

# The Bazelon Center for Mental Health Law

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## Preserving elders' housing rights

**Elderly people who have suffered discrimination are increasingly turning to federal law to secure greater housing opportunities and protect their rights.**

By Michael Allen and Susan Ann Silverstein

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Like many people in their 70s, Howard "Hop" Symons retired to Florida. His move to Sanibel Island in 1990 was possible only because of Sanibel's Below Market Rate Housing program, which provides subsidized rates to people who have limited incomes. Symons, a West Point graduate and veteran, lived happily and without incident in his one-bedroom apartment until October 2002, when he received a notice that a management committee had made a "unanimous decision not to reevaluate [him] for a new lease. . . . The committee . . . determined that [he did] not meet the program's required independent living criteria[, which] includes such things as care of self and care of the apartment." Both the city code<sup>1</sup> and the lease, it turned out, permit termination of the lease when the management determines that a tenant is "incapable of independent living."

Symons protested and provided detailed letters from his doctors and pharmacist saying that he was capable of independent living. One described how Symons, at 82, rode his bicycle to appointments. The apartment management, having done no medical assessment of its own, brushed aside these expert opinions and began an eviction case.

### More Information

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Housing discrimination against the elderly is usually based on actual, perceived, or past disabilities of the older person, as Symons's case illustrates. To adequately enforce the fair housing rights of vulnerable elders, a lawyer must understand and be able to apply the laws prohibiting disability-based discrimination in housing.

The primary source of legal protection for elders is Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, commonly known as the Fair Housing Act (FHA).<sup>2</sup> While age is not a protected class under the act, disability is.<sup>3</sup> In passing the act, Congress "repudiate[d] the use of stereotypes and ignorance" and rejected "[g]eneralized perceptions about disabilities."<sup>4</sup> In other words, Congress felt so strongly about eradicating bias that it prohibited discrimination against people who were only perceived to have disabilities, and prescribed sanctions for such behavior that are no less powerful than those for real disability discrimination.

The U.S. Department of Housing and Urban Development (HUD) estimates there may be as many as 2 million instances of housing discrimination each year,<sup>5</sup> but only about 25,000 FHA complaints are filed annually, most through private fair housing enforcement agencies.<sup>6</sup> A recent study by the National Council on Disability suggests that the administrative enforcement mechanisms at HUD and at some state and local government enforcement agencies are underfunded and performing poorly.<sup>7</sup> This makes the FHA's private cause of action even more important.<sup>8</sup> The FHA allows recovery for compensatory and punitive damages, as well as attorney fees.<sup>9</sup>

Elders who have suffered discrimination are increasingly turning to the FHA and the Americans with Disabilities Act to secure greater housing opportunity and choice of housing

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type, from rental apartments to senior-living and assisted-living communities to nursing homes. These plaintiffs may encounter significant resistance from landlords, service providers, family members, and policy makers.<sup>10</sup> In the approaching era of tumult, trial lawyers will play a critical role in determining how effectively elders' housing rights will be enforced.

The FHA is an equal-opportunity statute; it protects people's choice to live where they want to live. That principle is easy to understand in the context of a real estate agent who turns an African-American family away from houses in predominantly white neighborhoods, or a rental manager who will not rent to families with children. For seniors and younger people with disabilities, equal opportunity means having a broad spectrum of housing choices—including single-family homes, condominiums, and rental communities—in a variety of settings that include people of all ages and abilities living side by side. In addition, people who are older or have disabilities may need or want housing that offers support and medical services for their special needs.

Historically, as people aged, they faced a stark choice between staying in their own homes or moving to nursing homes or other service-intensive settings. During the last two decades, however, an ever-broadening range of options has emerged to allow seniors to remain in their homes longer, or to make the transition more gradually into communities that have graduated levels of care and services intended to respond flexibly to need.

In the past, advocates in the fields of disability and aging have sometimes taken different approaches to the legal issues arising from this trend. Disability advocates' views tend to be "informed by the rising disability rights movement, with its twin pillars of self-determination and consumer direction . . . [and an emphasis on using] administrative and judicial mechanisms . . . to enforce civil rights and consumer protection laws in case of violations."<sup>11</sup> Advocates for older people may have a perspective "colored . . . by a history of neglect in long-term care facilities, and the conviction that an unfettered free-market system for long-term care services will not benefit the vast majority of

seniors."<sup>12</sup> The FHA provides a framework for balancing these perspectives and for protecting the rights of both individual older persons and the institutions and agencies that wish to serve them.

