Permanent Supportive Housing

Legal Issues

Ann V. Denton
adenton@ahpnet.com
Advocates for Human Potential
The topics included in this session are:

- Fair Housing
- Reasonable Accommodation
- Working with Public Housing Authorities regarding Fair Housing and Reasonable Accommodation
- Rights of Tenancy
By the end of our session you will...

- Understand the basic statutes and case law that supports community integration
- Understand how to ask for a reasonable accommodation
- Be able to identify discriminatory behavior
- List provisions in a standard lease (rights of tenancy)
People with psychiatric disabilities have the right...

- To live in the community
- To rent or buy housing on the same terms as others (without any special conditions or agreements)
- To request reasonable accommodation for disability when needed.
- Have the same rights to housing units as any other tenant (assuming use of a standard lease)
Americans with Disabilities Act (ADA)

The right to live in the community is based in federal statute, related case law and federal policy initiatives.

Statute:
The Americans with Disabilities Act prohibits discrimination against people with disabilities.
Rehabilitation Act of 1973, Section 504

The right to live in the community -

Statute: Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency, including the U.S. Department of Housing and Urban Development.
The right to live in the community -
Statute: Title VIII of the Civil Rights
Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin. Title VIII was amended in 1988 (effective March 12, 1989) by the Fair Housing Amendments Act, to include persons with disabilities.
Fair Housing Act: No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling

http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm
Fair Housing Act

**Fair Housing Act, con’t:**
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting)
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.
Olmstead Supreme Court Decision

The right to live in the community -

Case law: *Olmstead v. LC* is a Supreme Court decision that reinforced the ADA and further mandated that people with disabilities live in the most integrated setting possible.
The Olmstead Supreme Court decision states that the clinically unwarranted segregation of people with disabilities is a violation of the Americans with Disabilities Act.
Equal Rights Under the Law

All of these laws protect people with disabilities throughout the process of finding, acquiring and living in rental housing.
Implications for behavioral health systems

The National Association of State Mental Health Program Directors (NASMHPD) has issued guidance to states regarding Olmstead implementation.
The NASHMPD policy “...is to promote housing policies and programs to ensure that people served by the public behavioral health system are able to make informed choices among safe and permanent affordable housing options that are linked with high quality services and are available in the most integrated setting in the community.”

Affordable Housing: The Role of the Public Behavioral Health System. (2011) NASMHPD Policy Brief.
People with disabilities have the right to rent or buy housing on the same terms as others (without any special conditions or agreements).

Local and state landlord-tenant laws establish rights and responsibilities of landlords and tenants.
In general, tenants must:

- Pay rent
- Keep unit reasonably clean
- Not damage the property
- Not threaten other tenants
In general, landlords must:

- Provide a safe environment
- Ensure that utilities work
- Enter the property only for specific reasons and only after reasonable notice is given.
Same Terms and Conditions

Sometimes, depending on local or state law:

Landlords must give written notice before eviction and allow tenants to challenge the eviction in court.

- Landlords might not be allowed to lock tenants out.
- Tenants might be allowed to withhold rent if the landlord does not make repairs.
A reasonable accommodation is any change in the landlord’s policies that enables a person with disabilities to apply for, obtain or live in housing.
A person with a disability may not be denied a reasonable accommodation.

Example: A building with a no pets policy must allow a visually impaired tenant to keep a guide dog.
The Fair Housing Act also provides for “reasonable modifications”, defined as a physical change made by the tenant, at the tenant’s expense, that will allow a person with a disability to use the housing unit.
Reasonable Accommodation

Landlords must make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.
Reasonable Accommodation

Housing providers may NOT require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.
Implications for Practice

Reasonable accommodation can help prospective tenants “pass” the application stage.

Some prospective tenants with psychiatric disabilities have poor credit or no credit; no references or poor references from previous landlords.
Implications for Practice

Reasonable accommodations for no credit or rental history might include:

- Use utility or other bills to show that the prospective tenant pays on time
- Prove enrollment in training or service program to show reliability
- Have a relative or friend co-sign the lease
Implications for Practice

Reasonable accommodations for a negative credit or rental history might include:

- Have emergency housing repair funds so that minor repairs can be made without cost to the landlord
- Guarantee rent up to a certain amount
- Guarantee support services, give landlord a 24/7 phone number and live up to that promise.
Implications for Practice

Let’s look at an example, taken from a HUD/DOJ publication, page 5.
A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant’s current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism.
Implications for Practice

Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant’s recent past conduct.
Implications for Practice

The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit.
However, the manager could have checked this applicant’s references to the same extent and in the same manner as he would have checked any other applicant’s references.
Implications for Practice

If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.
Implications for Practice

Let’s take a quick look at the “disparate impact rule”, published February 2013, by HUD.
Summary

For more information, see:

http://www.bazelon.org/

http://www.hud.gov/offices/fheo/

http://www.fairhousing.com/

http://www.fairhousinglaw.org/