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Housing Information Update #3:
Bazelon Center Releases Fair
Housing Handbook for People
with Disabilities

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This Information Update is the third in a series to be made available to improve awareness and understanding of alternative approaches to expand affordable and accessible housing choices for Americans with disabilities. These updates will feature new publications, policy developments at a federal, state, and local levels, and other strategies being pursued by grantees, community and faith-based organizations, and housing agencies to respond to the Olmstead “Community Inclusion” mandate. These Information Updates are being prepared by Michael Morris, Director of the National Disability Institute at the NCB Development Corporation on behalf of the Community Living Exchange at the Rutgers University Center for State Health Policy. To contact Michael Morris directly, his email address and phone number are mmorris@ncbdc.org, (202) 521-2930.

HOUSING INFORMATION UPDATE NUMBER 3

Bazelon Center Releases Fair Housing Handbook for People with Disabilities

The Bazelon Center for Mental Health Law recently released a new edition of its handbook, “What ‘Fair Housing’ Means to People with Disabilities.” The edition updates the previous one by including recent judicial decisions and enacted federal laws. The handbook explains how the housing rights of people with mental or physical disabilities in search of housing are protected under federal laws. While the handbook is addressed to people with disabilities in search of housing, it is useful for others as an information source.

The handbook opens with an overview of the issues surrounding fair housing for those with disabilities, the laws affecting those with disabilities, who the laws protect, who must comply with them, and who enforces those laws. The overview concludes with some examples of housing discrimination.

The three acts relevant to those with disabilities discussed in the piece are the Fair Housing Act (FHA) (42 U.S.C. § 3601 *et. seq.* (2000)), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 (2000)), and Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 (2000)). The FHA provides the definition of a person with a “handicap” or “disability” used by the other two laws. The FHA defines a person with a “handicap” or “disability” as someone: (1) with a “physical or mental impairment that substantially limits one or more major life activity;” (2) who has a record of having such an impairment; or (3) who is regarded as having such an impairment. (42 U.S.C. § 3602(h), 24 C.F.R. § 100.201 (1994)) This definition, the Center notes, is broader than that used to qualify for Social Security disability benefits. Housing providers such as property owners, landlords, housing managers, neighborhood and condominium associations, real estate agents, and brokerage service agencies, must comply with federal fair housing laws.

Much of the handbook details how tenants with disabilities can go about obtaining housing. This ranges from recognizing discrimination in the housing application process itself to requests for reasonable accommodation and modification.

Landlords are forbidden from rejecting an application solely because the candidate is disabled. They may, though, reject a disabled applicant who fails to meet standards identical to those applied to non-disabled applicants. The handbook presents the example of landlords permissibly rejecting a disabled applicant for a poor credit history or ownership of a non-service animal in a no-pets building. A landlord is also forbidden from requiring an individual with a disability to sign a different rental agreement or different addendums from that signed by an individual without such a disability. Nor may landlords discriminate against disabled tenants during their tenancy. Such discriminatory actions may include requiring tenants with mobility impairments to live on the ground floor or prohibiting them from using common use facilities.

A “reasonable accommodation” is a change in rules, policies, practices or services to afford a person with a disability an equal opportunity to use and enjoy a dwelling unit and a common area. A tenant may request a reasonable accommodation, provided it is related to their disability, when applying for housing, during tenancy, or to prevent eviction. The Bazelon Center gives the example of a tenant with mobility impairments requesting and the landlord permitting the tenant to mail the rent when the property’s policy is to for the rent to be paid in person.

A landlord is not, however required to grant every accommodation requested. An accommodation is reasonable when it is practical and feasible. The Courts have interpreted this requirement to allow a landlord to deny a request would impose an “undue burden” on the landlord or result in a “fundamental alteration” of the landlord’s provision of housing. A landlord, according to the handbook, would not be required to take care of a pet for a tenant with a mental illness who cannot take care of the pet his or herself.

The handbook provides guidance as to how to request a reasonable accommodation and what to do if that accommodation is rejected. The Bazelon Center suggests that those seeking reasonable accommodations make their requests in writing and prepare documentation on how this accommodation fits a need in case the landlord requests evidence of the accommodation’s need.

Multifamily homes built for first occupancy after March 13, 1991 must have certain accessibility and adaptability features. The FHA includes specific design and construction requirements such as having an entrance that is wide enough for wheelchair access via a route without steps, accessible public and common-use areas, and doors that allow passage by a person in a wheelchair. The handbook suggests that those whose dwelling was built after March 13, 1991, contains four or more units, and is a ground floor unit or in a building with an elevator and does not meet the FHA’s accessibility requirements may wish to file a complaint. The Bazelon Center suggests they contact a lawyer prior to filing the complaint.

Landlords must allow tenants to make modifications to apartments or common areas if the modifications are “reasonable” and necessary for the tenant to use and enjoy

the dwelling. The landlord can condition approval on the assurance that the modification be made properly, in compliance with all necessary building and architectural codes, and that upon vacating the dwelling, the unit be placed in a condition acceptable to someone who does not need the modifications. Bazelon cites the example of a tenant removing a cabinet below the bathroom sink to accommodate a wheelchair. The landlord, in that case, could require the tenant to return the sink when vacating the premises.

The handbook concludes by providing people with disabilities guidance on how to make a challenge when they perceive housing discrimination.

Passages from the Fair Housing Act and other relevant materials are cited in the notes. In addition, the resources listed at the back of the handbook provide more information on issues surrounding housing discrimination.

The handbook can be accessed at:

<http://www.bazelon.org/issues/housing/publications/wfhm.pdf>

The Fair Housing Act can be found at:

http://www.access.gpo.gov/uscode/title42/chapter45_subchapteri_.html

Section 504 of the Rehabilitation Act of 1973 can be found at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+29USC794

Title II of the Americans with Disabilities Act can be found at:

http://www.access.gpo.gov/uscode/title42/chapter126_subchapterii_parta_.html