#### The fair-housing framework

To meet the statutory definition of disability, a person must have a physical or mental impairment that substantially limits one or more major life activities, have a record of such an impairment, or be regarded as having such an impairment.<sup>13</sup> The second and third prongs of the definition can be especially helpful in addressing the prejudices of housing providers, who may refuse to rent to an older person because of generalized misconceptions about elders' health and abilities. In fact, it is this third prong that applies to Symons's case.

Because the FHA defines its coverage through the broad term "dwelling," it applies to virtually every kind of housing.<sup>14</sup> Courts have held that it applies to the spectrum of housing in which older people live, including retirement communities, condominiums, apartment complexes, cooperatives, assisted-living facilities, and nursing homes.<sup>15</sup> It applies at every stage and to every transaction in the housing process, from the advertising and sale of homes to application, admission, terms and conditions of occupancy, and evictions.<sup>16</sup>

Seniors are most vulnerable to discrimination at several transition points in their lives, such as at retirement or when they experience an increase in physical or mental impairments. To simplify their lives, older people may make a transition from home ownership to renting or simply move to smaller quarters. Or they may seek housing that is suited to retirement living, either because of the community's characteristics or the services it offers.

Many seniors experience blatant discrimination when they seek admission to new housing communities. A Texas couple was denied admission to a subsidized apartment complex because the husband was blind and partially paralyzed. In denying their application, the owner wrote that the property had a long-standing policy under which "rental units have

been made available to only ambulatory senior citizens."<sup>17</sup>

After investigating the surviving widow's complaint under the FHA, HUD determined that there was cause to believe discrimination had occurred and referred the case to the U.S. Department of Justice (DOJ) for prosecution. In denying the defendant's motion for summary judgment in the case filed by DOJ, the federal court made clear that the FHA does not permit discrimination against seniors with disabilities.

Few housing providers hang up a sign that says "no frail elderly." Most do not discriminate as obviously as that Texas landlord. However, application policies may bar older people just as effectively and in ways the potential resident may not even know are illegal. Housing providers may not require applicants to demonstrate that they are "capable of living independently," ask questions about an applicant's medical history, or require an applicant to sign a statement agreeing to move out if personal care is ever needed. Since at least 1990, courts construing the FHA have consistently held that independent-living criteria are forbidden,<sup>18</sup> and they have forced violators to pay hefty damages and civil penalties.<sup>19</sup> Given the smoking gun in Symons's case—the independent-living requirement in the lease and the city code—he should be successful in his pending litigation, as should the DOJ, which has indicated an interest in the case because of indications there is a pattern or practice of discrimination.

These types of illegal requirements are especially pernicious because both the housing provider and the applicant may believe they are "for the good" of the older person. The FHA explicitly prohibits inquiries into the "nature or severity" of a disability, yet we have frequently been told that the

information is being elicited to "help" the applicant.<sup>20</sup>

Housing providers must base their decisions on whether the applicant can meet the tenancy obligations: paying rent, complying with reasonable residential rules, not damaging the premises, and not unduly disturbing others.<sup>21</sup> The tenant is free to meet the obligations of tenancy with or without assistance. Just as a tenant may hire a maid to clean the house, so may he or she rely on family members, social service workers, or paid service providers.

The FHA also prohibits steering applicants to one building or floor based on their disabilities or perceived disabilities.<sup>22</sup> Statements and policies such as, "We like to put all our wheelchair and walker tenants on one floor, so the other tenants don't feel that they are living in a nursing home" or "You don't want that apartment near the pool and tennis courts because it will be too noisy for you and you won't use the facilities anyhow" violate the law.

The FHA also forbids discrimination in the "terms, conditions, or privileges"<sup>23</sup> of tenancy. In other words, landlords cannot treat older people with disabilities less favorably than tenants without disabilities. A woman in Minnesota suffered such discrimination when the owner of her "senior apartment" community decided to require all users of motorized wheelchairs to have liability insurance as a condition of continued tenancy. No similar requirement was imposed on people without mobility impairments or people who used other devices, such as manual wheelchairs, walkers, or canes.

