



Self-Determination Housing Project of Pennsylvania

This publication on Reasonable Accommodations is part of SDHP's technical assistance program to clarify regulations related to housing for people with disabilities in the Commonwealth of Pennsylvania. The goal of SDHP is to increase the stock of affordable, accessible and integrated housing and to expand access to public and private housing programs and self-determination in housing for people with disabilities.

WHEN THE LAW SAYS IT'S OKAY TO BEND THE RULES REASONABLE ACCOMMODATIONS

What is a Reasonable Accommodation?

A reasonable *accommodation* is a change in policies, practices, or services, when such a change may be necessary to afford a person with a disability equal opportunity and access to use and enjoy a dwelling. Common examples include waiving a "no pet" policy for a service animal or providing accessible parking.

What is a Reasonable Modification?

A reasonable *modification* is a structural or other physical change to the unit or housing structure to provide physical access to a person with a disability. The law states that it is unlawful for a building owner to refuse to permit modifications at the resident's expense, as long as he/she assures that the work will be done in a professional manner and can be restored to the pre-existing condition after he/she moves out if the modification affects the future usability of the building. For example, doorways that are widened need not be restored. One example of a reasonable modification is removing a kitchen base cabinet and lowering the countertop to allow for a wheelchair. However, if cabinets are lowered, then they may need to be restored if the next tenant does not need them lowered.

What is Reasonable?

Both Congress and the Supreme Court intended that the statute of reasonable accommodation be used to promote housing for people with disabilities and not be used as a barrier to housing. In addition, they intended that a "reasonable accommodation" be made except where the accommodation would constitute a substantial hardship, undue burden, or fundamental alteration of a program. Specifically according to Fair Housing laws, "reasonable" means that the action requested by the individual with the disability:

- Does not cause an undue financial or administrative burden to the housing provider;
- Does not cause a basic change in the nature of the housing program available;
- Will not cause harm or damage to others; and
- Is technologically possible

It is important to note that the burden for public housing projects is different from that for subsidized housing that is privately owned and managed such as that under the HUD Section 8 certificate and voucher program. Public housing authorities are subject to section 504 obligations, requiring that money be allocated and paid to assist tenants in achieving reasonable accommodations. Private landlords, on the other hand, have no such obligation under the Fair Housing Act (FHA). Public housing authorities also generally operate with a single large budget, projected over a number of years, for a number of programs, while private landlords generally budget on a single-project basis.

Requesting Reasonable Accommodation

It is the responsibility of the consumer to request that the landlord make an accommodation or modification, since a land-lord cannot be expected to predict or anticipate an individual's needs. Requests for accommodation or modification should be made in writing for proper documentation. If the request goes unanswered, the consumer can then file a formal complaint. (*See sample letter on pages 14 and 15.*) To ask for an accommodation under the FHA, (if the request was refused by the housing provider) a person must show that:

- √ He or she has a disability as defined in the Act; (A letter from a psychiatrist, doctor, psychotherapist, or other knowledgeable professional should be sufficient to verify a person's disability status and the relationship of the accommodation to the disability.)
- √ The housing provider knew of, or should reasonably be expected to know about the disability;
- √ Accommodation of the disability "may be necessary" to afford the person an equal opportunity to use and enjoy a dwelling; (The person requesting an accommodation must show that the specific accommodation he or she is requesting is necessary to overcome a housing barrier imposed solely because of his or her disability.)
- √ The housing provider refused to make such an accommodation.

An accommodation or modification request can only be denied if it is not reasonable according to the above standards. If a housing provider has doubts about what is reasonable, he/she can contact either an attorney, supervisor, or HUD's Office of Fair Housing and Equal Opportunity.

A housing provider cannot defend its refusal to grant an accommodation request on the basis that he/she does not believe that the accommodation would best meet the needs of the tenant or the applicant who requested the accommodation.

Information a Landlord Can Request.

Under fair housing and civil rights laws, landlords can request verification from a medical professional or professional service provider (such as a social worker) that indicates a tenant requires a reasonable accommodation or modification. For a modification, a landlord may ask to inspect or review site plans and demand that they are completed in a workman-like or professional manner. Aesthetics is NOT a defense in denying a modification request.

