

The logo for the City Bar Justice Center, featuring the text "CITY BAR JUSTICE CENTER" in a serif font, flanked by two horizontal bars.

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A Beginner's Guide to:

**CANCER AND
HOUSING
DISCRIMINATION
(FOR RENTERS)**

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Publication of the Cancer Advocacy Project of the City Bar Justice Center

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The Cancer Advocacy Project is a legal services program of the City Bar Justice Center. The project provides cancer patients and survivors with no-cost legal information and advice in three areas: life (estate) planning, coverage denials by private health insurers, and cancer-related employment discrimination.

Although it does not fall exactly within the above three categories, the purpose of this booklet is to provide a general overview of cancer-related housing discrimination laws in New York state. It contains basic information that can be used as a starting point for cancer patients to determine what actions amount to housing discrimination and to identify potential protections that those who believe they are victims of discrimination can discuss with their attorney. It is not intended to substitute for legal advice.



AN OVERVIEW OF THE ISSUES

Stable housing is a necessity for all of us, but renters who are undergoing or recovering from cancer treatment (as well as their family members) can face unique barriers that make it difficult to both obtain and maintain this basic necessity, as well as terminate undesirable rental arrangements. When it comes to finding a new home, navigating the rental market may be made more challenging as certain landlords and others might actually discriminate against applicants with a history of cancer because of concerns (largely unfounded) that renting to the individual will create increased risk or costs for the landlord. For those already renting an apartment, cancer can make it difficult to use and enjoy the space, and some landlords may be unwilling to make necessary modifications. A cancer diagnosis or treatment may also derail plans and force renters to unexpectedly relocate or otherwise have to surrender their premises before the end of their lease term, potentially resulting in costs and legal disputes with landlords.

If you or a loved one is experiencing these or similar housing-related challenges and being subjected to unlawful treatment as a result of a cancer diagnosis, related treatment or the lasting effects of the disease, knowing your legal rights will enable you to seek help.

Note: Certain key terms used in this booklet are defined in a Glossary on page 14.

KEY LAWS AGAINST EMPLOYMENT DISCRIMINATION

Listed below are laws that prohibit landlords and their agents (including real estate brokers, property managers, building supervisors, and similar employees or contractors of a landlord) from discriminating against certain individuals and are especially relevant for cancer survivors and their family caregivers who rent their homes:

New York City Human Rights Law (NYCHRL): prohibits discrimination in the rental of property on the basis of medical disability, which includes cancer patients and survivors (and extends to family members who face discrimination due to a loved one's disability).

- **Note:** The NYCHRL is the most comprehensive law with respect to discrimination in housing and has a less challenging legal standard for proving landlord liability. Note, however, it applies only to residents of the five boroughs (the Bronx, Brooklyn, Manhattan, Queens and Staten Island).

New York State Human Rights Law (NYSHRL): This applies to residents throughout New York State, and offers similar protections to the NYCHRL, except for a few exemptions related to senior housing and rental units in small buildings occupied by the landlord.

Americans with Disabilities Act (ADA) (1990): prohibits housing-related discrimination against individuals with medical disabilities and individuals viewed as having a medical disability and requires landlords to 'reasonably accommodate' individuals with disabilities to assist in the use and enjoyment of their rental home. Cancer is a recognized medical disability under the ADA.

Rehabilitation Act (1973): prohibits the exclusion of individuals with a medical disability from obtaining access to housing accommodations or related programs that receive federal financial assistance.

Federal Fair Housing Act (FHA) (1968): prohibits housing-related discrimination against individuals with a medical disability, including cancer-related disabilities, and requires a landlord to provide reasonable accommodations.

Examples of housing-related discrimination and reasonable accommodation, include:

- denial of an apartment application (whether a new application or a renewal) because the landlord is uncomfortable with a prospective resident's actual or perceived disability, whether it is the cancer patient or a family member;
- a property manager refusing to make modifications that are necessary to address the resident's medical disability (e.g., install a grab bar, lower a mailbox, etc.);
- being asked inappropriate questions by a real estate agent, such as: "Do you have a disability?" or "I need to see your medical records before you are approved for an apartment." Other types of discriminatory questions might refer to the severity of a person's disease or life expectancy;
- being denied government benefits because of a disability;
- being treated differently or less favorably as a prospective tenant during the negotiation process; and
- advertising that restricts offers to able-bodied individuals (directly or indirectly)

Note: If you have a disability, employers are required to provide you with a **reasonable accommodation** in the job application process and during employment. More information on this issue is provided later in this booklet.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

1. Where should I start? I know nothing about housing law or my rights as a renter.

The [New York City Human Rights Law](#) (NYCHRL) applies to all residents of the five boroughs of New York City.

