James Lee, 68, lives on the first floor of an older garden apartment. He broke his hip recently and now spends much of his time in a wheelchair, which he is having difficulty maneuvering around the apartment. Mr. Lee hears from a friend that the landlord is supposed to modify the apartment to make it accessible, but when he inquires, his landlord tells him that he must pay for the changes himself and must restore the premises when he moves out. The landlord also tells Mr. Lee that he will be charged an extra deposit to cover wheelchair damage.
Gladys Johnson, 85, is becoming forgetful and unsteady on her feet, and is having difficulty hearing. She has fallen a few times, and flooded her apartment when she left water running in the sink. She spends hours watching television, which bothers neighbors because she has the volume set very loud but forgets to turn off the television when she is not watching it. When she misses a rent payment, she receives an eviction notice. She calls the landlord, who tells her that she is too old to live alone and he does not want to be responsible if she hurts herself.

*Ms. Edelstein is a member of the staff of the American Bar Association Commission on Law and Aging.*
Discrimination against older people with disabilities in the rental market is frequently rooted in well-meaning concern for the safety of someone who is frail. It can also stem from the perception that elderly people using wheelchairs and walkers give an apartment building or other housing the appearance of a "nursing home." This discrimination frequently goes unchallenged, because people like James Lee and Gladys Johnson are not aware of laws that can protect them.

Applicable Laws
The Fair Housing Act (FHA) prohibits discrimination on the basis of race, color, religion, sex, national origin, disability, or familial status (adults living with children under the age of 18) in almost all housing and housing related transactions. It requires units and common areas in certain multifamily buildings designed and constructed for first occupancy after March 13, 1991, to meet minimal accessibility requirements. 42 U.S.C. §3601, 24 CFR Part 100 et seq. Housing for persons aged 55 and older — the "retirement housing" or "senior housing" or other similarly named programs common in most communities, is permitted under an exemption included in the Act. Senior housing of this sort, as well as assisted living and continuing care retirement communities, may exclude families with children, but it must comply with the non-discrimination provisions.

The quasi-healthcare nature of assisted living, continuing care communities, and other long-term residential care facilities may raise additional issues not addressed in this article.

Maryland's fair housing law, Md. Code Article 49B §§ 19-39, is equivalent to the Federal Fair Housing Act. It also bars discrimination on the basis of marital status. Many local jurisdictions have similar laws, and some also include protections against discrimination on the basis of age, sexual preference and source of income.

Two other federal statutes affect the rights of persons with disabilities in housing situations. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in all programs or activities operated by recipients of federal financial assistance. 29 U.S.C. §794, 24 CFR Part 8. This includes federally assisted senior housing such as Section 202 programs. The Americans With Disabilities Act (ADA) applies to public programs, activities, and services, whether or not such programs receive federal financial assistance. While the ADA does not specifically cover housing, and indeed excludes entities covered by the FHA, it does apply to non-housing functions of housing, such as the rental office and meeting rooms, meal sites, and adult day care center that one might find in some senior housing buildings. 42 U.S.C. §§ 12101 et seq., Sec 28 CFR Part 35.

Who is Protected?
These statutes cover individuals who:
1) have a mental or physical impairment that substantially limits one or more major life activities, such as walking, seeing, hearing, speaking, performing manual tasks such as personal care; or
2) have a record of having such an impairment, even if the impairment no longer exists, such as a previous diagnosis if mental illness; or
3) are regarded by others as having such an impairment, even if the perception is not accurate.

The statutes also cover people without disabilities who live with or are associated with people with disabilities.

Age alone does not give a person protection under these statutes. Older people who have a disability, or who are perceived to have a disability because of their age, are protected, however. These statutes do not protect current users of illegal controlled substances, individuals convicted of illegal manufacture or distribution of a controlled substance, or those who pose a direct threat to the health or safety of others.

Application and Admission
As a general rule, landlords must treat people with disabilities just as they treat other tenants. They may ask all applicants for their rental history to evaluate whether they can meet the essential requirements of tenancy: Will they pay the rent on time? Will they maintain the premises? Will they respect the rights of others? Will they obey the lease provisions? They may also ask applicants if their tenancy would pose a direct threat to the health or safety of others, or if they would cause substantial physical damage to the property of others. They may also ask for past criminal history information.

When housing is designed for people with disabilities, or offers special accessibility features, landlords may ask whether the applicant is qualified for the housing or that she needs the particular unit with special features. Even under these circumstances the landlord may only request information that would verify the need of the applicant for the accommodation or particular feature; there is no right to inquire about the medical history or treatment of the housing applicant.