In assessing the discrimination claim, an administrative law judge found that the landlord had adopted the policy without empirical evidence that users of motorized wheelchairs posed a risk of harm to themselves or others, and struck down the requirement as discriminatory under the FHA.<sup>24</sup> Likewise, residents cannot be prohibited from using wheelchairs, walkers, or other equipment in common areas.<sup>25</sup>

Beyond avoiding overt acts of discrimination, housing providers must also take affirmative steps to accommodate people with disabilities so they can use and enjoy the premises. The FHA requires architects, developers, builders, and landlords to comply with basic accessibility standards.<sup>26</sup> In addition, a landlord who refuses to permit physical modifications or make reasonable accommodations in rules and policies violates the FHA.<sup>27</sup>

The concept of reasonable accommodation may seem foreign to many housing providers because it requires them to make exceptions for people with disabilities that would not be made for other residents. But a reasonable

accommodation for a senior citizen can often be the difference between continuing to live in the community and entering a nursing home. With the help of a live-in aide, he or she may be able to stay in his or her own home. Where there are limits on occupancy or unit size, such as in a retirement community for people 55 and over,<sup>28</sup> or subsidized senior housing, a resident might be entitled to an accommodation in the occupancy rules to have someone move in to help with round-the-clock personal care needs. Or, through home visits by a mental health therapist, an assisted-living resident may avoid being transferred to a more restrictive setting. Another resident might need notices sent in large print or on audiotape because of failing eyesight. Still another might be able to "age in place" by getting a designated parking space close to his or her apartment.<sup>29</sup>

Once a request for accommodation has been made, it is the landlord's responsibility to reply. A failure to respond (or an inordinate delay) has been held to violate the FHA.<sup>30</sup> Courts have generally ruled that a housing provider must grant a requested accommodation unless the provider can demonstrate that doing so would constitute an "undue financial and administrative burden"<sup>31</sup> or amount to a fundamental alteration of the service being provided.<sup>32</sup> The failure to provide a reasonable accommodation constitutes an illegal act of discrimination and can be the grounds for a lawsuit.<sup>33</sup>

In one example, after retiring to a Florida condominium, a couple lived an active life until the man experienced a stroke that left him unable to walk. They had trouble maneuvering his wheelchair on the loose-pebble parking lot and stairs in the community. He requested permission to park a wheelchair van in the lot, install a walkway and a ramp or wheelchair lift, and store a golf cart on the property and run an electrical line to it.

The condominium association used delaying tactics to avoid permitting any of the accommodations. In adjudicating a complaint under the FHA, an administrative law judge required the association to make reasonable accommodations, submit copies of all board and association

minutes and any tenant requests for modifications to their units to the regional HUD office, and pay civil and compensatory damages and attorney fees.<sup>34</sup>

Another frequent issue is whether older residents are entitled to have service or emotional-support animals even if the housing provider does not allow pets.

A person with a disability may be entitled to have an animal as a reasonable accommodation if he or she can show that this ameliorates the disability's effects and improves his or her use and enjoyment of the premises.<sup>35</sup> Service animals—such as guide dogs, hearing dogs, and assistive dogs—must be permitted,<sup>36</sup> but so must emotional-support animals.<sup>37</sup> For instance, an older widow with an anxiety disorder might be unable to live in an apartment without a dog to provide a sense of security. Another person suffering from severe depression might need the companionship of a cat. Residents with service animals that are permitted as reasonable accommodations must still comply with tenancy obligations, and their animals may not destroy the premises or attack people.<sup>38</sup>

Because a housing provider is not permitted to inquire about disability, and an applicant or resident is not required to disclose one, the provider may not learn of a resident's disability until he or she requests an accommodation. No matter when this occurs, the obligation to provide reasonable accommodations exists at every stage of the relationship, right until its end.

Attorneys have been successful in preventing the eviction of older tenants by requesting reasonable accommodations, even in cases involving serious housekeeping violations,<sup>39</sup> rules violations,<sup>40</sup> and physical confrontations with management, staff, or other residents.<sup>41</sup> In addition to changes in rules, housing providers may need to permit physical changes to property used by an older person, at that person's expense.<sup>42</sup> Typical modifications might include placing grab bars in the bathroom, installing a roll-in shower, lowering countertops and removing below-countertop cabinets to allow room for a wheelchair, installing a ramp,



widening a door to allow a scooter to pass through, or installing an automatic door opener.

