



Going the Distance: Part 1

June 27, 2019





Which Law Applies?



State and Local





ADA

- **Title II**
 - Prohibits disability discrimination by "public entities"
 - Public Housing Authorities
 - State colleges and universities
- **Title III**
 - Prohibits disability discrimination by "places of public accommodation"
 - Rental and sales offices
 - Other areas of property open to general public



Fair Housing Act

- Protected Classes
 - Race
 - Color
 - National Origin
 - Religion
 - Sex
 - Familial Status
 - **Disability**



Fair Housing Act

- Prohibits discrimination:
 - In sale or rental
 - Terms and conditions
 - Advertising
 - Design and construction
 - **Failure to allow reasonable modification**
 - **Failure to make reasonable accommodation**

 **Section 504 Discrimination**

- Discrimination in the sale or rental housing on the basis of disability
- Discrimination in the terms and conditions of housing on the basis of disability
- Failure to provide reasonable accommodations
- Failure to include accessibility features in certain types of multifamily housing

 **Reasonable Accommodations**



 **“Reasonable Accommodation” Under the Fair Housing Act**

- Providing an exception to an equally applicable rule, policy, practice, or service that everyone must follow.
- Examples of “equally applicable” policies, etc.:
 - Unassigned parking
 - Pet policies
 - No pets
 - Limit on number of pets
 - Limit on where tenants may take pets
 - Mail delivery
 - Rental payment
 - All tenants must drop off rent at rental office

 **Reasonable Modification” Under the Fair Housing Act**

- Allowing a tenant to make a change to an existing building (at our expense) that is necessary because of the tenant’s disability.
- Examples of modifications
 - Grab bars
 - Shower Seat
 - Roll-in shower
 - Installing a ramp
 - Widening a bathroom door
 - Adding a lower peephole

 **Federally Funded Reasonable Accommodation Under Section 504**

- A recipient shall modify its housing policies and practices to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps.

 **Reasonable Accommodation Elements**





Reasonable Accommodation Process

- Identify the request
- Engage in the interactive process to determine if the accommodation is necessary
- Evaluate if the requested accommodation is unreasonable
- Discuss alternatives
- Make the decision



Identify the Request

- Person with a disability must request a reasonable accommodation
- HUD/DOJ Joint Statement
 - "The person with a disability must make "clear to the housing provider that she is requesting an exception, change, or adjustment to the rule, policy, practice, or service because of her disability"; and
 - Request can be written, verbal or other means
 - Request can come from applicant, tenant, or their representative



How Long Does A Manager Have to Respond to Request?

- An undue delay in responding to a request for reasonable accommodation may be deemed as a failure to provide a reasonable accommodation

 **Request Forms**

- Consider creating request forms
 - Identify specific reasonable accommodation being requested
 - Identify disability
 - Identify why you believe the accommodation is necessary because of your disability
 - Identify a reliable third party that can provide a verification
 - Include statement that if assistance is needed in completing the form to contact the manager
 - Include signature line to acknowledge the information is accurate
- Every request is eventually documented in some manner on the form

 **The Interactive Process**



 **Interactive Process**

- What is being requested?
- Does the person have a “disability”?
- Is the accommodation necessary to provide the person an equal opportunity to use and enjoy the housing?
- Is the accommodation reasonable?



Who is entitled to a reasonable accommodation?

- > Buyer or renter with a disability
- > A person with a disability who is residing in or intending to reside in the housing after it is sold or rented
- > A person "associated" with the buyer or renter



Example Request



Tenant asks for exception to no-pets policy so her granddaughter, who has an assistance dog, can visit her.



Who is entitled to a reasonable accommodation?

- > "Associated"
- > FHA prohibits "not only discrimination against the primary purchaser or named lessee, but also prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients subtenants or other associates who have disabilities."



The "Disability"

- > What is a "disability"?
 - > Physical or mental impairment
 - > Substantially limits one or more major life activities
- > As compared to most people in the population



"Obvious" Disability



If the disability and need for the accommodation are obvious, a housing provider cannot request a verification.



Obvious

- > If the disability and need for accommodation are obvious, only evaluate the reasonableness
- > If reasonable, grant the accommodation
- > If not, explore alternatives



Example Request



Tenant uses a scooter, but for the last five years has been able to walk ten yards to the mail kiosk without the use of the scooter. Tenant requests that you replace step to mail kiosk with a ramp so she can reach her mailbox with her scooter.



Not “Obvious”

If a housing provider has a reasonable question as to whether the applicant/tenant has a disability or need for the accommodation, it may request certification.





Mental Impairments



- Anxiety:
- Generalized anxiety disorder
- Post-traumatic stress disorder (PTSD)
- Obsessive-compulsive disorder (OCD)
- Panic disorder
- Social anxiety disorder

 **Mental Impairments**

- Mood Disorders
 - Depression
 - Mania
 - Bipolar disorder
- Psychotic disorders
 - Schizophrenia
- Personality disorders
 - Antisocial personality disorder
 - Paranoid personality disorder



 **Verification**

What do we need to know?

Does the person requesting the accommodation have a “disability”?

Does the person requesting the accommodation need the accommodation because of the disability?

 **Verifying Disability**

- HUD/DOJ Joint Statement
 - “Depending on the individual’s circumstances, information verifying that the person meets the Act’s definition of disability can usually be provided by the individual himself or herself (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual).”



Verifying Disability

- Joint Statement
 - "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 may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry."
- "Illegal Inquiry"
 - *Wilson v. Seattle Hsg. Auth.*, Case No. 2:09-0226-MJP (W.D. Wash.) (Filing No. 77)
 - *Bhogaita v. Altamonte Heights Condominium Assoc., Inc.*, No. 6:11-cv-1637-Orl-31DAB, 2012 WL 10511, at * 4 (M.D.Fla. Jan. 3, 2012) (the FHA does not provide a separate cause of action based on a defendant's requests for additional information to verify a request for reasonable accommodation).



Verifying Necessity

- Person requesting the accommodation must establish that the accommodation is necessary because of their disability to provide him or her an equal opportunity to use and enjoy the housing



What is "necessary"?



If I don't get it I have to move out ↔ It makes me feel better



Verification Form

- Consider creating verification form
 - Include definition of disability
 - Include request to identify the impairment and how it substantially limits the person in a major life activity
 - Include request to explain how the accommodation is necessary for the individual to use and enjoy housing as compared to a person without a disability
 - Consider requesting whether there is another accommodation available that is equally effective



What can we ask?



- Follow-up
 - If applicant/tenant is not providing sufficient information or if the verification is reasonably suspicious, call the verifier to clear up any questions.



Reasonable



Even if the person has a disability and the requested accommodation is necessary because of his or her disability, the accommodation must be reasonable.



"Reasonable"

Three factors to consider:

- Undue financial and administrative burden
- Fundamental Alteration
- Direct Threat





Questions?



Sara A. McCue
Baird Holm LLP
(402) 636-8276
smccue@bairdholm.com