A person requesting a modification or accommodation must disclose his or her disability, if it is not obvious, and provide enough information to prove he or she has a disability as defined by law. Also, information must be provided that supports how the requested accommodation or modification relates to the disability.

Note that it is illegal for a landlord to ask a tenant what the nature or severity of his/her disability is; how the disability was acquired; or what medications are taken. However, if an accommodation or modification is requested, the landlord may ask for specifics that would disclose this information.

The "Reasonable Accommodation" Mandate

The "reasonable accommodation" mandate dispels some of the power of landlords, injects flexibility into landlord-tenant relationships, and allows for individualized treatment. Sometimes a reasonable accommodation results in a landlord changing a policy or practice; sometimes it allows a tenant to alter behavior or practices and still be considered lease compliant. In either case a reasonable accommodation may often allow a tenant with disabilities to remain in private, public or subsidized housing when rules, policies, or practices would otherwise prohibit tenancy.

For example, courts have held that a landlord cannot proceed with an eviction of a tenant with a disability, even when a tenant has violated his or her lease because of violent behavior, if the tenant shows that he or she may be able to remain lease compliant when given the opportunity to obtain services or take action to correct the lease violation. This use of reasonable accommodation not only preserves housing for a person whose disability is interfering with his or her successful maintenance of stable housing, but also allows a tenant with disabilities to identify and resolve issues that would inhibit more general integration into community life.

Financial Responsibility:

Private rental housing:

The Fair Housing Amendments Act of 1988 (FHAA) requires the owner of a private apartment building to allow a tenant to make reasonable modifications to his or her unit. The tenant, however, is responsible for making and paying for any modifications, and may have to restore the premises to its original condition when he or she moves. The following are examples of how the courts have ruled in addressing who is responsible for the costs incurred for reasonable accommodation.

- √ Courts have required that housing providers accept some costs in making accommodations such as requiring one of its employees to use an off-site, rented parking space so that a tenant could have a reserved space close to the building entrance.
- √ A housing provider must permit a modification for a person who uses a wheelchair to install ramps, widen doorways, etc. Under the FHAA, these changes would be at the tenant's expense. In addition, a tenant might be charged for returning the premises to their former condition if the changes are undesirable for future tenants.

Publicly-assisted rental housing:

Many people with disabilities who have low-incomes cannot afford to make modifications to their rental units. In federally-assisted housing (covered by Section 504), the landlord is generally required to make and pay for the modifications if the cost is not prohibitive. A Public Housing Authority (PHA), for example, may be required to put grab bars into a bathroom and/or build a ramp to a front door. Whether the cost of a modification is reasonable or not is evaluated on a case-by-case basis. Factors for consideration include: the size of the housing owner's budget, whether the housing owner has accessible units available, the cost of the modification, etc.

Section 8 rental assistance:

A private landlord participating in the Section 8 program is generally not required to pay for modifications. However, the tenant can request that the PHA administering the Section 8 program provide a "reasonable accommodation," and pay a higher rent for the unit, in order to allow the landlord to pay for some necessary modifications.

Examples of Requests for Accommodations

The following are examples of cases where people have requested that reasonable accommodations be made. According to the law, all of these requests are reasonable.

