

THE HOUSING STABILITY AND TENANT PROTECTION ACT OF 2019 A. 8281/S.6458

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A.8281 / S.6458

- ▶ June 14, 2019 legislature approved, and Governor Cuomo signed legislation entitled *The Housing Stability and Tenant Protection Act of 2019*.
- ▶ Technical amendment signed on June 20, 2019, signed by Governor Cuomo on June 25, 2019.
- ▶ Previously rent regulation laws expired every 4-8 years and were geographically restricted to NYC, Westchester, Rockland and Nassau counties
- ▶ The legislative finding is that there is a serious public housing emergency in NY.
 - ▶ Shortage of housing accommodations caused by continued high demand
 - ▶ Reductions in availability of federal subsidies
 - ▶ Increased costs of construction and inflation factors

Extension of Emergency Protection Tenant Act- “ETPA”

- ▶ PART G
- ▶ The agreed upon bill, establishes rent stabilization as an option for localities statewide when there is a housing emergency, defined as less than five percent (5%) vacancy in the housing stock.
- ▶ Rochester was expected to be one of the first cities to opt-in.

Section of Law: RPL 223-b[1][a]

Retaliation by landlord against tenant

OLD LAW

- ▶ Used to create a rebuttable presumption of retaliation where a landlord served a notice to quit or commenced an eviction proceeding within **6** months after the tenant made a good faith complaint to a *governmental authority* of the landlord's violation of any health or safety law, regulation, code, or ordinance. (RPL §223-b[5][a]).

NEW LAW

- ▶ Extends look back period to **1 year** and extends this presumption based on a Tenant's good faith complaint to the Landlord, the Landlords agent, and now includes, the warranty of habitability under section two hundred thirty-five-b of this article.
- ▶ Extends to an unreasonable rent increase under 223-b(2)

TAKE AWAY POINTERS

- ▶ MAINTENANCE POLICY MUST BE FIRM AND IN WRITING
- ▶ ESTABLISH GUIDELINES FOR TIMING AND PROCEDURE TO RESPOND TO COMPLAINTS
- ▶ MAKE SURE DOCUMENTS ARE CONSISTENT, SCANNED AND INCLUDED IN TENANT FILE SHOWING LANDLORD'S RESPONSE TO ISSUES
- ▶ MUST HAVE A NON-RETAILATORY MOTIVE FOR LANDLORD'S ACTIONS- A/K/A HAVE A LEGITIMATE, NON-DISCRIMINATORY REASON FOR NON-RENEWAL OR RENT INCREASE
- ▶ WHAT IS AN UNREASONABLE RENT INCREASE?
 - ▶ 226-c

NEW SECTION 226-C NOTICE PROVISIONS

- ▶ STARTING OCTOBER 14, 2019 LANDLORD IS REQUIRED TO GIVE NOTICE OF INTENTION TO RENEW A TENANT WITH A RENT INCREASE OF 5% ABOVE CURRENT RENT OR;
- ▶ NON-RENEW A TENANT'S LEASE
- ▶ CHAPTER AMENDMENT ON 6/24/2019 CLARIFIED THAT THE NOTICE REQUIRED IS BASED ON THE CUMULATIVE TIME THE TENANT HAS OCCUPIED THE PREMISE.
 - ▶ TENANT HAS OCCUPIED FOR A YEAR OR LESS = 30 DAY NOTICE
 - ▶ TENANT HAS OCCUPIED FOR A YEAR UP TO 2 YEARS= 60 DAYS NOTICE
 - ▶ TENANT HAS OCCUPIED FOR 2 YEARS OR MORE = 90 DAYS NOTICE

TAKE AWAY POINTERS

- ▶ 364 DAY LEASES?
- ▶ WHEN A LEASE EXPIRES NATURALLY HOLDOVER V. MONTH TO MONTH
- ▶ BREAK LEASE AGREEMENTS?

