

# Reasonable Accommodation & Reasonable Modification Section 504 & ADA Compliance & Best Practices

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# Overview

- Fair Housing Laws
  - Fair Housing Act of 1968, as amended in 1988
  - Section 504 of the Rehabilitation Act of 1973 (UFAS)
  - The Americans with Disabilities Act of 1990 (ADA)
  - Best Practices

# Fair Housing Act

- Protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities.
- Federal nondiscrimination laws require housing providers to grant request for reasonable accommodations and modifications in housing, programs, and activities.

# Fair Housing Act

- Housing providers must make reasonable accommodations and allow reasonable modifications that may be necessary to allow persons with disabilities to enjoy their housing.

# Section 504 of the Rehabilitation Act of 1973 (UFAS)

- Section 504 does not distinguish between reasonable accommodations and reasonable modifications. Instead, both are captured by the term “reasonable accommodations.”

# **Section 504 of the Rehabilitation Act of 1973 (UFAS)**

- Under Section 504, the requirement to make reasonable accommodations applies to any changes that may be necessary to provide equal opportunity to participate in any federally-assisted program or activity.

# **Section 504 of the Rehabilitation Act of 1973 (UFAS)**

- This includes a change, adaptation or modification to a policy, program, service, facility, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, live in housing, or perform a job.

# Section 504 of the Rehabilitation Act of 1973 (UFAS)

- Under Section 504, reasonable accommodations must be provided and paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program.



# **Section 504 of the Rehabilitation Act of 1973 (UFAS)**

- In such cases, the provider is still required to provide any other reasonable accommodation up to the point that would not result in an undue financial and administrative burden on the particular recipient and/or constitute a fundamental alteration of the program.

# **The Americans with Disabilities Act of 1990 (ADA)**

- The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.
- The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.

# What is a Disability?

Disability is defined by laws and means:

- a physical or mental impairment that substantially limits one or more major life activities; or
  - having a history or record of such an impairment; or
  - being perceived as having such an impairment.
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- **Note:** Does not include current drug and alcohol abuse.

# What are Reasonable Accommodations and How does it work in Real Life?



# Reasonable Accommodations

- Reasonable accommodations are changes in rules, policies, practices, or services that are necessary for a person with a disability to have an equal opportunity to use and enjoy housing;
- Reasonable accommodations **MUST** be allowed;
- The request for accommodations must be acted upon within a reasonable time, because delay may amount to a denial of the accommodation;
- A tenant should not have to pay a fee for a reasonable accommodation.

# Requesting An Accommodation

- A reasonable accommodation must be requested.
- Requests can be made at any time, by person with a disability, family member or by someone else who is acting on their behalf.
- A request does not have to be in writing. It can be orally or by any other effective method.
- Housing provider should place request in writing and document outcome.

# Applying The Principles

- An oral request is enough and a written request may not be required.
- The process should be quick and easy and should answer these two questions:
  - Does the requester have a disability?
  - Does the requester have a disability related need for the reasonable accommodation request?

Note: Determinations should be made on a case-by-case basis.

# Reasonable Accommodations

- For an accommodation to be reasonable there must be an identifiable relationship or nexus between the requested accommodation and the individual's disability.



# What Is Reasonable

- The requested accommodation must be reasonable:
  - It does not impose an undue financial and administrative burden on the housing provider.
  - It does not fundamentally alter the nature of the housing provider's operations.

# What Is A Reasonable Request?

- Request for assistance animal is a reasonable accommodation under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.
- Assistance Animals are:
  - Not Pets
  - Include Service Animals and Emotional Support/Therapy and Comfort Animals.

# When is a Request for Accommodation Unreasonable?

A request is unreasonable when:

1. It would pose an undue financial and administrative hardship; and
2. The accommodation would fundamentally alter the nature of the complex or enterprise.