The Fair Housing Act prohibits a landlord from refusing to rent to a person with a disability or from imposing special conditions. They cannot require tenants to be capable of independent living, nor require a
person with disabilities to present a letter from a doctor verifying that she can live alone. They cannot restrict residents with mobility impairments to certain areas of a building or complex, nor bar people with disabilities from recreational facilities such as the swimming pool. In the case of Mr. Lee above, the landlord cannot charge an additional “wheelchair damage” deposit.

**Reasonable Accommodations and Modifications**

People with disabilities have the right to request reasonable accommodations — changes to rules and policies, or reasonable modifications — changes to the physical premises, that would allow them to participate in housing-related activities as fully as a person without a disability. 42 U.S.C. § 3604(f)(1)(B), 24 C.F.R. § 100.204. It is the responsibility of the tenant to request accommodations or modifications. Requests must be made in writing. They may be made at any time, even after eviction proceedings have begun, and they must be granted unless the requested action would constitute an undue financial burden to the landlord or a fundamental alteration to the housing program.

Accommodations can involve waivers to rules, such as waiving a no-pet rule for a service animal. They might involve asking management to provide administrative assistance such as helping an applicant with cognitive impairments to complete a rental application, or reading notices to a tenant who is visually impaired. They could also involve making changes in activities, such as avoiding use of certain cleaning products near a tenant with chemical sensitivities, or relocating a meeting for an individual with mobility impairments. In the case of Ms. Johnson above, she might request that the resident manager remind her when the rent is due.
As with accommodations, reasonable modifications are tailored to individual needs. They could include changing door handles to levered handles for a tenant with arthritis, installing automatic shut-off systems for ovens for tenants with memory loss, widening doorways, or installing ramps for tenants with mobility impairments. To make his apartment wheelchair accessible, Mr. Lee might need to remove under-sink cabinets and widen doorways. He may also need to install a ramp at the building entrance. Ms. Johnson would benefit from grab bars in her bathroom and automatic shut-off systems on her water faucets. She could also obtain a listening device so that she can lower the volume on the television, and she might benefit from a timer and automatic shut-off so that the television does not play all night. Because reasonable accommodations and modifications can be requested at any time, Ms. Johnson has the right to do so even after being given a notice to vacate.

What about the advice Mr. Lee received from his friend? Does he really have to pay the costs of making modifications to his apartment? It depends. In the case of accommodations, the landlord is responsible for the costs in both private market and subsidized housing. If the issue is modification of the premises, the answer will depend on the kind of housing involved. In private market, non-subsidized housing, the tenant is responsible for the costs. In federally subsidized housing or areas covered by the Americans with Disabilities Act (e.g., public accommodations such as meal sites or meeting rooms for community programs), the housing provider is responsible. Mr. Lee and Ms. Johnson both live in private market, non-subsidized housing, so they are responsible for the cost of modifications to the premises.

The Fair Housing Act gives property owners the right to take precautions against shoddy work or damage to the premises. They have the right to require assurance that work will be done properly and to ask the tenant to obtain necessary building permits. They also have the right to require the tenant to restore the premises to the original condition, if it is reasonable to do so. It would be reasonable to require Mr. Lee to replace cabinets under sinks, but not to redo the doors. Ms. Johnson could be asked to remove the automatic water shut-off systems and grab bars, but not to remove the in-wall grab bar supports. Landlords also have the right to require the tenant to set aside a reasonable sum in an interest bearing escrow account to pay for needed restoration.

It is important to remember that the requested accommodation or modification must be related to the disability, and must be reasonable under the circumstances. For example, while it might be reasonable to waive a no-pet rule to allow a seeing-eye dog for a vision-impaired tenant, it would not be reasonable to ask the landlord to take the dog for walks; or, while it would be reasonable to allow a frail or disabled tenant who is being evicted because of trash and clutter in her apartment, time to work with social workers and others to clean the apartment and establish some order, it would not be reasonable to expect the landlord to do the cleaning. A landlord who fails or refuses to provide a requested reasonable accommodation or to permit a requested reasonable modification, is subject to the same penalties under the Fair Housing Act as a landlord who intentionally discriminates on the basis of disability.

**Conclusion**

The Fair Housing Act, Section 504, and the Americans with Disabilities Act are valuable tools for James Lee, Gladys Johnson, and other seniors, whether they have long standing disabilities or more recent, age-related impairments. These laws not only open doors to housing options by protecting them against discrimination, but allow them to request accommodations that can help them to continue living in their homes and communities.


Ms. Eidelstein may be reached at sedelstein@staff.abanet.org.