The NYCHRL (and similar state and federal laws) prohibits discrimination in the rental of property for protected classes, which includes having, or being perceived as having, a disability. This prohibition(ban) applies even if, because of your disability, you would need some type of assistance (a 'reasonable accommodation') to be able to use and enjoy the rented space. Under the NYCHRL, cancer may be considered a disability. For more information on the NYCHRL and how to file a complaint, you can visit: <https://www1.nyc.gov/site/cchr/enforcement/steps-in-the-complaint-process.page>



RESPONSES TO FREQUENTLY ASKED QUESTIONS

2. I am having trouble renting a new home, could this be due to discrimination? And, if so, am I protected?

Yes. Housing-related discrimination can happen at different stages of the housing selection process and with different individuals involved in those processes.

For example, a real estate broker may refuse to show you certain units or a building owner may prevent you from signing or renewing a lease after discovering your cancer-related illness or its severity. As a general rule, if a unit is being offered for rent to the general public, any action on the part of the landlord or its agents that makes it more difficult for an individual with a medical disability to rent the unit is likely unlawful.

If your efforts to get housing are hindered by such actions, you have rights and protections under the law.



RESPONSES TO FREQUENTLY ASKED QUESTIONS

3. I like where I live and want to stay, but my medical disability has made it difficult to enjoy my residence. What are my rights?

In certain circumstances, if a medical disability interferes with your ability to use and enjoy your residence in a similar way to someone who does not have a disability, the landlord may be required to provide you with reasonable accommodations to aid your use and enjoyment of the space.

Whether a requested accommodation is 'reasonable' is decided on a case-by-case basis. If the landlord refuses your initial request and the case goes to court, judges will try to balance the benefits of providing the accommodation against the costs and burdens of providing it. For example, on the one hand, your landlord would very likely be required to install a grab bar in the shower, if doing so is necessary for you to use it. On the other hand, your landlord is less likely to be required to install an elevator, even if you are no longer able to walk up the stairs to get to your apartment. In that situation, a 'reasonable accommodation', may instead be to allow you to terminate your lease before the end of the lease term without penalty.

Note: Landlords are not required to provide accommodations that would place an undue financial or administrative burden on the landlord.

4. What are some examples of potentially reasonable accommodations?

The aim is to make rental homes usable and enjoyable by individuals with disabilities. Examples of reasonable accommodations include:

- Lowering countertops for easier access from a wheelchair;
- Installing special faucets, door handles, or light switches and/or moving existing ones to a position where you can reach them more easily;
- Installing a ramp or an automated stair-lift;
- Moving you to a new floor of the building; or
- Allowing you to terminate the lease without penalty.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

5. How do I request / enforce the right to a reasonable accommodation?

Step 1: Make a verbal or written request to your landlord (a family member can make the request on your behalf). A written request is recommended so that you have a record of the request if you need it.

Step 2: After you make a request, the landlord may ask you to provide reasonable evidence of your disability and an explanation as to why you need the accommodation. You are generally required to provide this information.

Step 3: After you provide the landlord with this supporting information, the landlord is required to consider your request. If the landlord refuses to act on the request, or if the process is dragging on for no legitimate reason, then you may contact the New York City Human Rights Commission and file a formal complaint.

Click [here](https://www1.nyc.gov/site/cchr/enforcement/complaint-process.page) to learn more about the complaint process or to file a complaint (<https://www1.nyc.gov/site/cchr/enforcement/complaint-process.page>).



RESPONSES TO FREQUENTLY ASKED QUESTIONS

6. I can no longer live in my home, can I get out of my lease?

Yes, the right to reasonable accommodations can allow for the early termination of a lease. However, that is generally an extreme remedy which should be saved for situations where no other alternatives are available. If your landlord has rejected your request for accommodations, or for some other reason you can no longer live in your home, you may be better off considering one of the following alternatives:

1. Requesting a mutual termination: if you can no longer use or enjoy your space due to issues related to cancer, you should speak to your landlord. A landlord (especially one that knows about the legal rights of tenants) may be willing to help and avoid a legal dispute;
2. Subletting / Assigning the apartment: in New York City, renters generally have the right to sublet their apartments or assign their leases, with a landlord's reasonable consent. In the case of a tenant who is no longer able to enjoy the space they rent because of a medical disability, it is unlikely the landlord would be able to refuse consent.