# Policies That Might Be Changed

- Pet Policies
- Transfer Policies
- Household Composition
- Parking
- Notification of Painting or Extermination

# Important Principles

- Persons with disabilities cannot be required to fill out a specific form or to document obvious needs.
- An unreasonable delay is equivalent to a denial of an accommodation.
- Even if an accommodation is unworkable due to administrative & financial burden housing providers must engage in the *interactive process*.

# Examples-Illegal Acts

- Service animal and “no pets” policies, deposits, pet fees;
- Requiring an employment record or current employment for people with disabilities;
- Refusing to change a due date for rent for an SSI recipient and charging a late fee.

## Examples-Illegal Acts

- Permitting “live-in” aides without requiring that they be added as tenants on the lease;
- Allowing a person with severe allergies or chemical sensitivities to forego monthly scheduled pest control.

# Examples-Accommodations

- Permitting an assigned parking space for a person who cannot walk far where the complex does not otherwise assign spaces;
- Waiving an eviction notice for a resident who has disturbed neighbors where that person has a mental disability and can prove that he/she will obtain the necessary assistance or medication to control the behavior.



# Examples-Accommodations

- Service/therapy animals are not “pets”;
  - No “pet fees”, additional security deposits, other extra charges;
  - No weight limits or breed restrictions;
  - No charges for ordinary wear and tear (can charge for additional damage).

# **Examples of Valid** **Documentation of Disability**

- SSI or SSDI letter provided by applicant;
- Statements from doctor or other medical professional, peer support group, non-medical service agency, or other reliable third party (including family members) with knowledge of the person's disability.

# What are Reasonable Modifications?



# Reasonable Modifications

- Changes to the physical structure of an apartment or common space necessary so that a person with disability can enjoy property in same way as other residents.

# A request for Modification is Reasonable if:

- It does not cause undue financial or an administrative burden;
- It will not cause harm or damage to others;
- It does not involve a fundamental alteration to the property.

# Examples of Reasonable Modifications

- Widening doorways
- Installing grab bars in bathrooms
- Lowering kitchen cabinets for use by people in wheelchairs
- Allowing wheelchair ramps or curb cuts
- Installing a visual door bell or fire alarm
- Removing a bathtub to install a roll-in shower

# Accessibility Issues



# Housing must be accessible if:

- Built for first occupancy after March 13, 1991;
- Four or more units;
- The complex has an elevator, then all units must be accessible;
- Without an elevator, only the ground-floor units must be accessible.



# What must be Accessible?

- Accessible building entrance on an accessible route, including accessible parking.
- Accessible and usable public and common use areas.
- Usable doors.
- Accessible routes into and through the apartment.
- Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Reinforced walls in bathrooms for later installation of grab bars.
- Usable kitchens and bathrooms.

# Illegal Interview Questions

- Questions that violate the federal Fair Housing Act include questions that specifically address the seven protected classes: race, color, national origin, religion, disability, sex, and familial status;
- Landlords may ask questions concerning information related to an applicant's employment, income, credit, rental housing history, and any criminal convictions;
- Landlords may also ask for Social Security numbers and driver's licenses numbers;
- Landlords may ask if you smoke or have a pet;
- Landlords cannot ask potential applicants about the nature of their disability.

# Best Practices

- *Brent Housing Authority*-tenant requested a reasonable accommodation for a pull-cord.
- *Ozark Housing Authority*-tenant request a reasonable accommodation for an accessible ramp.
- *Fairfield Housing Authority*- tenant made a reasonable accommodation request to move due to a medical condition.

# Best Practices

- *Brent Housing Authority*-tenant requested a reasonable accommodation for an emotional support animal.
- Note: The Department is aware that many housing providers continue to have questions regarding their responsibilities when it comes to emotional support and assistance animals, FHEO is in the process of developing guidance that will provide greater clarity.



# Questions

## **You can direct questions to:**

U.S. Department of Housing and Urban Development (HUD)

Fair Housing and Equal Opportunity

Birmingham Field Office

1-205-745-4354