RPL 232-B TERMINATION OF MONTH TO MONTH TENANCIES OUTSIDE OF CITY OF NEW YORK- EFFECTIVE OCTOBER 14, 2019

OLD LAW

- ▶ Was previously reciprocal and allowed either party to terminate provided at least one-month notice was given
 - ▶ Notice given by August 31 effective September 30.

NEW LAW

- ▶ Landlords must now follow RPL 226-c in order to terminate month-to-month tenancies

Application and screening process- USING PAST TENANT EVICTION HISTORY

- ▶ NO APPLICATION FEES ALLOWABLE IN NEW YORK
- ▶ ONLY CREDIT/CRIMINAL BACKGROUND CHECK CAPPED AT \$20
 - ▶ PER PERSON.
- ▶ LANDLORD MAY NOT REFUSE TO RENT OR OFFER A LEASE TO A POTENTIAL TENANT ON THE BASIS THAT THE POTENTIAL TENANT WAS INVOLVED IN PAST OR PENDING LANDLORD-TENANT ACTION OR SUMMARY PROCEEDING
- ▶ ALLOWS ATTORNEY GENERAL TO BRING AN ACTION OR SPECIAL PROCEEDING AND CARRIES \$500 TO \$1000 CIVIL PENALTY FOR EACH VIOLATION
 - ▶ CANNOT USE COURT RECORDS OR ANY INFORMATION ON CREDIT REPORT TO LOOK UP INFORMATION
 - ▶ CANNOT PULL COURT RECORDS- NO TENANT BLACKLIST
 - ▶ LANDLORD REFERENCES
 - ▶ UPDATE RENTAL SELECTION CRITERIA FORMS

Application and screening process- RENT, FEES AND SECURITY DEPOSIT

▶ RPL 702- NEW RENT DEFINITION

- ▶ RENT DEFINED AS MONTHLY OR WEEKLY AMOUNT CHARGED IN CONSIDERATION FOR THE USE AND OCCUPANCY OF THE DWELLING.
 - ▶ 14 DAY NOTICE BASE RENT DEMAND
 - ▶ 5 DAY? GREY AREA, ONLY A STATEMENT RENT IS LATE POTENTIAL FDCPA ISSUE?
 - ▶ NEED TO UPDATE LEASE TO INCLUDE RESERVATION OF RIGHT LANGUAGE
 - ▶ INCREASED PLENARY ACTIONS

▶ RPL 238-a(3) LATE FEES

- ▶ Cannot charge more than \$50 or 5% of the rent whichever is less
- ▶ Cannot charge a late fee until rent is more than 5 days past due

Security deposit

- ▶ All non-rent stabilized dwelling units cannot have a security deposit that exceeds the amount of one month's rent under any contract
- ▶ The entire amount of the advance or deposit shall be refundable to the tenant upon the tenant vacating except for an amount retained for the reasonable and itemized costs due to the non-payment of rent, damage beyond normal wear and tear, non-payment of utility charges payable directly to the landlord under the terms of the lease and storage and moving costs.
- ▶ Tenant must be allowed to cure any defects to secure security deposit return
- ▶ Penalties if not returned within 14 days of day tenant vacates not end of lease term
- ▶ First, last month rent deemed advance

Take away pointers

- ▶ Utilize move-in and move out inspection reports
 - ▶ Tenant must have opportunity to inspect premises after signing lease but prior to move in
 - ▶ If tenant gives more than 2 weeks' notice of intention to vacate landlord must no longer than 2 weeks before no shorter than one-week prior set a move-out inspection on 48 hours notice to tenant
 - ▶ Add another inspection when keys turned in

