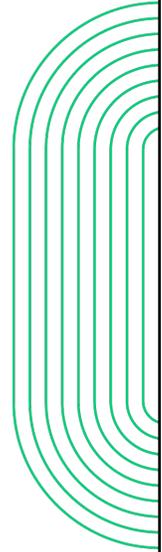


Reasonable Accommodations for Mentally Disabled Tenants

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Objectives

- Understand fair housing obligations as they apply to mentally disabled tenants and reasonable accommodations.
- Understand enforcement and liability for discrimination based on disability status.



Fair Housing Act

The federal Fair Housing Act prohibits:

- 1) Discriminating against prospective residents or residents because of their disability or the disability of anyone associated with them.
- 2) Treating a person with disabilities less favorably than others because of their disability.
- 3) Refusing to make reasonable accommodations necessary to afford equal opportunity to use and enjoy a dwelling.
- 4) Refusing residency to persons with disabilities or placing conditions on their residency because those persons may require a reasonable accommodation.



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Disability

The Fair Housing Act defines a person with a disability to include:

- 1) Individuals with a physical or mental impairment that substantially limits one or more major life activities.
- 2) Individuals who are regarded as having such an impairment.
- 3) Individuals with a record of such an impairment.



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Disability

A disability includes, but is not limited to:

- Orthopedic, visual, speech, and hearing impairments
- Cerebral Palsy
- Autism
- Epilepsy
- Muscular Dystrophy
- Multiple Sclerosis
- Cancer
- Heart Disease
- HIV
- Mental Illness
- Past Drug Addiction
- Alcoholism



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Disability

- Today we are going to focus on mental disabilities.
- A 2017 study from HUD found that at least 15 million Americans have some type of mental disability. That same study found that individuals with mental disabilities more often received disparate treatment because of their disability.
- HUD is obviously aware of this issue, so, it is important that all landlords are cognizant of this issue.



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Major Life Activity

A major life activity includes those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, and speaking.



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Reasonable Accommodations

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.



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Reasonable Accommodations

Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.



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Reasonable Accommodations

The federal Fair Housing Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

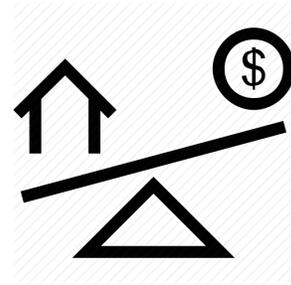


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Reasonable Accommodations

Under Section 504, reasonable accommodations must be provided and paid for by the housing provider unless providing them would be:

- 1) An undue financial or administrative burden, or
- 2) A fundamental alteration of the program.



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When is a Reasonable Accommodation Necessary?

A requested accommodation is likely necessary when there is an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.



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Who Must Comply?

The requirement to provide reasonable accommodations applies to, but is not limited to, individuals, corporations, associations, and others involved in the provision of housing or residential lending.



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Direct Threat to Health & Safety

The federal Fair Housing Act does not require you to house residents, or provide a reasonable accommodation to tenants, that would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of another unless the threat can be eliminated or significantly reduced by reasonable accommodation.



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Direct Threat to Health & Safety

To determine whether an individual imposes a direct threat a housing provider must make an individualized assessment to determine whether an applicant would pose a direct threat. The assessment must consider:

- (1) the nature of the risk of injury;
- (2) its probability of occurrence;
- (3) ways to eliminate the threat; and
- (4) whether the individual has received intervening treatment or medication that has eliminated the direct threat.



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Documentation & Reasonable Accommodations



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What Can You Ask?

A provider is entitled to obtain information that is necessary to evaluate if a requested accommodation or modification may be necessary because of a disability.



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What Can You Ask?

- You CAN ask for:
 - Information that verifies that the individual is disabled as defined by the FHA.
 - Information that describes the accommodation that has been requested and the relationship between the individual's disability and the need for the requested accommodation.



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What Can You Ask?

- Verification of the disability:
 - From the individual:
 - Submitting proof that the individual receives disability payments
 - Submitting a credible statement by the individual
 - From a third-party:
 - Doctor or other medical or mental health professional
 - Peer support group
 - Non-medical service agency
 - Reliable third party who is in a position to know about the individual's disability



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What Can You Ask?

- DO NOT ASK:
 - If a prospective resident has a disability or if a person intending to reside in a dwelling or anyone associated with a prospective resident or resident has a disability.
 - About the nature or severity of such person's disabilities.



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What Can You Ask?

- If you ask *all* residents, then you *MAY*:
 - Inquire into a prospective resident's ability to meet requirements of tenancy.
 - Inquire to determine if a prospective resident is a current illegal substance abuser or addict of a controlled substance.
 - Inquire to determine if a prospective resident qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability.
 - Inquire to determine if a prospective resident qualifies for housing that is legally available on a priority basis to persons with a particular disability.



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Examples of Reasonable Accommodations

- Relocating a tenant to a quiet portion of the apartment complex if their mental disability is exacerbated by loud noises.
- Changing the rent due date.
- Permitting an assistance animal in a "no pets" building for a person who has a physical or mental disability.
- Changing the policy of requiring in person rent payments for a tenant that has a mental disability that makes her afraid to leave her unit.



