



Reasonable Accommodations

Understanding Rights,
Responsibilities, and Processes
for Clients and NWPP Staff

*For Educational Purposes Only. This is not legal
advice.

November 13, 2024

Fair Housing Act

FHA prohibits discrimination on the basis of protected class:

Race	Color	Religion
Sex	National Origin	Familial Status
	Disability	

Discrimination due to Disability

- Prohibits discrimination in housing because of tenant's disability OR the disability of anyone associated with them
- Cannot treat someone with a disability less favorably
- Cannot refuse residency to persons with disabilities or place conditions on residency

Who must comply?

Disability protections apply to privately and publicly owned properties.

Who can be held responsible? (not an exhaustive list)

Individuals	Corporations	Lenders	Property Owners
Housing Managers	Homeowners	Condo Associations	Real Estate Agents
Brokers	Local and State Governments	Non-Profits	

What is a Disability?

- **Individuals with a physical or mental impairment that substantially limits one or more major life activities**
- **Individuals may have an obvious disability**
- **Individuals may have a documented impairment**

Physical or Mental Impairment

Includes but is not limited to...

Orthopedic	Visual	Speech	Hearing
Cerebral Palsy	Autism	Epilepsy	Muscular Dystrophy
Multiple Sclerosis	Cancer	Heart Disease	Diabetes
HIV	Intellectual Disability	Emotional Illness	Drug Addiction (other than addiction caused by current illegal use of a controlled substance)
Alcoholism			

Major Life Activity

Activities that are of central importance to daily life (not exhaustive)

- **Sight**
- **Hearing**
- **Walking**
- **Breathing**
- **Performing manual tasks**
- **Self-Care**
- **Learning**
- **Speaking**

Reasonable Accommodation

A person with a disability can ask for a reasonable accommodation at any point from the housing provider.

Reasonable Accommodation is a request for an exception in rules, policies, practices or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to enjoy a dwelling.

Reasonable Accommodation (cont.)

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.**

Nexus and RA's

To show that a requested accommodation may be necessary, **there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.**

The nexus demonstrates how the accommodation mitigates the effect of the disability in housing.

Example 1

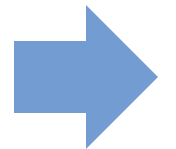
A housing provider has a policy of providing unassigned parking spaces to residents.

A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation.

There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first serve basis.



The Answer



Answer 1

The provider should make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2

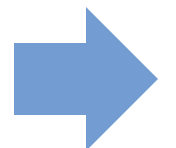
A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent.

A tenant has a mental disability that makes her afraid to leave her unit.

Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation.



The Answer



Answer 2

The provider should make an exception to its payment policy to accommodate this tenant.

Example 3

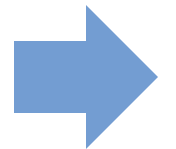
A housing provider has a “no pets” policy.

A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation.

The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway.



The Answer



Answer 3

The housing provider should make an exception to its “no pet” policy to accommodate this tenant.

Follow up: Same set of facts, but tenant asks for a reasonable accommodation for five assistance animals.

Sex Offenders and Active Drug Use

- Sex Offenders are NOT persons with a disability and are not protected.
- People who are recovering from substance use ARE protected.
- People currently engaging in the illegal use of controlled substances are **NOT protected.**
- Does not protect an individual with a disability whose tenancy is a **direct threat** to person or property.

Direct Threat

- Housing provider cannot exclude applicants based on fear, speculation, stereotype about disabilities.
- A determination that someone is a direct threat must rely on an individualized assessment that is based on reliable evidence
 - Current Conduct
 - Recent history of overt acts

Direct Threat (cont.)

- The individualized assessment must consider:
 - The nature, duration, and severity of the risk of injury
 - The probability that the injury will actually occur
 - Whether there are any reasonable accommodations that will eliminate the direct threat

Direct Threat (cont.)

- In evaluating an applicant's recent history of overt acts, housing providers must take into account **whether the individual has received intervening treatment or medication that has eliminated the direct threat.**
- Housing Provider CAN request that the applicant document **how the circumstances have changes so that they don't pose a threat any longer.**

Example 1

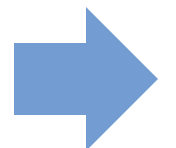
A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence.