If a modification would affect the unit's marketability when the resident moves out, the housing provider may require a reasonable escrow sufficient to restore the unit to its prior condition.<sup>43</sup> Failure to permit the modification is a violation of the FHA and grounds for litigation.

#### Enforcement

The FHA may be enforced in three ways:

- by HUD through an individual complaint or on its own initiative
- by the DOJ where there is a pattern and practice of discrimination
- by litigation brought by an individual in federal or state court.

Unlike employment discrimination cases, FHA cases do not require plaintiffs to exhaust administrative remedies before filing. In addition, there is concurrent jurisdiction, so they can file a HUD complaint and a civil complaint simultaneously. A HUD complaint must be filed within one year of the alleged violation. A civil action must be filed within two years of the alleged violation and before a HUD administrative hearing begins. Whether to file with HUD, in court, or concurrently is a strategic decision that depends on factors such as the timeliness and effectiveness of action by HUD or the state agency (which varies by administration and funding),<sup>44</sup> the need of the individual, and the general advantages and disadvantages of administrative proceedings versus litigation. Many practitioners file with HUD first as a form of informal discovery and then file in court if HUD is unable to conciliate.

In some elder-housing cases there is direct evidence of discrimination. Although current societal attitudes may inhibit people from overtly expressing racial or ethnic animus, prejudice against older people and those with disabilities is still frequently spoken out loud. A daughter may be told, "Your mother would be better off in a nursing home." A co-op agreement might explicitly require that shareholders "agree not to obtain any home health care without the express approval of the board of directors." Or a request for reasonable accommodations or physical modifications may be denied in a written response. These cases can be slam-dunk winners, or liability may be decided

on summary judgment.

Where there is no direct evidence of discrimination, indirect evidence may establish a prima facie case.<sup>45</sup> If housing was denied based on disability, indirect evidence would show that the person is disabled (or is perceived as disabled or has a history of being disabled), applied for and was qualified to rent or buy the property and was rejected, and that the housing remained available.<sup>46</sup> Once the prima facie case has been established, the defendant has to produce a legitimate, nondiscriminatory reason for its action. The burden of proof would then shift to the plaintiff to show that the reason given is pretextual.<sup>47</sup>

One way of establishing a prima facie case is to use a tester: Have someone with characteristics similar to the potential plaintiff's, but not in the protected class, apply for the same unit. If the tester is offered the unit, there is good evidence that the sole reason for rejecting the applicant was his or her protected class status. Many local agencies receive funding from HUD or local governments to perform fair-housing testing like this.

Plaintiffs can also use disparate impact to establish liability. The circuit courts have set different standards for establishing disparate impact.<sup>48</sup> In a civil action, relief under the FHA includes actual and punitive damages, injunctive relief, and attorney fees. HUD may also assess a civil penalty to vindicate the public interest.<sup>49</sup>

#### Fair housing and trial attorneys

Trial attorneys are uniquely situated to advance the remedies and protections of the FHA. They have experience presenting cases that maximize the types of damages this statute expressly authorizes. In awarding compensatory damages, courts have ruled that victims of housing discrimination are entitled to damages for mental distress as well as actual damages.<sup>50</sup>

In addition, a plaintiff attorney can often prove a good case for punitive damages.<sup>51</sup> Housing providers have had 15 years to comply with the law, and many have received

training in how to do that through HUD, local governments, provider organizations, or Realtor associations. Punitive damages may be the only way to ensure that the discrimination does not recur. The FHA's provision for attorney fees has also been generously applied.<sup>52</sup>

As the Supreme Court has unanimously held, the FHA's provisions are "broad and inclusive," implementing "a policy that Congress considered to be of the highest priority," requiring "a generous construction" of the statute.<sup>53</sup> By making creative use of the law, trial lawyers can protect vulnerable elders from illegal discrimination, preserving their homes and extending their lives.