EVICTION CHANGES

- ▶ 2 CONDITION PRECEDENTS; 2 NOTICES, 2 DIFFERENT METHODS OF SERVICE
 - ▶ NEW REQUIREMENT UNDER RPL 235-e(d)- Notice that Rent is late
 - ▶ WRITTEN DEMAND FOR PAYMENT OF PAST DUE RENT PURSUANT TO RPAPL 711
- ▶ RPL 238-A limits fees that can be sought in a summary proceeding except if provided by statute or regulation
- ▶ Rent demands now 14 days not 3-day notices to quit
- ▶ Service time period now 10-17 days not 5-12 days
- ▶ Adjournment requests
- ▶ Duty to mitigate damages

WARRANT SERVICE

- ▶ RPAPL 749 warrant now 14 days not 3 days.
- ▶ Warrant no longer cancels the lease
- ▶ Court has power at any time to stay, vacate or restore lease.
- ▶ Tenant can now pay anytime before execution of the warrant
- ▶ RPAPL 753- now extended statewide and provides up to a year stay if pay use and occupancy and applies to occupants *may have to pay back rent*

FAIR HOUSING ACT: AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE

Jaime Michelle Cain, Esq.

September 12, 2019



If you remember nothing else from today's lesson.....

- ▶ “JAIME’S ABCDE”
- ▶ ALWAYS BE CONSISTENT AND DOCUMENT EVERYTHING
- ▶ HIGHLY RECOMMEND
 - ▶ PERSONALIZED TRAINING TAILORED TO YOUR INDIVIDUAL ORGANIZATIONS RULES AND REGULATIONS
 - ▶ EMPLOYEE TRAINING MANUALS WITH EVERY POLICY SCRIPTED

Known as Title VIII of the Civil Rights Act of 1968, as amended in 1988, is referred to as Fair Housing Act- 42 USC 3601 et.seq.

- ▶ PURPOSE: Fair housing Act (FHA) prohibits discrimination against seven (7) protected classes in residential dwellings.
- ▶ The FHA requires that all federal executive departments and agencies and those state and local recipients of federal funds administer their programs and activities relating to housing and urban development in a manner affirmatively to further fair housing. 42 U.S.C. §3608(d).
- ▶ The authority and responsibility for administering the FHA is the Secretary of Housing and Urban Development. 42 U.S.C. §3608.
- ▶ The U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity (OFHEO)enforces the Fair Housing Act and related laws.

CLASSES PROTECTED UNDER FHA KNOWN AS THE “FEDERAL 7”

- ▶ RACE
- ▶ COLOR
- ▶ RELIGION
- ▶ NATIONAL ORIGIN
- ▶ SEX- INCLUDES SEXUAL HARASSMENT- HOT TOPIC!
- ▶ DISABILITY
- ▶ FAMILIAL STATUS

NEW YORK STATE HUMAN RIGHTS LAW- Executive Law- Article 15 §290 et seq.

- ▶ Includes the 7 protected classes under the FHA PLUS ADDS:
 - ▶ AGE
 - ▶ MARITAL STATUS
 - ▶ MILITARY STATUS
 - ▶ SEXUAL ORIENTATION
 - ▶ GENDER IDENTITY or EXPRESSION (GENDA)
 - ▶ SOURCE OF INCOME

MOST RECENT CHANGE TO NEW YORK HUMAN RIGHTS LAW-

- ▶ New York State Budget amended the Human Rights Law to add lawful source of income as a protected class and prohibits housing discrimination on the basis of lawful source of income
- ▶ This Act shall be known and will be cited as “Lawful Source of Income Non-Discrimination Act of 2019”
- ▶ Listed under Part T of the bill S-1506-c that passed
- ▶ Section 2 of the bill amends Section 292 of the executive law by adding a new subdivision 35, which defines lawful source of income
- ▶ Section 3, 4, 5,6 amend sections of the executive law that relate to housing discrimination by adding source of income as a prohibited category of discrimination
- ▶ Section 7 of the bill sets an immediate effective date and applies to all causes of action filed on or after such date

Part T

- ▶ Defines the term “lawful source of income” to include, but not be limited to, child support, alimony, foster care subsidies, income derived from social security, or any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers, or any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to the landlord, and any other forms of lawful income.

