodation provisions of Title III of the ADA. Specifically, test results have been analyzed to determine whether:

1) Evidence was found of discrimination in violation of one or more fair housing laws (i.e. the subject tester was treated less favorably than the control tester);

2) No evidence was found of discrimination (i.e. the subject tester and control tester were treated equally);

3) Evidence was found of one or more barriers to entry into the Newton housing market for individuals with disabilities (i.e. evidence of discrimination in violation of laws other than fair housing laws, such as Title III of the ADA).

Paired tests were conducted in person and by phone of both private rental market and subsidized housing. No evidence of discrimination was found in tests conducted involving subsidized housing. However, tests conducted within the private rental market revealed evidence of discrimination in 67%.

Testing Outcome

Overall, 56 percent of the paired rental tests conducted revealed evidence of discrimination. However, the private rental market in Newton showed significantly greater signs of differential treatment of individuals with disabilities than the subsidized

housing market. In fact, none of the tests conducted involving subsidized rental units revealed evidence of discrimination in the form of differential treatment. Of the private market rental tests conducted, 67 percent revealed evidence of discrimination.

Evidence of Discrimination - Examples

Untruthful representations/false statements

This type of discrimination can include untruthful representations that apartments are unavailable; failure to show available apartments to the subject tester that are shown to the control tester; or refusing to negotiate for rental.

Test B 1 - The subject tester was informed of and shown one unit in the stated price range, whereas the control tester, after indicating a desire to view similarly priced and sized apartments, was informed of and shown three units.

Test M 1 - Although preliminary research by the testing coordinator confirmed that suitable units were available within the desired price range, the subject tester was not told of or offered a viewing of any units. The control tester was shown three units. Additionally, after he inquired specifically about first floor units, the subject tester was told that the agent would get back to him "if first floor units were available." No follow-up occurred with the tester. However, the control tester was shown one available first floor unit, confirming that such a unit was available at the time.

Test D 1 - Despite multiple requests over a span of four days to view a specific apartment which was confirmed by the test coordinator to be available, the subject tester was not shown any available units. During this time period, the control tester was provided extensive information about the unit by the landlord.

Test D 4 - The control tester was shown an available unit which the subject tester was not shown. The subject tester had contacted the real estate agent through the relay service,¹⁰ so the agent was on notice that he was a person with a disability. Since he was treated less favorably than the control tester by not being shown an available unit, the test reveals evidence of differential treatment.

¹⁰ The relay service is a type of telephone-based communication system that allows individuals who are deaf or hard-of-hearing to converse in sign language through a computer, using video technology, with a person who is using a standard phone.

Test WC 3 - The control tester was shown an accessible, first floor unit. The subject tester, after stating a need for a first floor unit, was not told of the unit's availability until over a week after her initial visit to the real estate agency (and a week after the control tester had viewed the same apartment). After expressing a desire to view the apartment, the agent called the landlord to make sure it was still available and then informed the tester that it had in fact already been rented.

Test DD 6 - The control tester was provided information about an apartment which met the criteria which had been established for the test and was told that the landlord would be willing to decrease the rent since only one person would be living in the unit. The subject tester was also asked whether he would be living alone, but then was told by the agent that he did not know if there were any units available that met his criteria. The agent offered to call the tester back if something came up, but did not contact him again. Thus, the subject tester was not offered the same rent reduction.

Steering

Test B 4 - The subject tester was shown two units in Brighton (the realty office was located in Newton), whereas the control tester was shown the same two Brighton units, but also one additional unit in Newton which was in the same price range. The control tester was also offered a second appointment later in the week, during which he was shown a second Newton apartment.

Test M 1 - Both testers indicated that they were seeking apartments in Newton. The subject tester was encouraged by the real estate agent to seek apartments in Waltham and Watertown. The control tester was not similarly steered toward those towns.

Test WC 8 - During this phone test, the subject tester informed the agent that she was a wheelchair user and may need to make modifications to the interior of a unit. She made clear her intention to find an apartment in Newton. The agent indicated that he did not have many apartments in Newton, but had many in Allston and Brighton. The tester asked him to take her information and contact her if anything in Newton came up. The control tester later confirmed by phone that apartments were available which met the criteria established for the test.

