



Disability Law Center's Self-Advocacy Materials

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Housing

This document is designed for people with disabilities. The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit:

<http://www.dlc-ma.org/about/funding/>

Housing and Reasonable Accommodation

You Will Learn About:

- Discrimination Based On Disability in Housing
- Reasonable Accommodation
- Evictions
- Other Resources

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

Discrimination Based On Disability in Housing

What Laws Apply To Housing Discrimination Based On Disability?

- Federal Fair Housing Amendments Act (FHAA) (**unless** building has 4 or fewer units **and** is owner-occupied)
- Mass. General Laws chapter 151B (**unless** building has 2 or fewer units **and** is owner-occupied)
- Section 504 of the Rehabilitation Act (if the landlord receives federal funds)
- Americans with Disabilities Act (ADA) Title II (public housing authorities) and Title III (shelters; real estate agents, SROs, community residences)

Who Is Protected?

An **individual with a disability** is protected from housing discrimination based on disability. This means a person with a **physical or mental impairment** that causes a **substantial limitation** of one or more **major life activities**.

- ‘Major life activities’ is a **very broad term**. It includes, but is not limited to, activities such as seeing, hearing, learning, breathing, working, walking, caring for oneself, interacting with others and performing manual tasks.
- You are **not** covered if you are currently using illegal drugs. But, if you are in recovery from past drug addiction than you may be covered if you can show that you have not used illegal drugs recently.
- You are also not covered if your conduct poses a threat to other people’s health or safety or causes substantial physical damage to the property.
- These issues are decided on a case-by-case basis.

Does A Person Ever Have To Disclose That They Have A Disability?

NO. Disclosure is only required if a person needs a reasonable accommodation.

- Housing providers **cannot** ask you if you have a disability, except in very limited circumstances such as when the specific type of housing is for people with disabilities.

What Type Of Conduct Is Prohibited?

Housing providers must avoid discrimination in **all housing-related decisions they make**. This includes rental, leasing and sales decisions; treating people with disabilities differently (for example, charging higher rent or having different lease terms); or disability-based harassment. Also, refusing to provide a **reasonable accommodation** is illegal.

Reasonable Accommodation

What Is A Reasonable Accommodation?

Housing providers are required to provide reasonable accommodations for individuals with disabilities. A **reasonable accommodation** is a change in a rule, policy, practice or service that is necessary to give a person with a disability an equal opportunity to use and enjoy a dwelling.

- Reasonable accommodation issues are decided on a case-by-case basis.
- Landlords usually have to bear the cost of a reasonable accommodation.

There is no list of things that are reasonable accommodations, but there are **examples**. Some examples are waiving a no pet policy to allow for a service animal; allowing rent to be paid a couple of days late for someone who receives benefits after the first of the month; moving a person's parking space to a space which is closer to the entrance; not using certain chemicals to clean common areas; giving a person with a hoarding disorder a chance to get treatment and make his apartment more acceptable; allowing live-in aides; waiving need for references as part of application process for someone who has lived in a facility or community residence.

What Is A Reasonable Modification?

A reasonable modification is a physical change to a building or unit that a person with a disability needs to be able to have access to the entire property. This may include ramping an entrance; lowering cabinets; installing visual alarms; using raised numbers and letters; installing grab bars. Usually, a landlord **only has to give permission** for the modification. The tenant usually has to pay for it, **unless** the building has 10 or more units or is public or subsidized housing.

How Do I Get A Reasonable Accommodation If I Need One?

- **You will need to make a request.** If you do not make a request, your landlord does not need to provide you with an accommodation.
- **Make the request in writing, date it, and keep a copy.** Your landlord may have special forms that you can use to do this. If you do make your request orally, follow it up with a letter confirming that you made the request, and keep a copy.
- **Your request can come from someone else**, like a family member or service provider.
- **You will probably need to get medical support.** Your landlord can ask you for **limited** medical support for your request (indicating that you have a disability-related need for the accommodation you have requested). You may want to get this first and submit it with your request for the accommodation to save time. If your disability and need for the accommodation are obvious, then you do not need to provide medical support. For example, you use a wheelchair and need a ramp at an entrance with two steps.
- **Be prepared to discuss your request with your landlord.** This is called an interactive process. The purpose of the interactive process is to determine what accommodation the landlord will provide.
- **Landlords do not need to provide the exact accommodation you have asked for.** They do need to provide an accommodation that is **effective**. That means one that gives you an equal opportunity to use and enjoy your dwelling.

Can My Landlord Refuse My Request?

Landlords **do not** have to provide accommodations which amount to an **undue financial and administrative burden**. This is decided on a case-by-case basis. For example, a landlord probably does not have to ramp an entrance that has more than five steps.

Landlords also do not have to provide accommodations that would result in a **fundamental alteration** in the nature of the service or activity provided. For example, it would be a fundamental alteration to ask your landlord to do grocery shopping for you because you cannot leave your apartment.

Landlords also do not have to provide an accommodation that would pose a **significant health or safety risk to others**. So, landlords do not need to tolerate illegal activity or activity that interferes with the rights of other tenants. But they may need to provide you a reasonable accommodation if you need time to access services that will help you control your conduct.

Evictions

What Should I Do If I Receive An Eviction Notice?

If you receive a notice of eviction (usually called a Notice to Quit), you must take action quickly. Your landlord cannot evict you without going to court. But, depending on the reason why your landlord wants to evict you, there may not be much time before you have to appear in court.

- You may be able to request a **reasonable accommodation** asking your landlord not to evict you **if there is a connection** between your disability and the reason for the eviction.
- You should make your reasonable accommodation request as soon as possible.
- If there is no connection, you can still fight the eviction in court by filing defenses and/or counterclaims.
- **Do not wait until you receive notice of a court date - Get legal advice as soon as possible.**

Other Resources

Where Can I Get More Information?

If you need legal representation or advice, please call the Disability Law Center (DLC) at 1-800-872-9992, from 9:00 am to 5:00 pm, any business day except for Wednesdays.

Unfortunately, we cannot help everyone who calls us. If DLC cannot provide you with either legal representation or advice, we may refer you to:

- A local fair housing program;
- The local legal service program (see <https://www.masslegalservices.org/FindLegalAid/>);
- Your local bar association referral service; or to
- The National Lawyers Guild MA Chapter Lawyer Referral Service (<http://www.nlgmasslawyers.org/>).

Also, you can get information on reasonable accommodations and reasonable modifications from these two publications by HUD and DOJ:

<https://www.justice.gov/crt/us-department-housing-and-urban-development>

https://www.hud.gov/sites/documents/DOC_7502.PDF

If you would like to file a fair housing complaint against a housing provider that has discriminated against you or refused to allow a reasonable accommodation, you may file a discrimination complaint under both state and federal law with the Massachusetts Commission Against Discrimination (MCAD). (See <http://www.mass.gov/mcad/filing-complaint/how-to-file-a-complaint.html>). You also may have the right to file a lawsuit in state court, including housing court, or in federal court.