LOCAL GOVERNMENT LAWS

▶ Erie County Local Law No. 4 known as Fair Housing Law

Disability: A physical, mental or medical Impairment which substantially limits one (1) or more major life activities; or a record of having such an impairment; or a condition regarded by others as such an impairment.

Marital Status: Single, married, divorced, separated or widowed.

Source of Income: *Payments from any lawful occupation or employment, as well as other payments including, but not limited to, public assistance, public assistance security agreements, supplemental security income, pensions, annuities, unemployment benefits, disability payments, government subsidies, or other housing subsidies.*

Sexual Orientation: A person's heterosexuality, homosexuality, bisexuality, asexuality, whether actual or perceived.

Housing Accommodation: Any building, structure, or portion thereof located within the County of Erie, 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 persons.

Erie County continued

Military Status: A person's participation in the military service of the United States or the military service of the state including, but not limited to, the army national guard, the air national guard, the New York naval militia, the New York guard, and such additional forces as may be created by the federal or state government as authorized by law.

Gender Identity: A person's actual or perceived gender, as well as a person's gender identity, self-image, appearance, expression or behavior, whether or not that gender identity, self-image, appearance, expression or behavior is different than that traditionally associated with the person's sex at birth.

Familial Status: Any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years; or one or more individuals who have not attained the age of eighteen years domiciled with a parent or another person having legal custody of such individual or the designee of such parent

National Origin: Ancestry

Immediate Family: A person's spouse, parents, grandparents, children, grandchildren, brothers, sisters, mother in law, father in law, brothers in law, sisters in law, daughters in law, sons in law, adopted, half and step members.

Immigration and Citizenship Status: Any person's immigration or citizenship status in the United Citizenship States.

WHAT TYPE OF HOUSING IS INCLUDED

Fair Housing Laws cover most housing with some exemptions:

- ▶ owner occupied building with no more than 4 units (such as a duplex where the owner lives in one of the units and rents out the other units);
- ▶ religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society;
- ▶ A private club that is not open to the public, which as an incident to its primary purpose(s) provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members;
- ▶ A single-family house sold or rented by an owner, provided such private individual does not own more than three single-family houses at one time;
- ▶ Single-family homeowners who rent or sell their homes without the use of a real estate professional;
- ▶ Housing for older persons is exempt from the prohibition against familial status discrimination if:
 - ▶ The HUD secretary has determined that it is specifically designed for and occupied by elderly persons under a federal, state or local government program;
 - ▶ It is occupied solely by persons age 62 and older;
 - ▶ It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

NON-DISCRIMINATORY CRITERIA

- ▶ Landlords have the right to choose a perspective renter over another one if the decision is based on objective criteria applied equally to everyone provided the criteria does not have a disparate impact on protected classes in violation of the FHA.

TRUE OR FALSE? PROPERTY OWNERS WHO ARE OTHERWISE EXEMPT FROM THE LAW MUST STILL COMPLY WITH ITS PROHIBITION AGAINST DISCRIMINATION IN ADVERTISING

TRUE

A SINGLE-FAMILY HOMEOWNER WHO IS OTHERWISE EXEMPT FROM THE FHA MAY NOT PLACE AN AD STATING “NO CHILDREN ALLOWED” OR “WOMEN PREFERRED”.

APPLICATION AND SCREENING

- ▶ How Do fair housing laws affect application and screening?
- ▶ How to choose which applicant?
- ▶ Rental inquiries, walk-ins, calls, emails, online inquires
- ▶ Language barriers
- ▶ Credit checks
- ▶ Verification of citizenship
- ▶ Rental specials
- ▶ Tours of premises

In the sale and rental of housing you are prohibited from:

- ▶ Refusing to negotiate, rent or sell housing
- ▶ Make housing unavailable
- ▶ Set different terms, conditions or privileges for 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 related to the sale or rental of housing
- ▶ Harassing, threatening, intimidating or coercing anyone, including sexual harassment
- ▶ Printing or circulating a discriminatory advertisement