Imposing different terms/conditions or qualifications

This type of discrimination can include different information given to the tester regarding rent, fees, qualifications, application procedures, or screening standards; or asking for more/different information, which can discourage rental.

Test B 1 - The subject tester was told that a credit check would be required; the control tester was not told that a credit check was required.

Test B 2 - The subject tester was told the rent would be \$1600 and a fee was required. The paired control tester was offered a rent reduction to \$1550 and was told "you can ask the landlord to pay" the fee.

Test B 4 - The subject tester was told that a fee would be charged; the control tester was told that the landlord "usually pays the fee." In addition, whereas the subject tester, after being shown available units, had to inquire as to what the application process entailed, the control tester was offered an application and actively encouraged to apply. Finally, in contrast to the subject tester, the control tester received follow-up information from the agent and an offer of a price reduction on one of the units he had viewed.

Test MI 3 - The control tester was told that as long as he had a job and good credit, his application would be accepted. He was not asked any questions about his employment. The subject tester, after stating his income, was asked where he worked and told that he would need "perfect" credit to qualify.

Test MI 4 - The subject tester was informed that he would not be shown any apartments unless he signed an application form which indicated that a fee equivalent to one month's rent would be paid by him if he rented an apartment through the agency. All testers were trained by DLC not to sign any application forms, so he terminated the test at that point. The control tester was shown two apartments, by appointment, without being told that he would need to complete the application form. He was also informed by the agent that the fee, if he found an apartment, would be one-half month's rent, with the landlord paying the other half.

Test D 5 - The subject tester was informed by the agent that he would need to pay an application processing fee, whereas the control tester was not.

Test M 1 - The subject tester was not told what the application process entailed, whereas the control tester was, without asking, provided a detailed description of the

application process.

Providing different services

Treating an individual with a disability differently than a nondisabled individual in the manner of services provided, or by refusing services altogether, can be a violation of fair housing laws and Title III of the ADA if the entity is a place of public accommodation, such as a real estate office.

Test M 5 - The subject tester was refused service outright. (See Reasonable Accommodation Test M6, below). The control tester was shown four available units, offered a follow-up appointment to view other units, and was encouraged to begin the application process due to the rapid turnover of apartments for September 1 occupancy.

Test D 1 - After initial investigation by the testing coordinator that an appropriate unit was available, the subject tester contacted the landlord through the relay service and left a voicemail message, asking to be contacted through the relay service. Two more similar calls were placed, and the tester's messages were never returned. During this time period, the control tester contacted the landlord regarding the same unit and was provided extensive information about the unit.

Test D 4 - The subject tester contacted a real estate agent through the relay service regarding a unit which was listed as available on the agency's website. He left a voicemail message, again asking to be contacted through the relay service. After leaving a second similar message, the tester was not contacted. This amounts to a denial of service by a place of public accommodation.

Test WC 5 - The control tester was able to set up an appointment to view apartments without any difficulty. On the other hand, the subject tester, after informing the real estate agent that she was a wheelchair user in their initial conversation, did not hear back from the agent despite his promise to call her back after searching for an accessible unit. The subject tester left two subsequent voicemail messages requesting a return call but was not contacted.

Other/Title III violations

This type of discrimination can include disclosing to others that the tester is a

person with a disability; assumptions/comments about people with disabilities; or imposing barriers to equal participation in the housing search process in violation of Title III of the ADA.

Test WC 3 - The real estate agent called the landlord to set up a viewing and said that the person who wanted to see the apartment was "a professional woman who uses a wheelchair." By revealing to the landlord that the tester was a person with a disability, the agent contributed to the false stereotype that individuals with disabilities are "different" and thus can be treated that way.

Test M 1 - The subject tester was asked many direct questions about his disability that made him feel "uncomfortable" (such as what specifically his disability is and how he is able to accomplish everyday tasks). He was also asked many questions that the control tester was not asked (such as familial status and reason for wanting to move). Agents of landlords cannot make unnecessary inquiries into a person's medical condition or ask questions designed to reveal whether or not a person has a disability.

Test MI 3 - After the subject tester explained to the agent his desired criteria for an apartment, including rent of up to \$1300 for a one-bedroom apartment, the agent inquired as to whether he had a rent subsidy. The control tester, using the same income profile and desired criteria, was not asked the same question.

