

Housing Provider's Obligations Under New York State's Human Rights Law

I. Major Points re: Housing for Persons with Disabilities under New York State's Human Rights Law:

1. Housing providers include public and private housing, cooperatives, condos, and rentals that house three (3) or more families with certain limited exceptions.
2. Persons covered under the law must be disabled, and occupy or intend to occupy a housing accommodation.
3. Definition of "disability" under New York State's Human Rights Law is more generous than the Federal Fair Housing Act (FHA). Unlike the FHA, there is no requirement under New York State's Human Rights Law that the disability "substantially limits a major life activity."
4. Housing providers may not refuse to sell or rent housing accommodations on account of a person's disability.
5. Housing providers can not discriminate in the terms, conditions or privileges in the sale, lease, or ownership of a housing accommodation on account of a person's disability.
6. Housing providers must permit for reasonable modifications of existing premises to afford an occupant with a disability use and enjoyment of their home.
7. Housing providers must make reasonable accommodations of rules, policies, practices and procedures to afford an occupant with a disability use and enjoyment of their home.
8. Newly constructed multi-family housing (constructed on or after March 13, 1991) must follow stricter standards for accessible design and construction.
9. The New York State Human Rights Law permits for punitive damages and attorney's fees in cases of housing discrimination.

II. Definition of Disability:

New York State's Human Rights Law defines the term "disability" as,

- a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, or
- a record of such an impairment, or

- a condition regarded by others as having such an impairment.¹

Comparison of definition of “disability” under New York State and Federal law

New York State’s definition of “disability” differs substantially with the federal definition under the Federal Fair Housing Act (FHA) which defines the term as, a physical or mental impairment that substantially limits one or more of the major life activities of such individual.

The standard under the FHA is more difficult to meet in that it requires a “substantial limitation of one or more life activities of such individual.” There is no such requirement in the State Human Rights Law. It merely requires that a physical, mental or medical impairment that prevents the exercise of a normal bodily function; or a record of such impairment; or being regarded as having an impairment.

III. Housing Facilities Covered

New York State’s Human Rights Law covers both privately owned and publicly funded housing within the State. The law defines a “housing accommodation” as, “any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more human beings.”²

The law does NOT cover dwellings that include,

- rental units in two-family homes occupied by the owner;
- rental in rooming houses occupied by the owner;
- rental of all rooms to persons of the same sex; or
- certain types of senior housing, where rental or lease of housing accommodations is made exclusively to persons sixty-two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit.”³

IV. Prohibited Discriminatory Practices

New York State’s Human Rights Law prohibits persons having the right to own, lease, sell, rent or manage a housing accommodation constructed, or to be constructed to:

- refuse to sell, rent, lease or otherwise deny any person a housing accommodation on account of disability, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available;

¹ N.Y. Exec. Law § 292(21).

² N.Y. Exec. Law §292(10).

³ N.Y. Exec. Law §296(5)(a)(3).

- to discriminate against any person because of disability in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith;
- to print or circulate any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to disability, or any intent to make any such limitation, specification or discrimination.”⁴

V. Reasonable Modifications & Accommodations

New York State’s Human Rights Law prohibits housing providers from refusing reasonable modifications or accommodations to allow a person with a disability to access, use and enjoy their home.

Specifically, it shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations:

“to refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the said person, if the modifications may be necessary to afford the said person full enjoyment of the premises, in conformity with the provisions of the New York State Building Code except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter’s agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.”⁵

Examples of reasonable modifications include:

- installation of a ramp or wheelchair lift;
- widening of doorways; or
- modifications of kitchens or bathrooms to make them accessible to a person with a disability.

In the case of rental, landlords may condition permission for the modification on the renter agreeing to restore the unit to its original condition. Usually this is arranged through funding of an escrow account by the occupant.

⁴ N.Y. Exec. Law §296(5)(a)(1)-(3).

⁵ N.Y. Exec. Law §296(18)(1).

It is also unlawful for a housing provider to “refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling.”⁶

Examples of reasonable accommodations to rules, policies, practices or services include:

- waiving a no pet policy for a person who uses a guide, hearing or service animal, or emotional support animal; or
- moving a person with a disability to the top of a waiting list to secure a handicap parking place that is close and on an accessible route to one’s unit.

What is reasonable is determined on a case-by-case basis.

VI. New Construction

New York State’s Human Rights Law also requires that newly constructed buildings meet certain design requirements so that they are accessible to and usable by people with disabilities. This section of the law covers multi-family dwellings that were constructed for first occupancy **after March thirteenth, nineteen hundred ninety-one**. The New York State Human Rights Law requires these buildings be designed and constructed in accordance with the accessibility requirements for multi-family dwellings found in the New York State’s Building Code.

Specifically the law requires that,

- public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities;
- all doors are designed to allow passage into and within all premises and are sufficiently wide to allow passage by persons in wheelchairs;
- all premises within the units contain an accessible route into and through the dwelling;
- light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
- there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, in conformity with the New York State Building Code.⁷

⁶ N.Y. Exec. Law §296(18)(2).

⁷ N.Y. Exec. Law §296(18)(3).

VII. Damages

In cases of housing discrimination, New York State's Human Rights Law permits the aggrieved person to be awarded compensatory and punitive damages. Punitive damages are capped at ten thousand dollars.⁸ The New York State Division of Human Rights can also assess civil fines and penalties, in cases of housing discrimination in an amount not to exceed fifty thousand dollars, to be paid to the State by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the State by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious.⁹

VIII. Attorney's Fees

With respect to cases of housing discrimination only, the commissioner or the court may in its discretion award reasonable attorney's fees to any prevailing or substantially prevailing party; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous.¹⁰

⁸ N.Y. Exec. Law §297(4)(c)(iii)-(iv).

⁹ N.Y. Exec. Law §297(4)(c)(vi).

¹⁰ N.Y. Exec. Law §297(10).