



TOPICS IN FAIR HOUSING FOR PEOPLE WITH DISABILITIES
COHHIO CONFERENCE, HOUSING OHIO
April 8, 2019



Michelle Brunson, *Law Clerk, COHHIO*
 Kevin Truitt, *Attorney, Disability Rights Ohio*

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Fair Housing History

Fair Housing Act passed in 1968

- Title VIII of Civil Rights Act of 1968
- One week after assassination of MLK, Jr.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Sources of Law

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (FHA) (as amended)
- Fair Housing Act Amendments of 1988 (FHAA)
- Section 504 of the Rehabilitation Act of 1973
- Section 109 of the Housing and Community Development Act of 1974
- Architectural Barriers Act of 1968
- Age Discrimination Act of 1975
- Section 3: Housing and Urban Development Act of 1968
- Titles II and III of the Americans with Disabilities Act of 1990 (ADA)
- Housing for Older Persons Act of 1995 (HOPA)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Simple Definition of “Fair Housing Act”

- Prohibits discrimination in the rental (including services), sale, advertising, design, insuring, and financing of dwellings, and in other housing-related transactions, based on membership in protected classes
- VERY BROAD & intended to be broad**



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Fair Housing Act Basics

- Prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions...
 - Applies to Landlords, Realtors, Mortgage Brokers, Insurance Agents, Zoning Codes, etc.
- ...based on membership in protected classes
 - Characteristic of a person cannot be targeted for discrimination
 - Can be determined by documented patterns of treatment



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

7 Federal Protected Classes

Race



(Skin) Color



Familial Status



Religion



Sex/Gender



National Origin



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

7th Federal Protected Class

Disability

- Fair Housing Act amended in 1988 to include disability and familial status
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- 1999 Olmstead Decision



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Fair Housing Basics

- **F**amilial Status
- **R**ace
- **S**ex
- **H**andicap (Disability)
- **C**olor
- **R**eligion
- **N**ational Origin



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Ohio Protected Classes

Ancestry

(1965)



Military Status

(2008)



Ohio Revised Code 4112.02(H)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

LGBTQ and Source of Income

• Sexual orientation and gender identity

- Not federal or state protected class
- May be a local protected class (Columbus City Code 2331.02(A)(1))
- In addition to these two, Athens adds marital status and age as protected classes. (Athens Ord. No. 0-129-13, § I, 12-2-2013)
- HUD Equal Access Housing Rule

• Source of income

- Housing Choice Voucher/Section 8
- Not a protected class in Ohio or USA
- Has been adopted as protected class in other cities/municipalities AND a few cities in NE Ohio (Lindale, University Heights, South Euclid, Warrensville Heights)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Exceptions to FHA

- Any single family home sold or rented by an owner
- Rooms or units in dwellings with less than 4 units
- Religious organizations
- Private Clubs
- Emergency shelters?

Having an exemption under the FHA does not prevent one from being sued pursuant to other non-discrimination statutes.
(Section 504, ADA, RC 4112)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

TDHCA v. ICP

- HELD:
 - Disparate impact claims are cognizable under the Fair Housing Act
 - Short & sweet, but a l-o-n-g syllabus
 - Look at results, NOT intent

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Americans with Disabilities Act (ADA)

- Covers places of **public** accommodation.
- Those areas of a housing development which are open to the public:
 - Rental office
 - Pools
 - Club house/party room
 - Gym
- The ADA also covers public entities (ex: public housing authority).



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Disability Definition

- A individual with a disability is any person who has a **physical or mental impairment** that **substantially limits** one or more **major life activities**
- Person who has a record of such impairment
- Person regarded as having such an impairment

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Physical or Mental Impairment

- Visual or Hearing Impairment
- Mobility Impairment
- Mental Illness
- Emotional Illness
- Intellectual Disability
- Alcoholism & **Past** Substance Abuse
- Chronic Disease: muscular dystrophy, multiple sclerosis, HIV, Cancer, Autism, ADHD, asthma, etc.
- Can be temporary



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Major Life Activities

Including, but not limited to:

- Seeing
- Hearing
- Walking
- Breathing
- Performing Manual Tasks
- Caring for One's Self
- Speaking
- Thinking

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Why Focus on Disability

According to the US Census Bureau 2010:

- 56.7 MM people in the US experience a disability (19%)
- 29.5 MM were between the ages of 21-64 and **41% of them were employed**
- 19.2 Million were 65 and over.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Why Focus on Disability

According to HUD:

- Approximately 50% of all cases filed in 2013 were disability-related
- In 2017 the # of disability-related cases was more than 55%
- That % climbs every year