Conduct Prohibited under Fair Housing Act

- ▶ Refusing to permit, at the expense of the person with a disability reasonable modifications to the dwelling, necessary to afford full use and enjoyment of the premises.
- ▶ United States v. Freer, 864 F. Supp. 324 (W.D.N.Y. 1994)

Rules and Regulations

- ▶ Setting up Rules and Regulations from a fair housing perspective
 - ▶ Clear, neutral written rules are BEST PRACTICE
 - ▶ EMPLOYEE MANUALS!!!!
- ▶ Enforcement of Rules
 - ▶ Uniformly apply rules-avoid playing favorites (i.e. waiving late fees for some)
 - ▶ Have policies in place for reasonable accommodation requests and forms for people to complete
 - ▶ Document, photograph and have third parties verify conduct that violates rules.
- ▶ Avoid unintentional violations of Fair Housing Act in rules
 - ▶ Adult swim hour
 - ▶ Children playground issues
- ▶ Making exceptions to the rules DOCUMENT, DOCUMENT, DOCUMENT-
- ▶ Evictions for violating the Rules and Regulations

Maintenance issues

- ▶ Uniform written policies for handling maintenance and repair requests
- ▶ Training
- ▶ Outside contractor/subcontractor concerns agents of Landlord/owner
- ▶ Record keeping to avoid fair housing complaints and retaliation
 - ▶ Service request policies
 - ▶ Priority of work
 - ▶ Information that should be recorded

TIME TO GO OVER THE PROTECTED CLASSES

RACE, COLOR AND NATIONAL ORIGIN DESCRIBED

- ▶ RACE AND COLOR-OFTEN GO HAND AND HAND BUT ARE TWO DIFFERENT CHARACTERISTICS.
 - ▶ RACE- REFERS TO A PERSON'S PHYSICAL APPEARANCE (CLAIMS ARE RARE)
 - ▶ COLOR- CHARACTERISTICS OF A PERSON'S RACE
- ▶ NATIONAL ORIGIN- REFERS TO THE COUNTRY WHERE A PERSON OR THE PERSON'S ANCESTORS WERE BORN. PROTECTS AGAINST DISCRIMINATION OF THEIR NAME, OR ACCENT ASSOCIATED WITH AN ETHNIC GROUP, OR BECAUSE THEY DO NOT SPEAK ENGLISH, OR BECAUSE THEY ARE MARRIED TO OR ASSOCIATED WITH PEOPLE FROM ANOTHER COUNTRY.

SEX

- ▶ SEX DISCRIMINATION HAS BEEN INTERPRETED UNDER THE ACT TO INCLUDE
 - ▶ SEXUAL HARASSMENT
 - ▶ DELIBERATE OR REPEATED UNSOLICITED VERBAL COMMENTS, GESTURES, OR PHYSICAL CONTACT THAT MAKES FOR AN OFFENSE ENVIRONMENT OR WHEN SEXUAL FAVORS ARE SOUGHT AS A ‘QUID PRO QUO’ FOR HOUSING. *Kreuger v. HUD*, 115 F.3d 487 (7th Cir. 1997).
 - ▶ DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION OR GENDER IDENTITY
 - ▶ WHILE NOT EXPLICITLY PROHIBITED BY FHA, DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) INDIVIDUALS IN HOUSING ASSISTED BY HUD OR SUBJECT TO A MORTGAGE INSURED BY FEDERAL HOUSING ADMINISTRATION IS PROHIBITED.
- ▶ VICTIMS OF DOMESTIC VIOLENCE - FEB. 9, 2011 MEMO FROM HUD GAVE GUIDANCE FOR VICTIMS OF HOUSING DISCRIMINATION UNDER THE FHA.