#### Notes

1. SANIBEL, FLA., CODE ch. 102, §1.1.A (Feb. 15, 2002).

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2. 42 U.S.C. §§3601-3619 (2001). Housing that receives federal funds is also governed by §504 of the Rehabilitation Act, 29 U.S.C. §794 (2001). See Housing Act of 1959 §§1701q-1715w, 1748h-s (2001); Housing and Community Development Act of 1974 §210, 12 U.S.C. §1701q (2001); Cranston-Gonzales National Affordable Housing Act, 42 U.S.C. §§12701-12912 (2001); 24 C.F.R. pt. 891 (2003) (Section 202 housing); 24 C.F.R. pt. 892 (2003) (Section 8 housing). In general, §504 provides additional protections beyond those of the Fair Housing Act, and increases the affirmative legal obligations of the housing provider to accommodate the needs of people with disabilities. [Back to text...](#)

3. The FHA uses the term "handicap," although its definition is identical to that of "disability" in the ADA and §504. People whose rights are safeguarded by the FHA prefer the term "disability." [Back to text...](#)

4. H.R. REP. NO. 100-711 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2179. [Back to text...](#)

5. HUD, HOUSING DISCRIMINATION REP. (2002); see also HUD, DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: NATIONAL RESULTS FROM PHASE I OF THE HOUSING DISCRIMINATION STUDY (HDS) (2002). [Back to](#)

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6. National Fair Housing Alliance, 2003 Trends Report Press Kit, Press Release, Less Than One Percent of Illegal Housing Discrimination Reported, According to New Report by National Fair Housing Alliance (Apr. 16, 2003), available at [www.nationalfairhousing.org/html/trends/trends2003/FINAL%202003%20Trends%20Release.pdf](http://www.nationalfairhousing.org/html/trends/trends2003/FINAL%202003%20Trends%20Release.pdf) (last visited Aug. 8, 2003) Back to text...

7. National Council on Disability, Reconstructing Fair Housing (Nov. 6, 2001), available at [www.ncd.gov/newsroom/publications/01publications.html](http://www.ncd.gov/newsroom/publications/01publications.html) (last visited Aug. 28, 2003). Back to text...

8. 42 U.S.C. §3613(a) (2001). Back to text...

9. Id. §3613(c)(2). Back to text...

10. See Michael Allen & Eric Carlson, Can't We All Just Get Along? A Friendly Argument About Discrimination in Long-Term Care, NAELA NEWS, May-June 2002, at 1, 10-12. Back to text...

11. Id. at 10-11. Back to text...

12. Id. at 11. Back to text...

13. 42 U.S.C. §3602(h) (2001); 24 C.F.R. §100.201 (2003) (defining "handicap"). Back to text...

14. 42 U.S.C. §3602(b) (2001). Exemptions include (1) single-family homes, if the owner does not own more than three at any one time or meet other criteria, 42 U.S.C. §3603(b)(1) (2001); (2) dwellings with four or fewer units one of which is owner occupied, 42 U.S.C. §3603(b)(2) (2001). Back to text...

15. See, e.g., *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096 (3d Cir. 1996) (nursing home); *Gittelman v. Woodhaven Condo. Ass'n, Inc.*, 972 F. Supp. 894 (D.N.J. 1997) (condominium unit); *Weinstein v. Cherry Oaks Ret. Cmty.*, 917 P.2d 336 (Colo. Ct. App. 1996) (residential care facility). Back to text...

16. See 24 C.F.R. §100.202 (2003) (prohibiting discrimination during sale, application, and in terms and

conditions of occupancy); see, e.g., *San Pedro Hotel Co. v. City of Los Angeles*, 159 F.3d 470 (9th Cir. 1998); *Cobble Hill Apartments Co. v. McLaughlin*, 1999 WL 788517 (Mass. App. Div. June 23, 1999). [Back to text...](#)

17. *United States v. Forest Dale, Inc.*, 818 F. Supp. 954, 961 (1993). [Back to text...](#)

18. See, e.g., *Niederhauser v. Independence Square Hous.*, No. C 96-20504, FH-FL Rep. 16,305 (N.D. Cal. Aug. 27, 1998); *Cason v. Rochester Hous. Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 1990). [Back to text...](#)

