

Fair Housing Guide

For People with Disabilities

Presented by Long Island Board of REALTORS®



THE FAIR HOUSING ACT

The Fair Housing Act is a federal law that prohibits discrimination in all types of housing transactions based on disability, among other protected classes.

Enacted in 1968, the Act makes it illegal to discriminate against any person in the sale, rental or financing of housing and other housing-related activities based on their race, color, religion, sex, national origin, disability or familial status. The Act applies to a broad range of persons and entities, including but not limited to property owners, landlords, housing managers, public housing agencies, real estate agents, brokerage service agencies and banks.

The Act was amended in 1988 to [include protections for people with disabilities](#). It defines a disability as a physical or mental impairment that substantially limits one or more of such person's major life activities. Those covered by the law may not discriminate against applicants or residents because of their disability or the disability of anyone associated with them. They are also prohibited from treating persons with disabilities less favorably than others because of their disability.

The *Fair Housing Act* is enforced by the U.S. Department of Housing and Urban Development ([HUD](#)) and the U.S. Department of Justice ([DOJ](#)). It provides a baseline for anti-discrimination protections. Some states (including New York State) and localities have their own fair housing laws that provide additional protections and cover more categories of individuals.



NEW YORK STATE HUMAN RIGHTS LAW

The New York State Human Rights Law (NYSHRL) prohibits discrimination in housing on the basis of disability, among other protected classes.

The NYSHRL prohibits housing providers from refusing to sell, rent or lease to any person a housing accommodation on account of disability. It also prohibits housing providers from discriminating 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 with the housing unit.

Housing providers are obligated to reasonably accommodate persons with disabilities to allow them to use and enjoy their home, and they are required to pay and provide for reasonable modifications to common areas to make them accessible to such persons.

The definition of “disability” under the NYSHRL is more expansive than under the federal *Fair Housing Act*. It includes, in part, a physical, mental or medical impairment that prevents the exercise of a normal bodily function. There are no qualifiers as to the severity of the disability under the NYSHRL. Unlike federal law, NYSHRL does not require that the impairment “substantially limit a major life activity.”

REASONABLE ACCOMMODATIONS

Reasonable accommodations are changes in any rule, policy, procedure or service needed in order for a person with a disability to have equal access to and enjoyment of their home.

Property owners or managers have a legal responsibility to make reasonable accommodations to allow a person with a disability to live in the housing unit they are offering for rent. Under the law, people with disabilities also have the right to request reasonable accommodations be made to allow them to live in their home.

Examples of reasonable accommodations include allowing an overnight caregiver despite a policy prohibiting overnight guests, providing a designated parking space for a van or permitting a tenant to transfer to a ground-floor unit. This list is not exhaustive; the accommodation should be tailored to allow individuals to access their homes. Reasonable accommodations are made at the housing provider's expense.

Pursuant to the *New York State Human Rights Law*, all housing providers, real estate licensees and property managers must provide each prospective tenant with a "Notice of Tenants Rights to Reasonable Modifications and Accommodations for Persons with Disabilities" at first substantive contact.

This notice sets forth the rights a person with a disability has to request reasonable modifications or accommodations. Housing providers must post the notice in a well-lit area in the building where an individual is seeking the accommodation or in any leasing office, and they must display a link to the notice on the homepage of any website they create or maintain. Real estate licensees are also required to post the notice in their office in a conspicuous well-lit area and display a link to the notice on the homepage of their websites.

REASONABLE MODIFICATIONS

Reasonable modifications are physical changes to an apartment or house that make the unit accessible to someone with a disability.

Under the law, a person with a disability must be permitted to have reasonable modifications made to their housing unit or to public or common-use areas as needed to provide equal access.

Examples of reasonable modifications include wheelchair ramps, supporting bars, wider doorways and hallways, and automated doors. This list is not exhaustive; the physical modification should be tailored to allow individuals to have access to their homes.

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The New York State Association of REALTORS® (NYSAR) has developed [two sample notices](#), one where the managing agent information is known and one where the managing agent information is unknown.



RARE EXCEPTIONS

Under certain limited circumstances, rare exceptions may be made to the legal requirement to make reasonable accommodations or modifications to a home.