- A woman sees in the newspaper that her Public Housing Authority (PHA) is opening up the waiting list for the Section 8 certificate and voucher program. She wants to apply but the ad requires that applicants go to the PHA's office. This is difficult because of her disability. She can request that the PHA provide her a reasonable accommodation and mail the application to her or have someone come to her home to take the application.
- A man with a cognitive disability has a cat that is his companion animal. He is applying to a no-pets apartment building. The building manager should allow him to keep the pet as a reasonable accommodation if he can demonstrate he needs the pet because of his disability.
- A woman is about to rent an apartment. The manager tells her over the phone that the apartment building's policy is to assign parking by seniority, and since everyone wants the spaces near the front door this is the only fair way to deal with requests. The person says that she has a physical disability and as a result needs a parking space close to the front door, requesting a reasonable accommodation to the building's parking policy.
- A person who uses a wheelchair goes to a rental office or bank and the manager is behind glass or standing at a high counter. As a reasonable accommodation the manager comes out from behind the glass or counter and meets with the person who uses a wheelchair face to face.
- A person who has a visual impairment can ask for the following accommodations or modifications: put floor numbers in Braille on the elevator panel; add high marks (a liquid that hardens and becomes raised within 24 hours) on the stove dial; and paint curb cut areas bright yellow.
- A person who uses a wheelchair can request that an elevator panel be lowered or that he or she is guaranteed a first floor apartment.
- A tenant has no recent rent history because he has been in a mental hospital for two years. The landlord or manager makes an exception to the requirement of asking for prior rent history, and instead accepts a reference from the applicant's employer or social worker.
- A man with a disability also happens to be in recovery. When he lived in his last apartment, he was drinking a lot. As a result of his drinking, he did not pay his rent on time and the police were called to the apartment several times because of loud noise and arguments. After six months in a sober housing program, the tenant feels he is ready to move into his own apartment. The manager for the apartment where he has applied, however, tells him that he will not rent to him because his previous landlord gave him a bad reference. The tenant decides to appeal this rejection. He requests an accommodation to the landlord's policy of rejecting applicants with poor tenant histories. In order to obtain the accommodation, he will need to show the landlord that: the poor reference from his previous landlord is disability-related (i.e., related to his alcoholism); he is no longer drinking; and there is a reasonable expectation that his poor behavior will not recur. He can try to demonstrate his sobriety through written letters from substance abuse treatment providers such as the staff at his sober house, treatment groups he attends and/or his AA sponsor.
- A landlord or manager assists an applicant with mental retardation in filling out the standard application form. If the applicant needs oral reminders to pay the rent, the landlord agrees to call or visit to remind the person before each month's rent is due.
- A tenant with a mental disability has difficulty remembering to turn off the water after washing the dishes. The landlord provides reasonable accommodations and installs faucets that shut off automatically.

- A man with AIDS has become very frail as a result of his disability. He needs a live-in attendant to assist with his personal care. When he applies to the PHA, he requests an accommodation to have a two-bedroom unit to allow a live-in attendant to live with him.
- A man has difficulty filling in important documents such as leases, agreements, applications, etc. He can request to let his attendant fill in the necessary information.

What Happens When You File A Complaint?

- HUD will notify you when it receives your complaint. Normally, HUD also will:
- Notify the alleged violator of your complaint and permit that person to submit an answer
- Investigate your complaint and determine whether there is reasonable cause to believe the Fair Housing Act has been violated
- Notify you if it cannot complete an investigation within 100 days of receiving your complaint

Conciliation:

HUD will try to reach an agreement with the person your complaint is against (the respondent). A conciliation agreement must protect both you and the public interest. If an agreement is signed, HUD will take no further action on your complaint. However, if HUD has reasonable cause to believe that a conciliation agreement is breached, HUD will recommend that the Attorney General file suit.

Complaint Referrals:

If HUD has determined that your state or local agency has the same fair housing powers as HUD, HUD will refer your complaint to that agency for investigation and notify you of the referral. That agency must begin work on your complaint within 30 days or HUD will take it back.

What If You Need Help Quickly?

If you need immediate help to stop a serious problem that is being caused by a Fair Housing Act violation, HUD may be able to assist you as soon as you file a complaint. HUD may authorize the Attorney General to go to court to seek temporary or preliminary relief, pending the outcome of the complaint, if:

- Irreparable harm is likely to occur without HUD's intervention
- There is substantial evidence that a violation of the Fair Housing Act occurred.

What Happens After a Complaint Investigation?

If, after investigating your complaint, HUD finds reasonable cause to believe that discrimination occurred, it will inform you. Your case will be heard in an administrative hearing within 120 days, unless you or the respondent want the case to be heard in Federal District Court. Either way, there is no cost to you.

The Administrative Hearing:

If your case goes to an administrative hearing, HUD attorneys will litigate the case on your behalf. You may intervene in the case and be represented by your own attorney if you wish. An Administrative Law Judge (ALJ) will consider evidence from you and the respondent. IF the ALJ decides that discrimination occurred, the respondent can be ordered:

- To compensate you for actual damages, including humiliation, pain and suffering.
- To provide injunctive or other equitable relief, for example, to make the housing available to you.
- To pay the Federal Government a civil penalty to vindicate the public interest. The maximum penalties are \$10,000 for a first violation and \$50,000 for a third violation within seven years.
- To pay reasonable attorney's fees and costs.