Test MI 4 - The agent spoke very highly of Newton during her meeting with the control tester, indicating that she lived there, that it was an easy commute into Boston, that it was the 4th safest city in the U.S. and that there were many fine restaurants, stores, etc. The subject tester was not "sold" on the virtues of living in Newton by the same agent. Such fact can be evidence of discrimination because the tester with a disability was treated less favorably than the tester without a disability.

Test DD 3 - In this paired phone test, the subject tester, who has a speech impairment, was told by an agent that he was not sure whether there were any apartments that met the tester's criteria. The agent took the testers name and number and said that he would contact him; however, the agent never did. The control tester spoke to an agent at the same location and was told over the phone of numerous listings which met his criteria. The agent also followed up the conversation with an e-mail containing information about available units, and a week later e-mailed the tester again to see if he

was interested in any of the apartments.

Testing For Reasonable Accommodation

Overview

Generally, the process involving reasonable accommodations in housing is initiated by the individual with a disability making a request, either verbally or in writing. The real estate agent or landlord should allow the accommodation if it is reasonable and will not result in a fundamental alteration of the service being provided or impose an undue financial and administrative burden.

In DLC's tests for reasonable accommodation, the tester with a disability was instructed to request an accommodation, either to allow him/her to participate fully and equally in the housing search process or to allow them to have an equal opportunity to use and enjoy a particular dwelling. The testers collected data designed to reveal to the test coordinator whether evidence of discrimination was revealed by either an agent's or a potential landlord's unwillingness to provide a reasonable accommodation.

Testing Outcome

A total of 13 tests for reasonable accommodation were conducted. Overall, 31 percent of the tests conducted revealed evidence of discrimination.

Testing for Reasonable Accommodation - Sample Findings

Reasonable Accommodation Request: Waiver of no pet policy

In rental properties where no pet policies are in place, such rules must be waived for a tenant with a disability who uses an assistive animal to support or provide services to him or her. The Department of Housing and Urban Development (HUD) and several courts have explicitly stated that an exception to a "no pets" policy would qualify as a reasonable accommodation.

Service animals include guide dogs that assist individuals who are blind, signal dogs that alert individuals who are deaf to nearby sounds, assistance animals that fetch items for an individual who is a wheelchair user, or animals that provide emotional support for individuals with psychiatric disabilities. There is no restriction on the type of

animal which may qualify as a service animal under the law. The tenant need only show that there is a link between his or her ability to function and the assistance or support provided by the animal. Landlords may impose reasonable rules regarding the behavior of service animals, but may not refuse to waive a no pets policy or impose additional fees as a condition thereof.

Overall, 33 percent of reasonable accommodations tests involving a request for waiver of a no pet policy revealed evidence of discrimination:

Test B 3 - The tester who is blind conducted a reasonable accommodation test involving a unit for rent in an owner-occupied three family home. The property in question was subject to Massachusetts law but not the federal Fair Housing Act, which exempts owner-occupied buildings of four or fewer units. During this test the agent asked the tester if he had pets. The tester responded no, but stated that he did have a guide dog due to the fact that he is blind. The agent then stated that the owner lived below the unit and the dog would "drive her crazy." The tester inquired about waiving the no pet policy and the agent said he could ask but the tester should probably look elsewhere. The agent informed the tester that he should avoid owner occupied buildings due to his guide dog and should look outside the Newton area, closer to public transportation in such communities as Brookline.

Test MI 1 - The tester, an individual with a mental illness, contacted a real estate agent by phone regarding a rental unit which the testing coordinator had confirmed was available and had a no pet policy. The tester requested waiver of the no pet policy for an emotional support animal (a cat). The agent informed the tester that he would check with the landlord. The tester then followed up with three phone calls to the agent. Finally, the agent called him back and stated that the landlord would not waive the no pet policy.

In four other reasonable accommodation tests, a willingness to waive a no pet policy for a guide dog or service animal was expressed by the housing provider.

Reasonable Accommodation Request: Housing search process

Both federal and state law require places of public accommodation to allow equal access to their goods and services for people with disabilities. Denying a person with a disability the right to participate in or benefit from a place of public accommodation is

illegal. Allowing equal access also includes modifying policies, practices and procedures as an accommodation, unless such modification would fundamentally alter the nature of the good or service provided. Real estate agencies are considered places of public accommodation, and thus the services they provide must be accessible to individuals with disabilities.