On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism.

Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant.



The Answer



Answer 1

- The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat.
- Objective evidence about the applicant's recent past conduct was not reviewed or received.
- The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit.
- The manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references.
- If a reference check revealed objective evidence showing that this applicant had posed a direct threat, the manager could then have rejected the applicant based on direct threat.

Example 2

James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat.

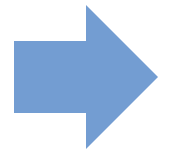
The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat.

Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process.

James X's social worker contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the social worker requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability.



The Answer



Answer 2

- The Shady Oaks rental manager need only grant the reasonable accommodation if James X's social worker can provide satisfactory assurance that James X will receive appropriate counseling and periodic medication monitoring so that he will no longer pose a direct threat during his tenancy.
- After consulting with James X, the social worker responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication.
- The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

Denial of Reasonable Accommodation

- A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability related need for the accommodation.

Undue Burden and Altering Operations

- A reasonable accommodation may be denied if providing the accommodation is not reasonable – i.e., if it would impose an **undue financial and administrative burden** on the housing provider or it would **fundamentally alter** the nature of the provider's **operations**.
- The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

Interactive Dialogue

- When a housing provider refuses a requested accommodation because it is not reasonable, the **provider should discuss with the requester whether there is an alternative accommodation** that would effectively address the requester's disability-related needs.
- If an **alternative accommodation would effectively meet the requester's disability-related needs** and is reasonable, the **provider must grant it.**
- An **interactive process** in which the **housing provider and the requester discuss** the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example 1

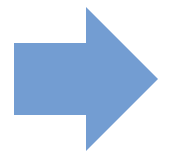
As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection.

The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster.

Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service.



The Answer



Answer 1

- The requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss alternative accommodations with the tenant.
- For instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site.
 - (No fundamental alteration of operations or undue burden)

The Value of Lived Experience

- Persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability.
- An individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

Cost to the Housing Provider

- Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations.
- The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations must be considered.

Extra Fees and Deposits

- Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1

A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes.

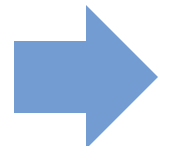
He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises.

It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes.

Damage to property by scooter?



The Answer



Answer 1

- Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter.
- However, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property.
- If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants).

Example 2

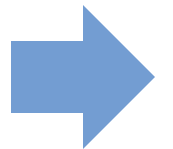
Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation.

The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal.

Damage by animal to person or property?



The Answer



Answer 2

If a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants)

How do you ask for an RA?

- A resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception because of her disability.
- If the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

Requesting an RA

- The Fair Housing Act does not require that a request be made in a particular manner or at a particular time.
- A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf.
- An individual making a reasonable accommodation request does not need to use the words "reasonable accommodation."
- The requester must make the request in a manner that a reasonable person would understand to be a request for an exception because of a disability.

Verbal vs. In Writing

- Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made.
- Housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

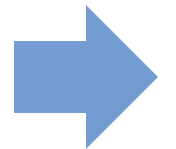
Example 1

A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend.

The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form.



The Answer



Answer 1

The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

How much time?

- A provider has an obligation to provide prompt responses to reasonable accommodation requests (one month).
- An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

What can a housing provider ask when it comes to Disability?

Housing providers may generally ask the following from all tenants:

- Applicant's ability to meet the requirements of tenancy
- Ask if an applicant is a current illegal abuser or addict of a controlled substance
- Ask if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability
- In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation.

What if the disability is obvious?

- A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability.
- If a person's disability is obvious, **or otherwise known to the provider**, and if the need for the requested accommodation is also readily apparent or known, **then the provider may not request any additional information.**
- If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, **the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.**

When it isn't so obvious...

- A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability.
- However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that:
 1. Is necessary to verify that the person meets the Act's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities)
 2. Describes the needed accommodation
 3. Shows the relationship between the person's disability and the need for the requested accommodation.

Who can attest to the disability?

- The person themselves, with proper documents.
- 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.
- Medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

THANK YOU