Note: Be aware of the differences between a sublease and an assignment. Under a subleasing arrangement, if the new tenant fails to pay rent, you would still be liable under the lease. Under an assignment, also known as a lease takeover, you are generally released from obligations under the lease. Additional information is available here: <https://rentguidelinesboard.cityofnewyork.us/resources/faqs/subletting/>

3. Making your own modifications: you have the right to make reasonable modifications (at your own expense). A landlord may, however, object to such modifications if they would make a unit unacceptable to future tenants.

Note: There are limitations and rules about the changes that you can make to rental space. The modifications must be reasonable and related to the disability, as well as carried out in a workman-like manner, meaning that they are of reasonable quality. In addition, you may be responsible for obtaining any permits necessary for completing the work.

RESPONSES TO FREQUENTLY ASKED QUESTIONS



7. I received an eviction notice, do I need to move out of my apartment immediately?

No. If you fail to pay rent, hold-over (remain) in a dwelling after termination of the lease, or violate terms of the lease, the landlord may try to evict you from the apartment. However, you are not required to leave your apartment until the entire eviction process has been completed, which can take anywhere from one to six months (or longer).

Note: “Self-help” evictions are prohibited in New York. Therefore, if your landlord has attempted to evict you by changing the locks or prevented you from entering your dwelling in some other way, without first obtaining a final judgment and assistance from a marshal, you must immediately alert the police.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

8. What does the eviction process involve?

What follows is a brief overview of the eviction process. This summary is not intended to alarm you. Instead, by understanding the process that your landlord must follow and your defenses to actions taken by the landlord, you will be able to better protect yourself and enforce your legal rights:

- First, the landlord must notify you of the proposed eviction in writing. For the nonpayment of rent, the landlord must make a “Demand for Rent,” which is a verbal or written notice informing you: (a) that the rent is late, (b) of the amount of the rent balance that is due, and (c) that you will be evicted if rent is not paid. For all other evictions (e.g., criminal behavior, creating a nuisance, etc.), the landlord must provide you with a New York Eviction Notice that describes the lease terms you are accused of violating.
- 14 days (for nonpayment) or 30 days (all other causes) after providing you with notice, the landlord may file a formal proceeding in Housing Court and must then serve you with the legal documents detailing the complaint and notifying you of the date and time of the Housing Court hearing (“Notice Papers”).
- After you receive Notice Papers, you must go to the Housing Court Clerk’s office to respond to the filing on the date and time specified.
- At the first court appearance, the court attorney will review the case with all parties and explore whether a settlement is possible. If a settlement is not reached, the court clerk will set a date for the case to be heard by a judge.
- On the court date, you will be given the opportunity to present defenses to the judge about the proposed eviction (discussed on the next page).
- If the landlord wins, the Housing Court will issue a Judgment of Possession and a “warrant” directing the City Marshal to evict you. The City Marshal will then serve you with a Notice of Eviction, which will give you at least 14 days’ notice of when the eviction could take place. In certain circumstances, the Court can delay enforcement of the warrant for up to 1 year. Finally, on the date of the eviction, the City Marshal will evict you.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

9. How can I protect myself from being evicted?

The eviction process may seem intimidating, but the process also gives you an opportunity to fix the issue alleged by the landlord, delay the eviction, or raise complaints you have against the landlord. These defenses include:

Procedural Defenses:

- The landlord's allegations are not substantial enough to warrant an eviction;
- The eviction notice was not served correctly (i.e., it did not meet certain technical requirements); or
- The Notice Papers do not specify a reason for eviction or fail to contain other required information (discussed on the previous page).