19. See, e.g., *United States v. Resurrection Ret. Cmty., Inc.*, No. 02-CV-7453 (N.D. Ill. Oct. 17, 2002). Statistics on FHA verdicts and settlements are available at [www.fairhousing.com/index.cfm?method=page.display&pageid=3292](http://www.fairhousing.com/index.cfm?method=page.display&pageid=3292) (last visited Aug. 28, 2003). [Back to text...](#)

20. 24 C.F.R. §100.202 (c) (2003). Inquiries into five areas concerning disability are permitted if they are asked of every applicant. [Back to text...](#)

21. See PUBLIC AND ASSISTED HOUSING OCCUPANCY TASK FORCE, REPORT TO CONGRESS AND TO THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (Apr. 7, 1994) (on file with authors). In addition, the applicant may be asked to comply with reasonable, narrowly tailored, relevant inquiries about disability to establish eligibility for reasonable accommodations or modifications. [Back to text...](#)

22. *Cf. Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982) (addressing the practice of steering in the context of race). [Back to text...](#)

23. 42 U.S.C. §3604(f)(2) (2001). [Back to text...](#)

24. Sec'y, *HUD v. Country Manor Apartments*, HUDALJ No. 05-98-1649-8, 2001 WL 1132715, at \*11 (ALJ Sept. 20, 2001). But see *United States v. Hillhaven Corp.*, 960 F. Supp. 259 (D. Utah 1997) (holding that a retirement community had a legitimate health and safety interest in restricting the use of motorized carts in common areas during peak periods). [Back to text...](#)

25. See, e.g., *Weinstein*, 917 P.2d 336. But see *Hillhaven Corp.*, 960 F. Supp. 259. [Back to text...](#)
26. 42 U.S.C. §3604(f)(3)(C)-(f)(4) (2001); 24 C.F.R. §100.205 (2003). [Back to text...](#)
27. 42 USC §3604(f)(3)(A), (B) (2001); 24 C.F.R. §100.204 (2003). For HUD's interpretations of what constitutes a reasonable accommodation, and other statutory provisions, see 54 Fed. Reg. 3232, 3243-252 (Jan. 23, 1989); see also PUBLIC AND ASSISTED HOUSING OCCUPANCY TASK FORCE, REPORT TO CONGRESS AND TO THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 21. [Back to text...](#)
28. 42 U.S.C. §3607(b) (2001). [Back to text...](#)
29. See, e.g., *Gittleman*, 972 F. Supp. 894. [Back to text...](#)
30. See, e.g., *Groome Res., Ltd. v. Parish of Jefferson*, 52 F. Supp. 2d 721 (E.D. La. 1999), *aff'd*, 234 F.3d 192 (5th Cir. 2000). [Back to text...](#)
31. See, e.g., *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2d Cir. 1995); *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1417 n.3 (9th Cir. 1994). [Back to text...](#)
32. *Woodside Vill. v. Hertzmark*, No. SPH9204-65092, 1993 WL 268293 (Conn. Super. Ct. June 22, 1993). [Back to text...](#)
33. 42 U.S.C. §3604(f)(3)(A) (2001); 24 C.F.R. §100.204 (2003) (FHA); 24 C.F.R. §8.33 (2003) (Rehabilitation Act); 28 C.F.R. §35.130(b)(7) (2003) (ADA). [Back to text...](#)
34. Sec'y, *HUD v. Ocean Sands, Inc.*, HUDALJ No. 04-90-0231-1, 1993 WL 343530 (ALJ Sept. 3, 1993); see also Sec'y, *HUD v. Ocean Sands, Inc.*, HUDALJ No. 04-90-0231-1, 1993 WL 471296 (ALJ Nov. 15, 1993); Sec'y, *HUD v. Ocean Sands, Inc.*, HUDALJ No. 04-90-0231-1, 1994 WL 110739 (ALJ Mar. 28, 1994). [Back to text...](#)
35. *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995). [Back to text...](#)