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Reasonable Accommodations & Reasonable Modifications

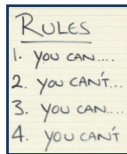
Fair Housing Act requires that:

- A landlord *may not unreasonably refuse to provide a reasonable accommodation* of a rule, policy, or procedure to address the needs of a person with a disability
- A landlord *may not unreasonably deny permission to a tenant to make a modification* of the premises to address the needs of a person with a disability

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Accommodation

A change in
rules, policies,
practices, or
services



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Accommodation Example #1



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Accommodation Example #1

- ADA
- Trained
- Performs a specific task to assist
- Dogs or miniature horses



- FHA
- No training
- No certification
- Not limited to dogs & horses
- No # limit



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Accommodation Example #2



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Accommodation Example #3



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Other examples of accommodations

- Live-in aide for people with disabilities who rely on others to care for them;
- Ground floor apartment for someone who has a mobility impairment and cannot use stairs;
- Effective communication for people who are deaf or blind;
- An assigned parking space for people with a mobility disability

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Anderson v. City of Blue Ash

- Important decision from the federal Sixth Circuit Court of Appeals
- This case involved a child with multiple disabilities whose doctor prescribed her equine therapy (a miniature horse) to enable her to walk and play and exercise in the backyard of her home, which would provide her many therapeutic benefits and was important for her long-term health.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Anderson v. City of Blue Ash

- A municipal ordinance prohibited the presence of horses and other farm animals on residential property in the city.
- The district court dismissed the family's case against the city.
- The Sixth Circuit reversed the dismissal on the basis of the ADA and FHA.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Anderson v. City of Blue Ash

- The case was eventually settled by the parties.
- The family was permitted to keep the miniature horse on their residential property and agreed to:
 - regularly remove waste from their property,
 - obtain no more animals, and
 - allow city employees to enter the exterior of their property without notice to ensure compliance.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Ellie, the miniature horse



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Fair Housing Modifications

Under the FHA, a landlord **may not unreasonably deny permission to a tenant to make a modification** of the premises to address the needs of a person with a disability.



Tenant's wallet ↑

Modification – a structural change (interior or exterior) made to existing premises, occupied or to be occupied by a person with a disability.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Section 504

"No otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity **receiving federal financial assistance...**"

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Section 504 & Fair Housing

Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing **and paying for** reasonable modifications that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodations under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Who is covered under 504?

YES:

- Owned by Public Housing Authority
- Project-based Section 8
- 202/811 – senior/disabled
- USDA Rural Development properties
- Section 236 (with a mortgage subsidy)
- Other federal funding (CDBG, HOME, etc.)

NO:

- Housing Choice Vouchers (AKA Sec. 8 Voucher)
- All other privately owned/financed property
- LIHTC properties **without federal gap financing**

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Paying for Section 504

504 requires that programs that receive **FEDERAL FUNDING** must make accommodations and modifications to permit full participation by people with disabilities.



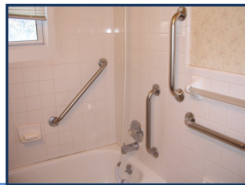
Landlord's wallet ↑

504? Landlord has to pay. Modification = Accommodation

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Modification Example # 1

Adding Grab Bars in the Shower



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Modification Example #2

Door knob → Door handle



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Modification Example # 3

Removing Carpet



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Exterior vs. Interior Modification

- Exterior
 - Under FHA, tenant cannot be required to remove
- Interior
 - Under FHA, tenant can be required to remove



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

“Reasonable” Definition

1. Economically and architecturally feasible
2. Does not alter the fundamental nature of the program
3. Each request **must be** considered on “case by case” basis



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Preparing a RA/RM request

Before submitting, make sure:

- Person is considered to have a disability under FHA/504
 - Not obvious? Then one may need documentation
- Major Life Activity impaired in housing
 - Strong "nexus"
- 504 eligible?

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Making a RA/RM request

- The request may be oral, but preferably should be in writing to prevent misunderstanding.
- It can also be made by another individual on behalf of a person with a disability.
- Need not mention the FHA or even the words "reasonable accommodation" or "reasonable modification." It should be apparent that the person has a disability and needs something.
- A housing provider may have a form or process but **cannot require** use of the form or process.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Documentation

Landlord allowed to ask for documentation of an individual's disability related to the request, if the person's disability is not readily apparent.



- NOT entire medical history
- Reliable documentation of disability + need for accommodation: usually a doctor or other medical professional but there is no exhaustive list

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Nexus

Nexus = Link between Disability and RA/RM request



Given the person's disability and the resulting impairment, is the RA/RM necessary?