RELIGION

- ▶ RELIGIOUS EXCEPTION FOR HOUSING OPERATED BY RELIGIOUS ORGANIZATIONS UNDER 3607(a).
- ▶ THE FHA DOES NOT INCLUDE A DEFINITION FOR RELIGION.
- ▶ IT PREVENTS AGAINST DISCRIMINATION BASED ON WHETHER SOMEONE IS A MEMBER OF A RELIGION OR WHETHER OR NOT THEY ATTEND RELIGIOUS SERVICES.
- ▶ PROHIBITS INTENTIONAL ACTS AGAINST PERSONS BECAUSE OF THEIR RELIGION.
 - ▶ RESTRICTING DISPLAYS OF RELIGIOUS SYMBOLS- BLOCH V. FRISCHOLZ, 587 F.3D 771 (7TH CIR. 2009).
 - ▶ STATE LAWS PROHIBIT DISCRIMINATION BASED ON MARITAL STATUS V. DEFENSE TO A FAIR HOUSING DISCRIMINATION CLAIM BASED ON LANDLORD'S CHALLENGE UNDER FIRST AMENDMENT.

FAMILIAL STATUS

- ▶ ADDED AS PART OF THE AMENDMENTS IN 1988.
- ▶ FAMILIES UNDER THE ACT ARE DEFINED AS ONE OR MORE INDIVIDUALS UNDER THE AGE OF 18, WHO ARE DOMICILED WITH A PARENT OR OTHER PERSON HAVING CUSTODY OF THEM OR WHO ARE DOMICILED WITH A PERSON DESIGNATED BY THE PARENT OR OTHER PERSON HAVING SUCH CUSTODY WITH THE WRITTEN PERMISSION OF SUCH PARENT OR OTHER PERSON. Section 3602(K).
- ▶ Also includes pregnant women, persons in the process of adopting a minor child, foster parents.
- ▶ HOT TOPIC- OCCUPANCY STANDARDS- HUD KEATING MEMO 2 PERSONS PER BEDROOM = REASONABLE
 - ▶ A local municipality that imposes an occupancy standard carries the burden of establishing that it is reasonable. Fair Housing Advocates v. City of Richmond Heights, 209 F. 3d 626 (6th Cir. 2000).

DISABILITY

- ▶ ADDED AS PART OF THE AMENDMENTS IN 1988
- ▶ THE TERM “DISABILITY” RATHER THAN HANDICAPPED IS UNIVERSALLY RECOGNIZED AS THE PROPER TERM NOW. UNDER 3602(H)
- ▶ UNDER THE AMERICANS WITH DISABILITIES ACT, BROADLY DEFINED AS:
 - ▶ 1. A PHYSICAL OR MENTAL IMPAIRMENT WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF SUCH PERSON’S MAJOR LIFE ACTIVITIES;
 - ▶ 2. A RECORD OF HAVING SUCH IMPAIRMENT; OR
 - ▶ 3. BEING REGARDED AS HAVING SUCH AN IMPAIRMENT, BUT SUCH TERM DOES NOT INCLUDE CURRENT, ILLEGAL USE OF OR ADDICTION TO A CONTROLLED SUBSTANCE

Major Life Activities include:

- ▶ Caring for one's self
- ▶ Performing manual tasks
- ▶ Walking
- ▶ Seeing
- ▶ Hearing
- ▶ Speaking
- ▶ Breathing
- ▶ Learning
- ▶ Working

DISABILITY CONTINUED

▶ ALSO COVERED:

- ▶ REFUSING TO MAKE A REASONABLE ACCOMODATION IN THE RULES, PRACTICES, OR SERVICES IF NECESSARY FOR THE INDIVIDUAL WITH THE DISABILITY TO FULLY USE AND ENJOY THE DWELLING
- ▶ REFUSING TO ALLOW REASONABLE MODIFICATIONS TO THE UNIT OR COMMON AREA USES, AT THE APPLICANT OR RESIDENT'S EXPENSE, IF NECESSARY FOR THE INDIVIDUAL WITH THE DISABILITY TO FULLY USE THE DWELLING;
- ▶ FAILING TO MEET THE ACCESSIBILITY REQUIREMENTS IN THE DESIGN AND CONSTRUCTION OF RENTAL HOUSING WITH FOUR (4) OR MORE UNITS THAT WERE FIRST OCCUPIED AFTER MARCH 13, 1991.

