

A Beginner's Guide to: **CANCER AND HOUSING DISCRIMINATION**

For Homeowners and Homebuyers

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

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

Although it does not fall squarely 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 in assisting cancer patients to identify actions (or inactions) that may rise to the level of housing discrimination and to identify potential remedies that those who believe they are victims of discrimination can discuss pursuing 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 individuals 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. These challenges can arise in various contexts. When it comes to buying a new home, navigating the market may be made more challenging for persons impacted by cancer as certain sellers, lenders and others might discriminate against applicants with a history of cancer because of concerns (largely unfounded) that selling or lending to the individual will create increased risk or costs. For existing homeowners, cancer can present the need to quickly relocate or create unexpected financial hardship which, in turn, may require a homeowner to sell their home on an expedited timeline, purchase a new home better suited to their needs or seek special accommodations from their mortgage lender, potentially resulting in unexpected costs and legal disputes.

If you or a loved one is experiencing these or similar housing-related challenges or believes that they have been 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 better equip you to seek appropriate help.

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

KEY LAWS AGAINST HOUSING-RELATED DISCRIMINATION

Listed below are laws that prohibit home sellers, property managers, real estate brokers/agents, and mortgage lenders and brokers from discriminating against certain individuals and are especially relevant for cancer patients, survivors and their family caregivers who want to purchase or sell a home:

New York City Human Rights Law (NYCHRL): prohibits discrimination in the marketing, sale or financing 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 wrongdoing. Note, however, it applies only to residents of the five New York City boroughs (the Bronx, Brooklyn, Manhattan, Queens and Staten Island).

New York State Human Rights Law (NYSHRL) : This law applies to residents throughout New York State and offers protections that are similar to those provided under the NYCHRL, except for a few exemptions related to senior housing.

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 multifamily housing buildings to 'reasonably accommodate' individuals with disabilities to assist in the use and enjoyment of their home. Cancer is a recognized medical disability under the ADA.

Rehabilitation Act (1973): section 504 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 discrimination in mortgage lending to individuals with a medical disability, including cancer-related disabilities, and provides such individuals with a process through which, after filing a complaint, they may receive compensation for actual damages caused by the discrimination and have other penalties imposed upon the wrongdoer.

Examples of housing-related discrimination in the sale of a home or financing of a home purchase include:

- a lender (i) refusing to provide a mortgage loan or information regarding loans to a prospective homebuyer or (ii) imposing different terms or conditions on a loan, such as different interests rates, points or fees, due to the homebuyer's medical condition;

- a seller agreeing to sell a house to you but, after discovering your medical history or situation, removing the home from the market only to promptly relist it for sale or attempting to negotiate a price higher than the price previously agreed;

- inappropriate questions or requests by a real estate agent or mortgage broker, such as: "Do you have a disability?" or "I need to see your medical records to approve your application." Other types of discriminatory questions might refer to the severity of a person's disease or life expectancy;

- a lender refusing to consider a mortgage applicant's disability-related income, such as Social Security Disability Insurance;

- being treated differently or less favorably as a prospective buyer or borrower during the buying/lending negotiation process;

- advertising that restricts offers to able-bodied individuals (directly or indirectly); and

- being denied a reasonable accommodation, such as a handicap parking space or structural modifications to shared spaces in a multi-family property.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

1. I know nothing about housing laws or my rights as a homeowner, homebuyer or mortgage borrower. Where should I start?

The New York City Human Rights Law (NYCHRL) applies to all sellers, purchasers, lenders and agents and brokers located or involved in the sale of property in any of the five New York City boroughs. The Federal Fair Housing Act (FHA) offers similar protections to individuals with medical disabilities across the country and, importantly, applies to all mortgage lenders and brokers in the U.S., regardless of the location of the financed property or borrower.

The NYCHRL and FHA (and similar state and federal laws) prohibit discrimination against members of Protected Classes (race, age, people with disability, etc.) by anyone with the authority to sell residential property, finance the purchase of a home or provide advertising or brokerage services in connection with a home sale or financing. Under both the NYCHRL and FHA, cancer may be considered a disability. If you have a disability or are perceived as having one, you are considered to be a member of the classes or groups that such laws are intended to protect.