Affirmative Defenses that you can raise to defeat an eviction:

- The landlord waived (gave up) the right to evict you by accepting rent from you or from someone else (a "third-party") on your behalf;
- The landlord's allegations are false;
- The landlord failed to maintain the premises;
 - **Note:** This can be a particularly powerful defense if your landlord did not uphold their responsibilities under NY law. Among other duties, NY law requires landlord to provide: (a) waterproof ceilings, walls and floors, (b) bug and vermin extermination services, (c) mold remediation services, (d) functional plumbing and water, and (e) lockable windows and doors. If a landlord fails to meet these responsibilities, courts may stop the eviction proceeding until the issues are addressed.
- The landlord's decision to evict you was based on retaliation for filing a complaint about the condition of the property; or
- The eviction is based on your religion, race, sex, national origin, creed, sexual orientation, age, marital or family status, or **disability**.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

10. I can no longer afford to pay my rent, what should I do?

While there may not be much you can do from a legal perspective to help with the non-payment of rent, there may be a few things for you to consider that may give you more time to pay or lessen the after-effects on credit, future housing, etc.

- Request a rent deferral or rent abatement from your landlord;
- Terminate or assign the lease or sublet the residence (discussed above);
- NYC Human Resources Administration (HRA): You may be eligible for a 'One Shot Deal (Emergency Assistance) to help maintain your or your family's health and safety, including funds to clear rent arrears or utility bills. For information visit: <https://access.nyc.gov/programs/one-shot-deal/>

Potential sources of financial and other help

Note: Each cancer-related organization will have its own eligibility criteria when considering applications for assistance, which may include the type of cancer, age and location, and may also have deadlines. Funding may be limited to specific types of expenses, such as housing, co-pays and deductibles, or medical treatment costs.

- The Pink Fund: <https://pinkfund.org/get-help/>
- Breast Cancer Emergency Aid Foundation: https://bceaf.org/client_services.html
- Patient Advocate Foundation: <https://www.patientadvocate.org/connect-with-services/financial-aid-funds/>
- Family Reach: <https://familyreach.org/ftp/>
- Leukemia and Lymphoma Society: <https://www.lls.org/support-resources/financial-support>

You can find additional organizations by searching online.

CONCLUSION

Dealing with housing-related discrimination after a cancer diagnosis can be confusing – while some landlords provide a supportive environment, others unfortunately do not. Knowing your legal rights is important. While this booklet provides a basic overview of some of the legal protections available to eligible cancer patients, survivors and their family caregivers, housing-discrimination law is complicated and very specific to the facts and circumstances of each case. It is strongly recommended that you seek advice from an attorney if you believe you are being discriminated against because of your or your family member's cancer-related disability.



GLOSSARY

Affirmative Defenses: in this context, facts or circumstances that challenge the landlord's argument that the court should evict the tenant. If proven by the tenant, these affirmative defenses may convince a judge to decide against the landlord or lessen the consequences of the tenant's actions.

Dwelling: any building or structure that is intended to be lived in.

Hold-over: continuing to stay in a residence, without the landlord's consent, after the term of the lease or rental agreement has expired.

Judgement of Possession: in this context, a court order formally transferring ownership of the property.

Notice of Eviction: also known as a Notice to Quit, a document posted on your property by the marshal, giving you a specific number of days to correct a lease violation in order to avoid eviction.

Order to Show Cause: a court order requiring an individual to explain, justify or prove facts supporting a request. As used in this Guide, an Order to Show Cause may be issued by the judge if a tenant seeks to delay eviction after the judge has ruled in the landlord's favor.

Procedural Defenses: legal arguments that do not challenge the underlying claim itself, but rather, broadly speaking, challenge the way in which the claim was brought to court. A procedural defense can be raised if one party did not follow the proper legal procedures.

Prohibit/Prohibited: something that is not allowed. It is forbidden or banned.

Rent Deferral: an agreement that allows a tenant to delay rent payment for a short period of time. It does not eliminate rent payment.

Rent Abatement: a temporary suspension of some (a 'partial abatement') or all (a 'complete abatement') rent payments due under the lease. Often, abated rent is required to be re-paid through increased rent that begins at a later date or in a lump sum payment at the end of the lease.

Waiver: giving up a legal right. Legal rights may be waived by consenting to the action or failing to follow the proper legal steps.



The housing-related discrimination law basics covered by this booklet are intended to educate and inform, but not substitute for legal advice. The Cancer Advocacy Project provides free legal assistance to financially eligible cancer patients and survivors seeking advice about cancer-related housing discrimination through consultation with a qualified attorney. For further information please contact the Cancer Advocacy Project:

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