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Denial of a Reasonable Accommodation

A housing provider can deny a request for a reasonable accommodation if:

- 1) The request is not made by or on behalf of a person with a disability.
- 2) There is no disability-related need for the accommodation.
- 3) The accommodation is not reasonable, meaning it:
 - a) Imposes an undue financial or administrative burden on the party to whom it is submitted,
or
 - b) Imposes a fundamental alteration in the nature of the program



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Case Law Example Where No Assessment Occurred

- Facts: An individual applied to live with his mother at an apartment complex. Application was denied because he had a misdemeanor conviction for indecent exposure. Son claimed that it was caused by his mental illness. Request for reasonable accommodation was that the apartment complex consider the application without reference to the conviction. Son had also received treatment and had not had any similar incidents.
- Response: The apartment manager refused. In court the apartment argued that the FHA protection did not apply to those convicted of crimes and the apartment complex could issue blanket denials regardless of disability status and even if criminal conduct derived from the disability. Also argued the direct threat exception.



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Case Law Example Where No Assessment Occurred

Outcome: Motion to dismiss complaint was denied because the apartment complex failed to consider a reasonable accommodation for the son and did not undertake a direct threat analysis at all.

The court noted that while all criminal convictions must not be accepted, the apartment complex here needed to undertake an analysis to determine whether the reasonable accommodation requested was appropriate.

Further, because the apartment complex had done nothing to determine whether the son actually imposed a direct threat, they could not rely on that exception.



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Case Law Example Where No Assessment Occurred

- Facts: An elderly man was diagnosed with a bipolar disorder. He was also hearing impaired with no hearing aid. The man struck another tenant which required stitches. There were also other instances where he was verbally abusive. After the assault, he was served with a notice of eviction. He filed a lawsuit arguing that his disability could be accommodated.



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Case Law Example Where No Assessment Occurred

Outcome: The court found that before he could be evicted or the direct threat exception could be used, the apartment complex was required to demonstrate that no reasonable accommodation would eliminate or acceptably minimize the risk the tenant posed to other residents.



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Case Law Example

- Facts: The tenant suffered from a mental disability that caused her to hear voices within the walls of her apartment. In response, the tenant struck the walls with a broom or stick and by throwing objects at the wall. This all caused damage to the apartment and violated the lease. Tenant requested a reasonable accommodation that would prevent further eviction steps and give her an opportunity to pursue a program of outreach and counseling.
- Response: The landlord refused and evicted the tenant.



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Case Law Example

Outcome: The court found that the request was reasonable as long as more substantial damage was not caused. Further, the landlord failed to show that it would be greatly prejudiced by holding off eviction and giving the tenant an opportunity to address her disability.



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Assistance Animals

- An assistance animal works, provides assistance, or performs tasks for the benefit of a person with a disability.
- An assistance animal may provide emotional support that alleviates one or more signs or symptoms of a person's disability.



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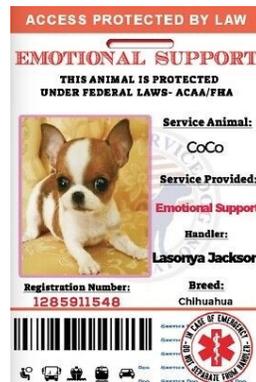
Assistance Animals



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Assistance Animals

For purposes of a reasonable accommodation, the federal Fair Housing Act does not require that the animal be certified or individually trained.



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Assistance Animals

After receiving a request for an assistance animal, consider:

- 1) Does the person seeking to use and live with the animal have a disability—i.e., a physical or mental impairment that substantially limits one or more major life activities?
- 2) Does the person making the request have a disability-related need for an assistance animal?

If the answers to both questions are "YES" then you must allow the assistance animal.



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Case Law Example

- Facts: A resident requested a reasonable accommodation of an assistance animal, but the apartment complex had a "No Pets" policy.
- Response: The apartment manager said that the resident could not have a pet or, alternatively, that she would be subject to additional restrictions.



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Case Law Example

Outcome: HUD charged the owner/property managers and the apartment complex with discrimination based on disability status, including:

- Failure to make a reasonable accommodation
- Imposition of discriminatory and burdensome terms
- Making discriminatory statements that indicated a preference, limitation, or discrimination based on disability
- Discriminating on the terms, conditions, or privileges of the rental of the dwelling
- Retaliation against the resident for requesting an accommodation



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Reasonable Modifications

- A "reasonable modification" is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.
- A reasonable modification may include structural changes to the interior, exterior, or common and public use areas.



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Examples of Reasonable Modifications

- (1) Widening doorways to make rooms more accessible for a person in a wheelchair.
- (2) Installing grab bars in bathrooms.
- (3) Lowering kitchen cabinets to a height suitable for a person in a wheelchair.
- (4) Adding a ramp to make a primary entrance accessible for a person in a wheelchair.
- (5) Altering a walkway to provide access to a public or common use area.



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Who Pays?



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Design & Construction Requirements

- If the building has an elevator, all apartments must have:
 - Accessible entrance on an accessible route
 - Accessible public and common-use areas
 - Usable doors
 - Accessible route into and through a dwelling unit
 - Accessible light switches, electrical outlets, thermostats, and environmental controls
 - Reinforced walls in bathrooms
 - Usable kitchens and bathrooms
- If the building does not have an elevator, all ground floor apartments must meet these design requirements.



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Hypotheticals



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Enforcement

A provider has an obligation to provide prompt responses to reasonable accommodation requests.

An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.



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Enforcement

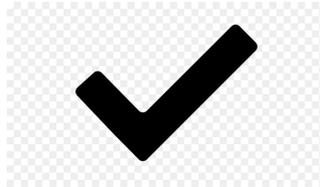
When a person with a disability believes that he or she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, the person may file a complaint with HUD's Fair Housing and Equal Opportunity office.



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How to Handle Requests

- A reasonable accommodation request form.
- Do not maintain a blanket policy for such requests.
- Engage in dialogue with the requestor.
- Provide a prompt response to a request.
- Err on the side of caution with assistance animals.



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Questions?



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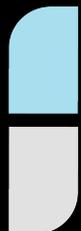
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Thank You

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