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>

For more information on the FHA and how to file a complaint with the Office of Fair Housing and Equal Opportunity, you can visit:
https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint

RESPONSES TO FREQUENTLY ASKED QUESTIONS

2. I am having trouble finding a new home to purchase. Could this be due to discrimination and, if so, am I protected?

Yes. Housing-related discrimination can take place from the start of the home buying process as a result of unlawful actions by certain individuals involved in the process that limit access to homes available for sale based on a person's disability.

For example, a real estate broker may refuse to show you certain for-sale properties or use discriminatory marketing techniques that result in you seeing only a limited range of the overall home sales market. In addition, individual sellers may, after learning of your medical issues, try to complicate your attempts to tour a home or offer to sell it to you only at an increased price or under unfair terms that do not apply to the general public. As a general rule, if a home is being offered for sale to the general public, any action on the part of the seller or its agents that makes it more difficult for an individual with a medical disability to purchase the home is likely discriminatory and unlawful.

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



RESPONSES TO FREQUENTLY ASKED QUESTIONS

3. I found a home to purchase but cannot get a mortgage loan to purchase it. Could this be due to discrimination and, if so, am I protected?

Yes. Discrimination in mortgage lending and related activities (like marketing of loans) can be a major issue for individuals with medical disabilities and it is one of the most difficult to identify.

For example, a lender may refuse to give you a mortgage because of unjustified concerns that a cancer diagnosis or on-going or past cancer treatment may impact your ability to repay it. More commonly, a lender might only offer loans on discriminatory terms, such as higher interest rates, additional fees and costs, or more costly or limited prepayment rights. In addition, a mortgage broker (someone you hire to help find the best terms and rates for a mortgage), may refuse to work for you due to your medical condition. They may also choose to remain silent upon learning that you are facing discrimination by a lender, since brokers often rely on their relationship with lenders to conduct their business. A broker or lender might also discriminate by asking you to provide sensitive information related to your medical condition, treatment or life expectancy.

If you begin working with a lender or broker and notice a change in their behavior or the loans they are offering after they become aware of your medical situation, you may be facing discrimination. Similarly, if you cannot find a lender or broker willing to take you on as a client and you think it may be related to your cancer diagnosis, treatment or medical history, discrimination could be a factor.

Knowing your rights under the law and how to enforce those rights could help you obtain compensation for past discrimination and even allow you to get out of an existing mortgage that was made on discriminatory terms. A more detailed guide on lender discrimination and federal fair lending laws is available here: https://www.hud.gov/sites/documents/FAIR_LENDING_GUIDE.PDF

RESPONSES TO FREQUENTLY ASKED QUESTIONS

4. I own a unit in a multifamily housing complex. I like where I live and want to stay, but I need to make changes to my home to accommodate my cancer-related disability and am being told I cannot do so. What are my rights?

The FHA prohibits discrimination, which includes the refusal to allow reasonable modifications to be made to existing premises that are occupied or are to be occupied by you, as a person with a disability, if the modifications are necessary to enable you to have full use and enjoyment of the property, and are paid for by you. The law applies to all individuals, corporations, associations and others involved in providing housing, including condominium associations, property managers, homeowner associations and co-operative (co-op) boards. Therefore, if you need to make structural or interior changes to the premises you own or to common areas on the property, so that you are able to use the premises, and the changes are reasonable, other Interested Parties may not be able to prevent you from doing so.

Whether an accommodation is 'reasonable' is decided on a case-by-case basis. If someone is trying to prevent you from making a change to the property, judges will try to balance the benefits of providing the accommodation against the costs and burdens it imposes on others. For example, on the one hand, it is very likely your co-op board would be required to permit the installation of ramps or grab bars within your home, if doing so is necessary for you to use it. On the other hand, the co-op board would likely not be required to allow you to perform major changes, like constructing a new entrance to the building, especially if it would result in increased costs to other co-op members.

5. What are some examples of potentially reasonable accommodations?

The aim is to make 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; or
- Providing a handicap parking space closer to the building entrance.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

6. How do I request / enforce the right to a reasonable accommodation in a multifamily housing building?

Step 1: Make a verbal or written request to the governing body for the property (usually the condo association or co-op board). 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 governing body 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 this supporting information, the governing body is required to consider your request. If it refuses to act on the request, denies the request or approves it subject to burdensome or oppressive requirements with no legitimate reason, then you may contact the New York City Human Rights Commission (for claims under the NYCHRL) or the Federal Office of Fair Housing and Equal Opportunity (for claims under the FHA) and file a formal complaint by using the website provided on page 4 of this Guide.