The primary reason for such exceptions is if the reasonable accommodation or modification would present an undue administrative or financial burden on the housing provider or constitute a fundamental alteration to a program. One example of this could be a designated historic property that would require complete reconstruction to widen access points like doors and hallways.

It is important for property managers or owners to consult with legal counsel about such potential exceptions before offering the home for rent. Should the exception be justified, the housing provider still has a legal requirement to work with the person requesting the modification or accommodation to try to find a reasonable alternate accommodation or modification that would effectively address the requester's disability-related needs.

It is always a good practice for housing providers and requesters to work together in an interactive, collaborative process to find the right modification or accommodation to fit the situation. Learn more from the [U.S. Department of Housing and Urban Development](#).

SERVICE AND EMOTIONAL SUPPORT ANIMALS

Service animals are dogs trained to work or perform tasks for a person with a disability, such as a guide dog for a person with a vision impairment.

Emotional support animals assist a person with a physical or mental impairment (not limited to dogs). Service and support animals are not pets.

Housing providers and property managers with a “no pets” policy are required to make reasonable accommodations to allow persons with a physical or mental disability to keep a service or emotional support animal and cannot charge fees, deposits or additional rent to a person who requires the assistance of a service or emotional support animal. REALTORS® should address this topic with the property owners and be prepared to work with and accept any tenant with a service or emotional support animal. Refusal to accept tenants with these types of animals can result in charges for violating the law.

Housing providers cannot ask about the nature or extent of a person’s disability and may not demand proof that a service animal is certified. However, if it is not apparent that a dog is in service, two questions can be asked: (1) “Is the animal required because of a disability?”; and (2) “What work or task has the animal been trained to perform?”

If the disability of a person with an emotional support animal is not apparent, you can ask for a letter from a physician, social worker or psychologist stating that the person requires an emotional support animal. However, you cannot request to see their medical records or ask them to define the emotional support issue or explain their disability.

A service or emotional support animal must also be allowed to accompany a client or customer to an open house or showing. When the animal enters the open house, licensees can obtain the contact information of the animal’s owner so that there can be recourse in case any damage occurs. These animals must also be allowed inside real estate offices and other places of business.



REALTOR® BUSINESS OPERATIONS

Under the Americans with Disabilities Act (ADA) and New York State law, businesses and facilities that serve the public may not discriminate against individuals with disabilities.

Title III of the ADA prohibits entities – which includes real estate offices – that own, lease, or operate a place of public accommodation from discriminating against a person with a disability. Title III requires equal access and services in the most integrated setting possible, which means that architectural and communication barriers need to be removed in existing facilities where such removal is readily achievable and can be carried out without much difficulty or expense.

Simple steps REALTORS® can take to ensure their office(s) complies with the ADA include:

1. Improve Your Office's Accessibility
 - a. Remove physical barriers that may hinder access and ensure clear pathways within the office, free from obstacles.
 - b. Analyze room setups and ensure accessibility to areas where services are provided to the public, such as meeting rooms.
 - c. Be ready to provide reasonable accommodations, which are changes in any rule, policy, procedure or service needed to provide equal access – including permitting the use of service and emotional support animals.
2. Review Your Website for Accessibility
 - a. Update your site by providing alternative text for images; ensuring proper color contrast; making sure the website is navigable using a keyboard; and providing captions for multimedia content.
 - b. Consider conducting an accessibility audit or consulting with a web accessibility professional to ensure compliance with the Web

- Content Accessibility Guidelines (WCAG 2.1), which include a set of technical standards and specifications to ensure accessibility.
- c. Post an accessibility statement on your website.
3. Increase Training and Awareness
- a. Train your staff on ADA requirements and disability etiquette to ensure they understand how to provide proper assistance and accommodate individuals with disabilities.
 - b. Promote a culture of inclusivity and respect within your office to foster an accessible environment.
 - c. Establish a procedure for individuals to report any ADA-related concerns or complaints. Investigate and address these concerns promptly.

Understanding and assuring compliance with the ADA requirements can be complex, so you may want to consult with an attorney or ADA specialist who can provide specific guidance tailored to your office's situation. Learn more [here](#) from the National Association of REALTORS®.