Federal District Court:

If you or the respondent choose to have your case decided in Federal District Court, the Attorney General will file a suit and litigate it on your behalf. Like the ALJ, the District Court can order relief, and award actual damages, attorney's fees and costs. In addition, the court can award punitive damages.

Suggested procedure for writing a request for a reasonable accommodation or modification:

1. Indicate that you qualify as a person with a disability as defined by civil rights laws. It is not necessary to reveal the nature or severity of your disability, unless you feel comfortable in doing so.
"I qualify as an individual with a disability as defined by the Federal Fair Housing Act Amendments of 1988."
2. State where you live and who is responsible for the building.
"I live at 805 W. Green Street, Apartment #2A. This building is managed by John Doe and owned by you, Jane Smith."
3. Describe the policy, rule, or architectural barrier that is problematic to you.
"Rent must be paid on time or the tenant can become evicted." OR
"There is not any reserved accessible parking in our building's parking lot."
4. Describe how this policy or barrier interferes with your needs, rights, or enjoyment of your housing.
"I am unable to pay my rent on time without a reminder." OR
"I am unable to park in regular sized parking places because I need additional space to transfer from my car into a wheelchair."
5. In clear and concise language, describe the change you are seeking in the policy, rule or barrier.
"I am requesting oral reminders to pay the rent or that the landlord agrees to call or visit to remind me before each month's rent is due." OR
"I am requesting that you designate a reserved parking space for disabled persons next to the curb cut on the west side of the parking lot."
6. Cite the applicable law that protects your rights.

For accommodations, use:

"Under the Federal Fair Housing Act Amendments Sec. 804 (42 U.S.C. 3604) (f) (3) (B), it is unlawful discrimination for a management company to deny a person with a disability a reasonable accommodation of building rules or policies if such accommodation may be necessary to afford such person full enjoyment of the premises."

For modifications, quote the law as follows:

"Under the FHAA, Sec. 804 (42 U.S.C. 3604) (f) (3) (B), it is unlawful discrimination for a management company to deny a person with a disability a reasonable modification of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises."

7. Ask for a written response within a certain amount of time.
"Please respond in writing to my request within 10 days."
8. Sign and date the request. Remember to keep a copy of your request for your files.
9. If the request is denied, contact an advocate to determine if your rights have been violated. A list of fair housing advocacy groups broken down by state can be found in the following website: www.fairhousing.com.

Where to Write or Call:

To file a complaint, send a letter to, or obtain a Housing Discrimination Complaint Form from the HUD regional office nearest you or from the following website:

www.hud.gov.

For more information contact:

Office of Fair Housing and Equal Opportunity
U.S. Dept. of Housing and Urban Development, Room 5204
Washington, D.C. 20410

If you wish, you may use the toll-free Hotline number:

1-800-669-9777.

The number to call in Philadelphia is **215-656-0500.**

If You Have a Disability, HUD also Provides:

- A toll-free TDD phone for the hearing impaired: **1-800-927-9275.**
- Interpreters
- Tapes and Braille materials
- Assistance in reading and completing forms

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This publication includes information from the following resources:

- ⇒ *The National Fair Housing Advocate* online at www.fairhousing.com.
- ⇒ *The “Fair Housing Rights of Persons with Disabilities”* produced by Access Living of Chicago, IL.
- ⇒ *Using Reasonable Accommodations to Preserve Rights of Tenants with Disabilities* by Sherry Trafford, a staff attorney at the Judge David L. Bazelon Center for Mental Health Law.
- ⇒ *The “Reasonable Accommodation” Test and the Early Cases Interpreting “Reasonable Accommodation”* Under the Federal Fair Housing Amendments Act by Robert L. Schonfeld – Reprinted from the Fordham Urban Law Journal, Volume XXV, Number 3, 1998., ©1999, National Center on Poverty Law. All Rights Reserved, 33 Clearinghouse Rev. 131, 33 Clearinghouse Rev. 131.