RESPONSES TO FREQUENTLY ASKED QUESTIONS



7. I received a notice of foreclosure. Do I need to move out of my home immediately?

No. If you fail to make mortgage payments or otherwise default on the loan, the lender may try to foreclose on the mortgage and sell the property. However, you are not required to leave your home until the entire foreclosure and eviction process has been completed, which can take at least a year and often much longer. There are many procedural protections for homeowners and free, high-quality legal services are available in all five boroughs.

Note for Co-op Owners: In New York, there are two types of residential mortgage foreclosure processes, one for a 1-to-4 family homes and condominiums (real property) and another for co-op apartments (not real property but rather shares in the co-op corporation and rights in the proprietary lease). The main difference between these two processes is that lenders must go through the courts to foreclose on real property (judicial foreclosure) while lenders may foreclose on co-op apartments without going to court after providing the necessary notices (non-judicial foreclosure). The foreclosure of a co-op apartment can proceed very quickly in as little as six months from the date of default with few procedural protections. If you are a co-op owner and expect to default on your loan or have received a notice of intent to foreclose, seek legal assistance immediately.

Note: “Self-help” evictions are prohibited in New York. Therefore, if your lender has attempted to remove you from the home, without first obtaining assistance from a marshal following a complete foreclosure and eviction process, you must immediately alert the police.

RESPONSES TO FREQUENTLY ASKED QUESTIONS



8. What does the judicial foreclosure process involve?

What follows is a brief overview of the judicial foreclosure process in New York for residential mortgagors. Although fairly detailed, this summary is not intended to alarm you. Instead, by understanding the process that your lender must follow, you will be able to better protect yourself and enforce your legal rights:

- New York law requires the lender to send the homeowner a pre-foreclosure notice 90 days prior to commencing any court proceeding. This requirement is intended to give the homeowner three months of additional time to cure the default and seek legal assistance if necessary. The pre-foreclosure notice must include specific information, and the failure to send a notice or include the required information on such a notice is a defense to the foreclosure.
- 90 days after delivering the pre-foreclosure notice, the lender may then file documents known as a Summons and Complaint with the court to start the foreclosure process. A copy of the Summons and Complaint must be delivered to the homeowner.
- After the homeowner receives the Summons and Complaint, the borrower has 20 days (if delivered in person) or 30 days (if delivered by mail) to file a response, known as an Answer. You will have a second opportunity to submit an Answer within 30 days following the first Mandatory Settlement Conference. It is extremely important to seek legal assistance at the first sign you may default on your mortgage or receive any default notice to ensure you and your attorney have sufficient time to prepare your defense and seek loss mitigation to avoid unnecessary foreclosure.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

- Within 60 days after the lender confirms to the court that the court documents have been delivered to the homeowner and files a request for judicial intervention, the court will send a notice to the homeowner and schedule a Mandatory Settlement Conference. The purpose of the court-supervised conference is for the homeowner and lender to meet to attempt to avoid unnecessary foreclosure through a loan modification, repayment plan or other foreclosure alternative. All judicial proceedings are stayed (paused) until the court determines a settlement cannot be obtained and holds no further conferences. **It is extremely important for homeowners to attend the Mandatory Settlement Conference; failure to attend can result in the foreclosure proceeding to judgment.**
- If the matter cannot be resolved at the settlement conferences, the foreclosure will proceed through its normal course. In New York, average judicial foreclosure proceedings can take 445 days or more to complete from the date the lender first files for foreclosure.

Note: Federal law also requires most lenders to contact you directly following default to explain how they may assist you in preserving your home and cannot commence foreclosure until such outreach has been completed.



RESPONSES TO FREQUENTLY ASKED QUESTIONS



9. For those that own shares in a co-op, what does the non-judicial foreclosure process involve?

As noted previously, if you own a co-op, you have purchased shares in the corporation that owns the building and the rights under a proprietary lease assigned to those shares. Those shares and lease are the collateral for the mortgage loan and are subject to foreclosure outside of the courts because they are deemed personal property instead of real property. These non-judicial proceedings are very fast, do not have the same protections as condos and 1-to-4 family homes, and provide fewer opportunities for the co-op owner to resolve the default by catching up with missed payments or modifying the loan.

