

The Fair Housing Act: Drug and Alcohol Addiction as a Disability

The Fair Housing Act prohibits discrimination on the basis of a handicap. The Act defines “handicap” as:

- 1) A physical or mental impairment which substantially limits one or more of such person’s life activities,
- 2) A record of having such an 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.

Congress and Courts have found that the term “physical or mental impairment” under the Fair Housing Act includes diseases such as drug addiction and alcoholism. Alcoholism includes both current and past alcoholism.

Establishing Alcoholism or Drug Addition as a Disability under the FHA

An individual claiming that he or she is disabled due to an alcoholism or drug addiction must still meet the requirements outlined above. An individual claiming this must show not only that he is an alcoholic or drug user in the past, but also that his alcoholism or drug addiction substantially limits or limited one or more major life activities. The impairment must have prevented or severely restricted the person from activities that are centrally important to most people’s lives and must have been long term.

In addition, the individual must not be currently abusing drugs. The FHA does not expressly define what it means to be a current drug user, but courts have established that at the time of the alleged discrimination the individual must prove he was not using illegal drugs – even if the individual later uses illegal drugs again.

Even if an individual is disabled under the FHA due to alcoholism, a housing provider may still move forward with an eviction or termination of lease if the behavior resulting from alcohol abuse is a direct threat to the health and safety of other tenants. It is important to note that a direct threat means that an incident has taken place which threatened other people or property. The possibility of a direct threat is not sufficient to evict an individual suffering from alcoholism.

For example, if Tom Tenant is seen roaming around the property intoxicated, that alone is not enough to be considered a direct threat, even if a housing provider is worried he can possibly cause damage to a person or to property.

Examples of Housing Discrimination against a Recovering Alcoholic or Drug User

- Refusing to rent or sell to a person who was once addicted to a controlled substance but is not a current user.
- Asking for confirmation from a physician, social worker, or other third party to confirm that the person is able to live independently.
- Imposing different terms or conditions because the individual is in recovery from drug or alcohol addiction.