

Granting Reasonable Accommodations for People With Disabilities

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- ***What is a Reasonable Accommodation?*** The federal Fair Housing Act (FHAct) prohibits discrimination in housing based on 7 enumerated protected classes, including disability. Discrimination because of disability includes the refusal to make a reasonable accommodation (a change, exception, or adjustment) to rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.¹ The U.S. Department of Housing and Urban Development, and the Department of Justice, issued a joint statement to provide technical assistance for analyzing reasonable accommodations under the FHAct.² This article summarizes that guidance, and includes relevant citations to the FHAct and its regulations.
- ***Who Must Comply with the Reasonable Accommodations Requirements of the FHAct?*** Any person or entity engaged in conduct prohibited by the FHAct, including a refusal to make reasonable accommodations, may be liable under the FHAct, unless exempted from the FHAct's coverage. The reasonable accommodation requirements of the FHAct do not apply to: a private individual owner who sells his or her own home, if, she (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings; or owner-occupied buildings that have four or fewer dwelling units.
- ***Who Has a Disability under the Fair Housing Act?*** The FHAct defines a person with a "handicap," now commonly referred to as disability, as a person who (1) has a physical or mental impairment³ which substantially limits one or more of such person's major life activities⁴, (2) has a record of having such an impairment⁵, or (3) is regarded

¹ 42 U.S.C. § 3604(f)(3)(B).

² Joint Statement of HUD and DOJ, *Reasonable Accommodations Under the Fair Housing Act*, 2004 ("Joint Statement").

³ "Physical or mental impairment" includes: "(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." 24 CFR § 100.201.

⁴ "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. 24 CFR § 100.201.

⁵ "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. 24 CFR § 100.201

as having such an impairment^{6,7} Physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.⁸ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits will in most cases meet the definition of disability under the FhAct.

- **How is a Reasonable Accommodation Request Made?** To obtain a reasonable accommodation, it must be requested by or on behalf of a person with a disability. A request may be made at any time, before or during a tenancy. A housing provider may offer, but cannot require, that an applicant or tenant use the provider’s forms or procedures to request an accommodation. The request may be oral or in writing. It need not contain the phrases “reasonable accommodation” and “Fair Housing Act.” An accommodation request is made whenever it would be clear to a reasonable person that an exception, change, or adjustment to a rule, policy, practice, or service is requested because of a disability.

- **When Must a Reasonable Accommodation Request Be Granted?** A housing provider must respond promptly to requests for reasonable accommodation. An undue delay in responding may be deemed a denial of a reasonable accommodation. A reasonable accommodation request must be granted if (1) the requester has a disability under the FhAct, (2) the accommodation requested is necessary: there is a nexus between the accommodation requested and the disability; and (3) the accommodation is not unreasonable. Housing providers may not require extra fees or deposits as a condition of receiving a reasonable accommodation.

- **What Supporting information may a Housing Provider Request?** A housing provider may not inquire as to the nature and severity of a person’s disability. A provider may only request disability-related information necessary to (1) verify that the person meets the FhAct’s definition of disability, (2) describes the needed accommodation, and (3) demonstrates the relationship between the disability and need for the accommodation. If a disability is obvious, or known to the housing provider, and the need for the accommodation is also apparent or known, the housing provider may not request additional information. If a disability or disability-related need are not apparent, then a housing provider may request verification, which verification of disability may be provided by: the requester (e.g., proof of less than age 65 and receipt of SSI or SSDI

⁶ (d)Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment. 24 CFR § 100.201

⁷ 42 U.S.C. § 3602(h).

⁸ 24 CFR § 100.201.

benefits or a credible statement by the individual); or a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability.⁹ Any disability-related information obtained must be kept confidential and not shared with others unless required by law (e.g., court order).

- ***When Can a Reasonable Accommodation Request Be Denied?*** A housing provider can deny a request for a reasonable accommodation if:
 - 1) the person for whom the accommodation is requested does not have a disability or a disability related need for the accommodation; or
 - 2) the accommodation requested is not reasonable – it would
 - a. impose an undue financial and administrative burden on the housing provider, or
 - b. fundamentally alter the essential nature of the housing provider's operations.

Each accommodation request must be assessed on a case-by-case basis to determine whether an undue financial and administrative burden exists, considering the cost, financial resources of the housing provider, benefit of the accommodation to the requester, and availability of alternative accommodations.

- ***Alternative Accommodations*** If a housing provider determines either that a requested accommodation is not reasonable, or that it is reasonable but there exists an equally effective alternative preferred by the housing provider, the provider should engage in an interactive process with the requester to explore whether there is an alternative accommodation that would meet the disability-related needs of the requester. If such an alternative accommodation is identified which is not unreasonable for the housing provider, the housing provider must grant the alternative accommodation. However, people with disabilities are in the best position to know about their disability-related needs and are not required to accept alternatives that will not meet their needs.

- ***What Now?*** If the accommodation requested, or an agreed upon alternative, is granted, the housing provider should take any necessary steps to implement the accommodation. If agreement is not reached on an accommodation request, it is a denial of the accommodation by the housing provider. The requester may accept that decision. Alternatively, the person who requested the accommodation may file a complaint with HUD, and if the complaint is accepted for investigation, each party will have an opportunity to show why the accommodation should have been granted or not.

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⁹ Joint Statement, p. 13-14.