Co-op foreclosure typically involves the following steps:

- **Notice:** Lender sends a 90-day pre-foreclosure notice to the borrower. The notice is usually sent between 30 to 60 days after a missed loan payment and informs the borrower of the missed payment and the lender's intent to foreclose.
- **Foreclosure Referral:** Borrower's file gets referred to the lender's corporate division dedicated to delinquent borrowers (borrowers who have failed to make their loan payments when due). A local law firm is often assigned the case and may contact the borrower to collect the debt.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

- **Publication:** If the borrower fails to make the missed payments and is unable to come to an agreement with the lender, the lender must publish notice of the foreclosure in a local newspaper for three weeks in a row before proceeding to sell its loan collateral (the co-op shares).
- **Sale:** The co-op shares will then be sold at an auction held at the local county courthouse or at some other reasonable location unless the lender chooses to keep the property.
- **Transfer:** The managing agent of the co-op is responsible for transferring ownership to the lender, or if there is a third-party buyer, to that purchaser at the auction following approval by the co-op board.

As you can see, the foreclosure process for co-op owners moves quickly and gives the lender substantial authority to decide the outcome. Therefore, it is particularly important if you are struggling to meet your loan obligations to take the following steps:

- Communicate early and often with your lender;
- Seek out financial assistance resources available to you;
- Secure legal representation (there are high-quality, free legal services available in New York City); and
- Develop a plan to manage financial obligations and bring the loan current (pay off the amount that is due.)

RESPONSES TO FREQUENTLY ASKED QUESTIONS

10. How can I protect myself from non-judicial foreclosure?

The foreclosure process may seem intimidating, but it also gives you an opportunity to catch-up on missed payments, assert legal defenses, including those related to discrimination, and forces the lender to negotiate with the borrower in good-faith. Some defenses to foreclosure include:

Procedural Defenses:

- The lender's allegations are not substantial enough to warrant foreclosure;
- The pre-foreclosure notice and/or the Summons was not delivered correctly (i.e., it did not meet certain technical requirements); or
- The pre-foreclosure notice and/or Summons do not specify a reason for eviction or fail to contain other required information (discussed on the previous page).

Affirmative Defenses: The affirmative defenses to foreclosure are based on relatively complex legal principals of law and equity, a complete discussion of which is beyond the scope of this Guide. But, in short, a homeowner facing foreclosure may have such defenses if the lender has 'unclean hands', meaning the lender contributed to the homeowner's inability to make the required payments or fulfill other obligations under the mortgage contract. Evidence of fraud, misrepresentation or illegal acts (like discrimination) on the part of the lender or lender's agent are among the types of conduct that might cause a court to prevent foreclosure.

Remember, only homeowners will have their cases heard in Housing Court. For co-op residents, raising defenses to a lender's foreclosure action requires filing suit against the lender before the UCC foreclosure process ends.

Obtaining legal representation is essential when facing either type of foreclosure. If you or a loved one are at risk, the City Bar Justice Center's Legal Hotline can provide referrals to possible sources of legal representation. Call (212) 626-7383, for English or (212) 626-7374, for Spanish. In addition, if you have limited financial resources, some of the organizations providing free legal services are provided on page 16.

RESPONSES TO FREQUENTLY ASKED QUESTIONS

11. I can no longer afford to pay my mortgage, what should I do?

There are quite a few options to assist you in addressing an expected shortfall in mortgage payments as well as catching up with arrears to avoid unnecessary foreclosure and the loss of your home. There are a few things you can consider that may give you more time to pay outstanding amounts or lessen the after-effects on credit and future housing.

- Contact your lender to discuss alternative repayment plans, including loan modification and forbearance. As you can see from this Guide, the foreclosure process can be burdensome and take a long time to complete. Lenders therefore have an incentive to work with borrowers to resolve payment issues before filing for foreclosure.
- Consider whether refinancing your mortgage or taking another line of credit might reduce the financial burden or provide enough breathing room to avoid losing your home to foreclosure. A loan modification is often preferable, however, because a refinance or new line of credit can carry significant lender fees ('origination') and other costs that do not exist with a modification.
- If you are over the age of 62 and have equity in your home, you may qualify for a reverse mortgage loan to pay off the existing mortgage loan and stabilize your housing. These loans have some pitfalls, but depending on your circumstances, they can be useful in keeping you in place. Be certain to speak with a trusted attorney or financial adviser before entering into this kind of loan product to make sure it is a right fit for you.
- Look at other ways to reduce expenses and increase income. Seniors and people living with disabilities may qualify for a significant reduction in property taxes through one of the tax exemption programs. Apply for the STAR tax credit program if you have not already. Shop for less expensive insurance with greater deductibles. Apply for social security disability if you qualify and explore other benefits such as SSI, cash assistance and SNAP (food stamps).