DEFINITION OF DISABILITY CONTINUED

- ▶ This includes people who have a record of such impairment, even if they do not have a current disability.
 - ▶ “intended to include people who have recovered from physical or mental impairments, or who have been misclassified as having such impairments, whether or not the individual is currently limited in a major life activity. 29 CFR §1630.2(k), 42 U.S.C.A. §12102(2)(B).
- ▶ It also includes individuals who do not have a disability but are regarded as having a disability.
 - ▶ People who are perceived as having substantial limiting impairments or an individual with an impairment that substantially limits major life activities only as a result of attitudes of others toward the impairment. 43 U.S.C.A. §12012(2)(C).
 - ▶ “Society’s myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairments.” *School Board v. Arline*, 480 U.S. 273 (1987).

Reasonable Accommodations and Modifications

- ▶ What is a reasonable accommodation?
 - ▶ Refusal to make reasonable accommodations in rules, policies, practices and services, when such may be necessary to afford the individual the equal opportunity to use and enjoy the dwelling.
 - ▶ *Liddy v. Cisneros*, 823 F. Supp. 164 (S.D.N.Y. 1993)
- ▶ Is a formal procedure needed for reasonable accommodations?
- ▶ What documentation can be requested when a request for an accommodation is made?
- ▶ Who must pay for accommodations?

Emotional Support Animal Pitfalls

- ▶ RESTRICTING BREED
- ▶ RESTRICTING SIZE OR WEIGHT
- ▶ REQUIRING A PET DEPOSIT
- ▶ CHARGING A MONTHLY PET FEE
- ▶ REQUIRING TENANTS WITH EMOTIONAL SUPPORT ANIMALS TO SIGN PET ADDENDUM THAT CONTAINS CONDITIONS AND RESTRICTIONS NOT APPLICABLE TO EMOTIONAL SUPPORT ANIMALS
- ▶ LIMITING RESIDENT TO ONLY ONE EMOTIONAL SUPPORT ANIMAL
 - ▶ You may require an additional verification for each subsequent animal requested and it must serve a different purpose.



Insurance concerns:

- ▶ *HUD according to the Joint Statement on reasonable accommodations, an accommodation is unreasonable if it imposes an undue financial and administrative burden on a housing provider's operations. If a housing provider's insurance carrier would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or certain animal, HUD will find that this imposes an undue financial and administrative burden on the housing provider. However, the investigator must substantiate the housing provider's claim regarding the potential loss of or adverse change to the insurance coverage, by verifying such a claim with the insurance company directly and considering whether comparable insurance, without the restriction, is available on the market. If the investigator finds evidence that an insurance provider has a policy of refusing to insure any housing that has animals, without exception for assistance animals, it may refer that information to the Department of Justice for investigation into whether the insurance provider has violated federal civil rights laws prohibiting discrimination based upon disability.*

LEASE PROVISIONS

- ▶ Every lease, regardless if your policy is to allow pets or not should address general rules of conduct for animals.
 - ▶ Address damages
 - ▶ Address nuisance and quiet enjoyment of other residents
 - ▶ Address cleaning up after animal and local ordinances
 - ▶ Vaccination requirements
- ▶ Should still have a separate pet addendum that you would not have someone who has an approved ESA sign.