Barriers to equal access to places of public accommodation generally come in two forms: architectural and communications. Architectural barriers in existing buildings must be removed where removal is readily achievable (easily accomplishable and able to be carried out without much difficulty or expense). When removal of physical barriers is not readily achievable, places of public accommodation must use alternative methods to make their goods or services available, such as relocating a service to an accessible location or providing curb service. Barriers to effective communication may be removed by a place of public accommodation by the provision of auxiliary aids and services, such as qualified American Sign Language (ASL) interpreters and Braille materials. The cost of such aids and services *may not* be passed on to the customer with a disability.

Overall, 33 percent of tests involving requests for reasonable accommodation during the housing search process revealed evidence of discrimination.

Test M 4 - The tester contacted a housing provider by phone and self-identified as a person with a disability.¹¹ He was told that the agent who handles Newton would get back to him. Receiving no response, the tester made three follow-up phone calls. First, he was told the agent's name, but that he was out of the office. In the second follow-up call, he was told that there was no agent by that name in the office and that the realtor did not have any Newton listings. In the third follow-up call, after stating that he had researched the agent's website and found available units listed in Newton, the person who answered the phone simply hung up.

Test M 6 - The tester visited a real estate agent whose office was inaccessible due to stairs. The tester's companion went into the office and requested that an agent meet with the tester in an accessible location. The agent "looked blankly" at her and did not respond. She then left the office.

¹¹ The tester was instructed to state that he would need an accommodation for his mobility impairment of meeting in an accessible location and would likely require modifications to the unit in the form of bathroom grab bars.

In two other tests involving a tester who is a wheelchair user, the test coordinator first confirmed that the real estate office was not wheelchair accessible. The tester contacted the agencies by phone and the agents, upon request, met her in an accessible location as a reasonable accommodation.

Two reasonable accommodation tests were conducted by an individual who is deaf. The tester contacted the housing providers via relay and was able to communicate all the necessary information to the agents. The tester then informed the agents that an ASL interpreter would be necessary for an in-person appointment to view available units. In each test an ASL interpreter was provided.

Reasonable Accommodation Request: Application and screening process

Landlords must make changes to application and screening policies as a reasonable accommodation for individuals with disabilities. Such accommodations may include assisting a person with a vision impairment to complete a written application; waiving an in-person application requirement for an individual with a mobility impairment; or modifying a tenant screening process and/or eligibility criteria for an applicant whose prior rental history was negatively impacted because of behavior or characteristics related to a disability, but who has since received treatment intended to address such affects of the disability. For instance, a tenant with mental illness who has been evicted from a previous apartment due to behavior which was a manifestation of their disability must be given the opportunity to show that he or she has subsequently received treatment and no longer poses a risk of engaging in similar behavior.

In a reasonable accommodation test conducted by a tester with a developmental disability, the tester was instructed to request a waiver of the screening requirement involving a reference from the applicant's prior landlord because he had most recently been living in a community residence or "group home." In such instances, landlords must accept alternate forms of personal references, such as from an employer or service provider, as a reasonable accommodation. In the test, the landlord indicated a willingness to provide the accommodation.

Testing For Reasonable Modifications

Overview

Permission to make reasonable physical modifications to a dwelling, at the expense of the tenant or prospective tenant,¹² cannot be denied. A housing provider may request reasonable assurances that any work performed will be done in a professional manner. In addition, a landlord may require the unit be restored to its original unmodified state, unless the structural change made would not interfere with a subsequent tenant's use and enjoyment of the premises.

In DLC's tests for reasonable modifications, the tester with a disability was instructed to request a physical modification to a rental unit, to allow him or her to have an equal opportunity to use and enjoy a particular dwelling. The testers collected data designed to reveal to the test coordinator whether evidence of discrimination was revealed by a potential landlord's unwillingness to allow a reasonable modification.

Of six tests for reasonable modifications conducted, 33 percent revealed evidence of discrimination. One test did not expose direct evidence of discrimination, but did reveal the fact that some housing providers do not know what the law requires with respect to which party must pay for modifications to be made to a unit in order to ensure accessibility.