RESPONSES TO FREQUENTLY ASKED QUESTIONS

- Speak with a housing counselor or legal services attorney specializing in homeowner stability to determine if you are eligible for grants and other sources of funding to catch you up on arrears. For example, there is a program specifically for low-income seniors that will pay up to \$25,000 in mortgage or other housing expense arrears. Also, as of the date of this guide, you can register to join the NYS Homeowner Assistance Fund's waiting list in case additional COVID-related relief funds become available in future.
- Prioritize paying condo common charges and co-op maintenance payments over mortgage payments, as the former are much more difficult to settle, the costs and legal fees may spiral out of control much quicker, and there are few protections in non-mortgage foreclosures.
- If all other options fail and you have significant equity in your home, consider selling the home at full market value to preserve the equity and relocate to more affordable housing. If the home is sold at foreclosure (which again is a very long process that can take 2 to 5 years), it will likely sell for much less than it would in a brokered market sale.

Note: It is vital that you consider your options and reach out for advice and assistance well in advance of a missed loan payment or other default. Once a foreclosure proceeding is initiated, you still have ample opportunity to address the default and foreclosure. There are free, quality legal services available for you.

FIND LEGAL HELP: If you are facing a threat to your housing, seek legal assistance as soon as possible. If you have limited financial resources, free legal services are available, including from the following organizations:

Homeowner Stability Project, City Bar Justice Center: 212-382 6766

Foreclosure Prevention & Homeowner Rights, Legal Services NYC: 917-661 4500

Foreclosure Prevention Assistance, NYLAG: 212-946 0349

Foreclosure Assistance, Center for NYC Neighborhoods: 311 or 646-786 0888

CONCLUSION

Dealing with housing-related discrimination after a cancer diagnosis can be confusing – while some sellers, lenders, brokers and agents will 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. Accordingly, 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 lender's argument that the court should grant the foreclosure. If proven by the homeowner, these affirmative defenses may convince a judge to decide against the lender in favor of the homeowner or to lessen the actions required by the homeowner to remedy the default.

Interested Parties: parties who have an interest in the possible accommodation you are seeking, such as your condo association, co-op board, neighbors, etc.

Forbearance: when your lender allows you to pause or reduce your mortgage payments for a limited time while you build back your finances. Forbearance does not mean your payment obligations are forgiven or erased. You are still required to repay missed payments, which, in most cases, may be repaid over time or when you refinance or sell your home.

Pre-Foreclosure Notice: a notice the lender is required to deliver no less than 90 days before beginning a judicial foreclosure action in court. The Pre-Foreclosure Notice must include: 1) the number of days the mortgage has been in default; 2) the outstanding loan amount; 3) the mortgage servicer's or lender's phone number; 4) a list of at least 5 government-approved non-profit housing counseling agencies that provide free or low-income housing in the homeowner's area; 5) disclosure of the New York State Department of Financial Services' free helpline and website; and 6) a statement that makes clear that if the matter is not resolved within 90 days, the mortgage holder will start a foreclosure case against the borrower.

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.

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.

Protected Classes: protected classes include age, immigration or citizenship status, color, disability, gender, gender identity, marital status, national origin, pregnancy, race, religion, sexual orientation, and status as a veteran or active military service member.

Summons: a notice the lender is required to deliver to the borrower containing (1) the documents submitted by lender to the court to start the foreclosure process, (2) the date of the Mandatory Settlement Conference and (3) how many days the borrower has to respond to lender's mortgage foreclosure complaint.

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:

Cancer Advocacy Project, City Bar Justice Center
42 West 44th Street
New York, NY 10036-6689

Phone: 212-382-4785
Email: cap@nycbar.org
Website: www.citybarjusticecenter.org