PUBLIC RELATIONS NIGHTMARE “But Jane was allowed a PITBULL”

- ▶ To handle the questions that inevitably arise, make sure you train your staff well.
- ▶ An owner should not disclose sensitive or personal information of another resident.
- ▶ Make sure your staff member reiterates this to the other tenant and suggest handling the question as follows:
 - ▶ While we are unable to discuss any specific information regarding another tenant with you, we are required to comply with the Federal Fair Housing Act and under such act we are required to make reasonable accommodation requests for certain assistance animals, which are not considered pets and are not subject to the conditions and restrictions of our pet policy.

Resource if animal becomes a problem:

- ▶ A nuisance is continuous course of conduct that interferes with another tenant's ability to live in their home safely and comfortably. *Domen Holding Co. v. Aranovich*, 753 N.Y.S. 2d 57 (1st Dept. 2003).
- ▶ Examples include:
 - ▶ Continuous barking
 - ▶ Aggressive behavior
 - ▶ Urinating in public areas
 - ▶ A tenant who neglects to clean up after the animal may also be cited

TIMING FOR FILING A FAIR HOUSING COMPLAINT - STATUTE OF LIMITATIONS

FHA

- ▶ ONE YEAR FROM THE DATE OF THE DISCRIMINATORY ACT THAT OCCURRED TO FILE AN ADMINISTRATIVE COMPLAINT WITH HUD.
- ▶ TWO (2) YEARS TO FILE A LAWSUIT UNDER THE FHA.

NEW YORK STATE

- ▶ ONE YEAR FROM THE DATE OF THE DISCRIMINATORY ACT THAT OCCURRED TO FILE AN ADMINISTRATIVE COMPLAINT WITH THE STATE DIVISION OF HUMAN RIGHTS
- ▶ YOU HAVE THREE (3) YEARS TO FILE A LAWSUIT UNDER THE***
- ▶ *** IF YOU FIRST FILE A COMPLAINT WITH THE DIVISION OF HUMAN RIGHTS, YOUR RIGHT TO PROCEED IN COURT MAY BE LIMITED UNLESS THE DIVISION CASE IS DISMISSED FOR ADMINISTRATIVE CONVENIENCE OR ANNULMENT OF THE ELECTION OF REMEDIES.

BONUS SECTION: CRIMINAL STATUS

APRIL 4, 2016 GUIDANCE FROM HUD

- ▶ On April 4, 2016, HUD issued Guidance on the Application of Fair Housing Standards to the use of criminal records by providers of housing
 - ▶ Guidance given due to the fact that criminal record-based barriers to housing are having a disproportionate impact on the African American and Hispanic population.
 - ▶ HUD now has issued a memorandum that a housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider has no intent to discriminate. 24 C.F.R. § 100.500
 - ▶ Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the FHA if it is not supported by a legally sufficient justification.

INDIVIDUALIZED ASSESSMENT OF AN APPLICANT'S CRIMINAL HISTORY

- ▶ What was the nature of the crime?
- ▶ When was it committed?
- ▶ Length of time between conviction and application? (HUD suggests a 7 year look-back period)
- ▶ Repeated convictions?
- ▶ Have they lived in other housing without issue and are they able to provide positive landlord references?
- ▶ Positive employment record?
- ▶ Allow applicants the opportunity to give you specific facts and circumstances surrounding the criminal record.

SO NOW WHAT?

- ▶ Make sure your websites, advertising materials, applications, application process, and leases do not have a blanket restriction on renting to anyone with a criminal conviction.
- ▶ Have a clear and written criminal history policy in place (training manuals)
- ▶ Make sure your staff is trained and understands the policy
- ▶ Run all application checks, credit history, employment, landlord references first before criminal background check.
- ▶ Order county courthouse or docket details to get additional information about the conviction if needed.
- ▶ Exclude use of arrests
- ▶ Do not make exceptions for some individuals but not make the same exception for another individual based on the individual's inclusion in a protected class

MAY STILL EXCLUDE THIS SPECIFIC CONVICTION

- ▶ Housing providers may exclude persons convicted of the illegal manufacture or distribution of a controlled substance. 42 U.S.C. 3607(b)(4).