Testing for Reasonable Modifications - Sample Findings

Test WC 1 - The tester, a wheelchair user, indicated to an agent that she was interested in an available apartment but would need to make modifications in the form of lowering cabinets. The agent indicated he would check with the landlord regarding her request and follow up with her, but never got back to her.

Test WC 8 - The tester inquired about a first floor unit which had three steps to the door. The agent checked with the landlord upon her request, and a willingness to allow her to install a temporary ramp at her own expense was expressed.

Test D 3 - The tester attended an appointment with a housing provider and, through an ASL interpreter, inquired of the building manager whether a visual fire alarm,

¹² In Massachusetts, public housing providers, and owners of assisted housing and multifamily housing of ten or more units, must pay the cost of physical modifications.

smoke detector and doorbell could be installed if he were to take the unit. The manager replied that it would not be a problem.

Test D 6 - The tester, who is deaf, viewed a unit in a building of multifamily consisting of more than 10 units. Because of the size of the building, any reasonable modification would have needed to be made at the owner's expense. The tester requested the installation of a visual fire alarm, smoke detector and doorbell. The landlord expressed a willingness to do so, but only at the expense of the tester.

Test M 10 - In this test, the tester requested reasonable modification of the unit in the form of grab bar installation in the bathroom. The agent checked in with the landlord, who indicated that such a modification would be allowed, but did not know which party was responsible to pay the costs associated therewith. Note: given the nature of the property, the tenant would have been required to make the modification at his own expense.

Test M 11 - A subsidized housing provider expressed a willingness to make modifications to a unit and acknowledged that they would be responsible for bearing the costs thereof.

Testing for Evidence of Discrimination in the Sales Market

Overview

In tests regarding properties for sale in Newton, the testers were instructed to contact real estate agents about properties listed for sale on either a website or in a newspaper. A profile was created for each tester which would have made them appear financially qualified to purchase a condominium in the \$350-500,000 price range. Testers were instructed to indicate that they were just beginning their housing search and to inquire about a specific unit which the test coordinator had confirmed was available, as well as any other similar units which the agent put forward. Testers then collected data designed to reveal whether differential treatment occurred or whether other forms of discrimination were encountered, such as discriminatory statements or failure to provide reasonable accommodations during the search process.

Specifically, test results have been analyzed to determine whether:

- 1) Evidence was found of discrimination in violation of one or more fair housing

laws (i.e. the subject tester was treated less favorably than the control tester);

2) No evidence was found of discrimination (i.e. the subject tester and control tester were treated equally);

3) Evidence was found of one or more barriers to entry into the Newton property sales market for individuals with disabilities (i.e. evidence of discrimination in violation of laws other than fair housing laws, such as Title III of the ADA).

Testing Outcome

DLC conducted eight tests involving the real estate sales market in Newton. Overall, 62.5 percent of the rental tests conducted revealed evidence of discrimination. 80 percent of paired tests revealed evidence of discrimination in the form of differential treatment between the subject and control tester, and 33 percent of tests for reasonable accommodation revealed evidence of discrimination.

Evidence of Discrimination - Examples

Differential Treatment

Test B8 - In this test, both the control tester and the subject tester were taken on a tour of the unit which they had been instructed to inquire about. However, after each tester indicated to the agent that they were interested in any other units that fell within their price range, the control tester was shown a second unit, whereas the subject tester was provided with access to a website which listed units for sale and told that if he was interested in any of them he should contact the agent again. The second unit which the control tester was shown did appear on that list of units, which the subject tester accessed as soon as he returned home.

Test D8 - The subject tester was informed by e-mail that he would need to present a mortgage pre-approval letter before he would be shown any properties. The control tester was shown a property on his first visit to the agent. On a follow-up visit, after the agent had sent him information about other properties for sale, he was asked if he had a pre-approval letter. He indicated that he did not, but even then was shown 5 additional properties. Note: in this test the subject tester was offered the reasonable accommodation of an ASL interpreter. However, since he did not have a pre-approval letter he did not

actually view any properties.

Test WC7 - The subject and control tester were shown the unit for sale on the same day. The agent told the control tester that the seller was offering a \$1,500 credit toward the closing costs. The subject tester was not provided with this information.