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Submitting a RA/RM

- The basic 4-part test to determine reasonableness:
 1. Does the applicant/tenant have a disability?
 2. Is there a nexus between the disability and the problem?
 3. Will accommodation/modification fix the problem?
 4. Is it an undue burden?
- A reasonable request will have the following answers to those questions:
 1. YES, applicant/tenant has a disability
 2. YES, there is a nexus between the disability and the problem
 3. YES, the modification will fix the problem
 4. NO, there is not an undue burden

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Interactive Process

"...Both sides must communicate directly, exchange essential information and neither side can delay or obstruct the process..."

—Marilyn Tobocman,

Assistant Attorney General for Civil Rights Issues

• Landlord has affirmative duty to participate in Interactive Process

• Skepticism ≠ Intrusiveness

• Tenant's duty to show the accommodation is necessary and reasonable



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Request Ignored or Denied?

VIOLATION ALERT!

- Document the details
- File a complaint with HUD or OCRC
- HUD/OCRC conducts investigation
- Mediation – allows for creative remedies
- Decision: NO Cause or FOR Cause
- Remedies: Injunctions, damages, civil penalties, court costs, and attorney fees
- Can always go to court

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Olmstead v. L.C.

- Under the ADA and the U.S. Supreme Court's decision in *Olmstead v. L.C.*, people with disabilities have the right to live and work and receive the services and support they need in the most integrated, least restrictive setting in the community instead of an institutional setting, like a nursing facility or hospital.



Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Ball v. Kasich

- Disability Rights Ohio (DRO) filed a class action *Olmstead* lawsuit in 2016 against state officials in Ohio, alleging that there are thousands of people with intellectual and developmental disabilities in large institutional settings or are at serious risk of admission to one of these facilities.
- Many would prefer to live in their own homes in the community with appropriate services, but the lawsuit alleged that the current system cannot support them in these settings.
- The case was certified as a class-action in March 2018, and trial is set for February 2020.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

Olmstead and the FHAA and ADA

- Under the FHA and ADA, municipalities and other local governments cannot make zoning or land use decisions or policies that exclude or otherwise discriminate against people with disabilities.
- They must also make reasonable accommodations to allow people with disabilities an equal opportunity to live in our communities.

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

WHERE TO GET HELP

- Fair Housing Organizations:
 - Fair Housing Contact Service:
 - 330-376-6191
 - www.fairhousingakron.org <<http://www.fairhousingakron.org>>
 - Summit, Portage, Medina, Stark Counties (and others where a private fair housing group does not exist)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

WHERE TO GET HELP

- Fair Housing Advocates
- 330-253-2450
- Located in Akron but serve outside this area

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

WHERE TO GET HELP

- Fair Housing Center for Rights & Research
- 216-361-9240
- www.thehousingcenter.org<<http://www.thehousingcenter.org>>
- Cuyahoga & Lorain Counties (Cleveland area)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

WHERE TO GET HELP

- Fair Housing Resource Center
- 440-392-0147
- www.fhrc.org<<http://www.fhrc.org>>
- Lake, Geauga, Ashtabula Counties (far Northeastern counties of OH)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

WHERE TO GET HELP

- Toledo Fair Housing Center
- 419-243-6163
- www.toledofhc.org<<http://www.toledofhc.org>>
- Lucas & Wood Counties

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

WHERE TO GET HELP

- Miami Valley Fair Housing Center
- 937-223-6035
- www.mvfairhousing.com<<http://www.mvfairhousing.com>>
- Montgomery & Green Counties (Dayton area)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

WHERE TO GET HELP

- Housing Opportunities Made Equal (HOME) Cincinnati
- 513-721-4663
- www.homecincy.org<<http://www.homecincy.org>>
- Greater Cincinnati area including Hamilton County

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

WHERE TO GET HELP

- Legal Aid (866-LAW-OHIO)(866-529-6446)
- Disability Rights Ohio (800-282-9181)
- COHHIO (tenant information line—888-485-7999)
- OCRC (888-278-7101)

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215

How to stay in touch:

Joe Maskovyak, COHHIO

• jmaskovyak@cohhio.org

• Direct: 614-280-1984 x133

• rentinfo@cohhio.org

• Toll Free: 888-485-7999 (Housing Information Line)

•Kevin Truitt, Disability Rights Ohio

• ktruitt@disabilityrightsOhio.org

• (614) 466-7264 or (888) 282-9181 ext. 122.

Thank you!

Coalition on Homelessness and Housing in Ohio | 175 S. Third St. Suite 580 Columbus, OH 43215
