

Roger Williams University

DOCS@RWU

Life of the Law School (1993-)

Archives & Law School History

1-18-2013

Nwsroom: Moloney '09 on Reasonable Accommodation

Roger Williams University School of Law

Follow this and additional works at: https://docs.rwu.edu/law_archives_life

Recommended Citation

Roger Williams University School of Law, "Nwsroom: Moloney '09 on Reasonable Accommodation" (2013). *Life of the Law School (1993-)*. 196.
https://docs.rwu.edu/law_archives_life/196

This News Article is brought to you for free and open access by the Archives & Law School History at DOCS@RWU. It has been accepted for inclusion in Life of the Law School (1993-) by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Newsroom

Moloney '09 on Reasonable Accommodation

Michael J. Moloney '09 writes in Massachusetts Lawyers Journal about challenges and strategies for handling housing cases involving tenants with disabilities.

From MASSACHUSETTS LAWYERS JOURNAL (Jan. 2013, Vol. 20, No. 5): "[Reasonable accommodation requests in the housing context](#)" by Michael J. Moloney [RWU Law '09]



MICHAEL J. MOLONEY

was admitted to practice in Massachusetts, Connecticut and in the United States District Court, District of Massachusetts. He is a

graduate of Roger Williams University School of Law and Sacred Heart University. A native of Worcester, Moloney is the Worcester County Director for the Massachusetts Bar Association Young Lawyers Division. He practices law as an AmeriCorps Attorney with the Justice Center of Southeast Massachusetts, a subsidiary of South Coastal Counties Legal Services, Inc. and handles cases in Brockton, Fall River and New Bedford.

An interesting challenge, not only for a young attorney but also any advocate who practices housing law, is handling cases involving tenants with disabilities. Several laws prohibit housing discrimination based on a person's disability, most notably Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, Title VIII of the Federal Civil Rights Act of 1968, codified at 42 U.S.C. § 301 (The Fair Housing Act), and the Massachusetts Housing Bill of Rights for People with Disabilities, G.L. c. 151B. Under these laws, a person with a disability is defined as an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. A person with a disability under this definition is entitled to a reasonable accommodation to assist in accessing proper housing or in preserving a tenancy. A landlord's obligation to provide a reasonable accommodation to an individual with a disability exists at all stages of the tenancy, and a refusal to make such an accommodation is discrimination under the law.

The process of reaching an accommodation is an interactive one, with the obligation to accommodate a disabled tenant triggered not by a request for a specific accommodation, but rather by the landlord's knowledge of the disability. There are, therefore, no magic words that are required to initiate the process of formulating a reasonable accommodation. Consequently,

merely informing the landlord of the existence of a qualifying disability and putting the landlord on notice that the tenant requires a change in the landlord's policies or procedures qualifies as a request reasonable accommodation. *Boston Housing Authority v. Bridgewater*, 452 Mass. 833, 847 (2009).

Although a formal request is not a requirement, it is, as a practical matter, the most effective way for an advocate to initiate the accommodation process. The landlord then has a duty to either approve the accommodation or deny the request if the accommodation is either unreasonable or fails to eliminate a direct threat that the tenant poses to the health and safety of others. In denying a proposed accommodation, the landlord must articulate the specific grounds on which the denial is based.

Reasonable accommodations are discerned and resolved on a case-by-case basis. An accommodation is "reasonable" if it will not fundamentally alter the nature of a service, program, or activity, or impose an undue financial or administrative burden on the landlord. In determining whether an accommodation imposes an undue administrative or financial burden, courts examine the overall costs and benefits of the requested modification. If the costs are reasonable in light of the anticipated benefits and the burdens imposed are not excessive, the refusal to provide an accommodation constitutes discrimination. Further, where a requested accommodation is unreasonable, a landlord must consider other reasonable options that would enable the individual to achieve an equal opportunity prior to issuing a decision of termination or denial. See *City Wide Assocs. v. Penfield*, 409 Mass. 140 (1991).

A key provision of the law that must be noted and understood by advocates for either the landlord or the tenant, is that discrimination protections do not apply to any individual whose tenancy would constitute a "direct threat to the health or safety of other individuals, or whose tenancy would result in substantial physical damage to the property of others". See, 42 U.S.C. § 3604(f) (9) 24 C.F.R. § 100.202 [Title VIII]; 24 C.F.R. § 8.3 [Section 504]. A person however, cannot be excluded on the basis of threat unless it can be shown that the person poses a direct threat based on objective evidence rather than assumptions, subjective fears, or speculations. In *Bridgewater*, the court held that, "before a federally assisted public housing authority ... may lawfully evict a disabled tenant who requests a reasonable accommodation as posing a threat to others, it must either demonstrate the failure of an accommodation instituted at the request of the tenant, or demonstrate that no reasonable accommodation will acceptably minimize the risk the tenant poses to other residents." 452 Mass. at 842.

Knowing the legal skills of requesting a reasonable accommodation in a housing case can be a useful tool for a young attorney who is representing either a landlord or a tenant. Both sides need to be proactive when attempting to accommodate the needs of a tenant with a disability. If a reasonable accommodation can be made to afford the tenant an equal opportunity to use and enjoy the dwelling, the accommodation should be made in order to allow the tenant the full benefits of the tenancy.

Michael J. Moloney was admitted to practice in Massachusetts, Connecticut and in the United States District Court, District of Massachusetts. **He is a graduate of Roger Williams University School of Law and Sacred Heart University.** A native of Worcester, Moloney is the Worcester County Director for the Massachusetts Bar Association Young Lawyers Division. He practices law as an AmeriCorps Attorney with the Justice Center of Southeast Massachusetts, a subsidiary of South Coastal Counties Legal Services, Inc. and handles cases in Brockton, Fall River and New Bedford.

For full story, click [here](http://www.massbar.org/media/1329826/january2013.pdf). [http://www.massbar.org/media/1329826/january2013.pdf]