Test MI 7 - In this test, the subject tester was told that he would not be able to view any of the available properties until he met with a mortgage broker and received a pre-approval. This same prerequisite was not imposed on the control tester, who was also provided with a detailed description of how to access MLS listings on his own.

Title III (Places of Public Accommodation) Violations

Test M7 - Both the subject tester and control tester were provided information about available units. However, upon his first visit to the agent, which was located on the second floor, the subject tester was refused service after his companion went to the office to ask whether a sales associate would come downstairs to speak with the tester. The tester was later provided information regarding available properties by e-mail after he phoned the agency.

VI. RECOMMENDATIONS

Newton, by virtue of its proximity to Boston, safety, exceptional public schools and high standard of living, is understandably a highly sought-after destination for many home seekers. In addition, opportunities for individuals with disabilities to live independently in the community and to fully and equally participate in the economic and social life of Massachusetts have increased dramatically in recent years, in part due to political and legal victories, and in part due to an increased awareness of barriers to full integration and of the issues that face the community of people with disabilities. However, as the Newton Disability Discrimination Audit confirms, much work needs to be done if those opportunities will translate into tangible benefits for current or prospective residents of Newton. In short, the results of the audit should cause serious concern for all residents and policy makers of the City.

Newton should be commended for commissioning this audit, but must not allow its findings to be disregarded. The problem simply will not go away on its own. The city

needs to be proactive in taking steps to ensure that discrimination in housing against people with disabilities is eliminated.

Specifically,

- 1) The Fair Housing Task Force and the Mayor's Committee For People With Disabilities must ensure that this issue remains in the forefront and continue to advocate for the rights of individuals with disabilities to seek and secure housing in Newton without facing discriminatory barriers.
- 2) The City should provide comprehensive training, outreach and education regarding fair housing laws to:
 - real estate agents
 - landlords
 - subsidized housing providers

Such trainings should include components on discrimination in the form of differential treatment and in the form of failure to provide reasonable accommodations and reasonable modifications.

- 3) The City should provide comprehensive training, outreach and education to real estate agents on laws regarding legal obligations of places of public accommodation, including components on discrimination and on physical accessibility.
- 4) The City should take steps to increase awareness among the public of issues faced by people with disabilities, including ways in which attitudinal barriers to full integration into the community may be eliminated.
- 5) The City should provide training, outreach and education regarding fair housing laws to people with disabilities in Newton and surrounding communities to ensure full awareness of one's right to be free from discrimination and awareness of remedies provided under the law where discrimination has occurred.
- 6) Real estate agents should gain knowledge of where accessible housing units are located. The City may consider completion of a comprehensive survey and creation of a searchable database of accessible units in Newton. An online database of available accessible housing units, coordinated by Citizens' Housing and Planning Association (CHAPA) is also available to anyone free of charge, and should be widely publicized by the City. The database is called "Mass Access" (the full name is the Mass Access Housing Registry).¹³ All owners, managers and housing authorities with accessible apartments are required to register the units with Mass Access.
- 7) The City should consider requiring developers, during the permitting process, to confirm that where new or rehabilitated housing units are planned which are

¹³ It is located at <http://www.mnip-net.org/registry/registrymax.nsf/webpages/home?open>.

accessible the developer has in fact registered the units with Mass Access.

- 7) The City should provide necessary resources for real estate agents and landlords so that they have immediate access to information regarding understanding their legal obligations. Such resources should include sample anti-discrimination policies for free download, and posters to display in rental and sales offices.
- 8) The City should consider completion of an audit of new construction to ensure compliance with accessibility obligations of the law. Both state and federal law impose varying obligations on developers to design and construct housing units so that they can be fully used and enjoyed by persons with disabilities. Depending on the overall size of the project, Section 504 of the Rehabilitation Act, Title VIII of the federal Fair Housing Act, Chapter 151B of the Massachusetts General Laws and design standards promulgated by the Massachusetts Architectural Access Board may be triggered, and certain units within a building, or a certain percentage of units would be required to meet specific accessibility standards.

Submitted to the Newton Fair Housing Task Force and the Mayor's Committee For People With Disabilities,

By,

Thomas P. Murphy, Esq.
Disability Law Center, Inc.
One Beacon Street, Suite 925
Boston, MA 02108
(617) 723-8455