36. See, e.g., *Bronk*, 54 F.3d 425, 429; *Fulciniti v. Vill. of Shadyside Condo. Ass'n*, No. 961825 (W.D. Pa. Nov. 20, 1998). [Back to text...](#)
37. See, e.g., *Whittier Terrace Assocs. v. Hampshire*, 532 N.E.2d 712 (Mass. App. Ct. 1989); *Sec'y, HUD v. Riverbay Corp.*, HUDALJ No. 02-93-0320-1, 1995 WL 108212 (ALJ Mar. 5, 1995). [Back to text...](#)
38. See, e.g., *Hertzmark*, No. SPH 9204-65092, 1993 WL 268293. [Back to text...](#)
39. *Cordrey v. Hous. Auth.*, No. 80-C-881, 1980 U.S. Dist. LEXIS 17835 (D. Colo. 1980). [Back to text...](#)
40. See, e.g., *City Wide Assocs. v. Penfield*, 564 N.E.2d 1003 (Mass. 1991); *Cobble Hill Apartments Co.*, 1999 WL 788517. [Back to text...](#)
41. See, e.g., *Roe v. Hous. Auth.*, 909 F. Supp. 814 (D. Colo. 1995); *Roe v. Sugar River Mills*, 820 F. Supp. 636 (D.N.H. 1993). [Back to text...](#)
42. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (2001), requires recipients of federal funds to pay for most such modifications. [Back to text...](#)
43. 24 C.F.R. §100.203 (a) (2003). [Back to text...](#)
44. Where a state human rights agency has been determined to be substantially equivalent to HUD for purposes of enforcing housing discrimination laws, the complaint may be filed with and investigated by the state agency. 42 U.S.C. §3610(f) (2001). See, e.g., National Council on Disability, *supra* note 7 (documenting shortcomings of HUD administrative enforcement). [Back to text...](#)
45. See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); *Sec'y, HUD v. Mountain Side Mobile Estates P'ship*, HUDALJ No. 08-92-0010-1, 1993 WL 307069 (HUD), at \*5-\*7 (ALJ July 19, 1993); Memorandum from Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal Opportunity, *Applicability of Disparate Impact Analysis to Fair Housing Cases* (Dec. 17, 1993), available at [www.fairhousing.com/index.cfm?method=page.display&pagename=HUD\\_resources\\_hudguid7](http://www.fairhousing.com/index.cfm?method=page.display&pagename=HUD_resources_hudguid7) (last visited Aug. 8,

2003). [Back to text...](#)

46. *Ind. Civil Rights Comm'n v. Washburn Realtors*, 610 N.E.2d 293, 295 (Ind. Ct. App. 1993). [Back to text...](#)

47. *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). [Back to text...](#)

48. See, e.g., *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977) (four-factor test), cert. denied, 434 U.S. 1025 (1978); *Mountain Side Mobile Estates P'ship v. HUD*, 56 F.3d 1243, 1253 (10th Cir. 1995) (three-factor test). [Back to text...](#)

49. 42 U.S.C. §3612(g)(3) (2001). [Back to text...](#)

50. See, e.g., *Boulder Meadows v. Saville*, 2 P.3d 131 (Colo. Ct. App. 2000); Sec'y, *HUD v. Dutra*, HUDALJ No. 09-93-1753-8, 1996 WL 657690, at \*14 (ALJ Nov. 12, 1996); *Mitchell v. Soleyman*, No. 00-12951 (C.D. Cal. 2002), reported at FH-FL Rep., Rep. Bull. 6.3 (June 15, 2002); Sec'y, *HUD v. Twinbrook Vill. Apartments*, HUDALJ Nos. 02-00-0256-8, 02-00-0257-8, 02-00-0258-8, 2001 WL 1632533 (ALJ Nov. 9, 2001). [Back to text...](#)

51. See, e.g., *Balachowski v. Boidy*, No. 95-C- 6340, 2000 WL 1365391 (N.D. Ill. Sept. 20, 2000); *United States v. Wagner*, 940 F. Supp. 972 (N.D. Tex. 1996). [Back to text...](#)

52. *Davis v. N.Y.C. Hous. Auth.*, Nos. 90 Civ. 628 (RWS), 92 Civ. 4873 (RWS), 2002 WL 31748586 (S.D.N.Y. Dec. 6, 2002); *Samaritan Inns, Inc. v. District of Columbia*, 114 F.3d 1227 (D.C. Cir. 1997), aff'g, in part, and rev'g, in part, No. 93 CV 2600 R, 1995 WL 405710 (D.D.C. June 30, 1995). [Back to text...](#)

53. *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 211, 212 (1972). [Back to text...](#)

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