

SELF-ADVOCACY
FOR TENANTS WITH DISABILITIES
IN HOUSING AND WITH REGIONAL CENTERS

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Both the ADA and Fair Housing Laws Protect “People with Disabilities”

- “Disability” = a physical or mental impairment or condition that substantially limits a major life activity
- “Person with a Disability” = someone who:
 - Currently has a disability;
 - Has a record of having a disability; or
 - Is regarded as having a disability.

Some Examples of Disabilities

- Visual Disabilities
- Auditory Disabilities
- Mobility Disabilities
- Aids & HIV, diabetes, cancer, stroke, arthritis, chemical sensitivities
- Alcoholism
- Past Substance Abuse
- Temporary Disability (accident or injury)
- Mental health disabilities

REGIONAL CENTERS: ADA

HOUSING PROVIDERS: FAIR
HOUSING LAWS

WHAT IS DISCRIMINATION BY THE REGIONAL CENTER?

- Not providing interpreters or making reasonable accommodations for IPP Meetings
- Denying Programs or services or benefits based on disability
- Using eligibility criteria that tend to screen out people with disabilities
- Retaliating for exercising ADA rights

Who Must Comply with Fair Housing Laws?

- Landlords, housing authorities, homeowners' associations, and people involved in real estate transactions must comply with fair housing laws.
 - Usually not private owners of single-family homes are exempt from federal fair housing laws. State fair housing laws still apply.
- Fair housing laws *may* cover conduct by other tenants or neighbors

What is Disability-Based Discrimination?

- Unequal treatment;
- Denial of Housing Opportunities;
- Equal Access to Common Areas
- Discriminatory advertising or other statements;
- Retaliation; Harassment
- Failure to Grant Reasonable Accommodation Requests

The Application Process

- Landlords may not reject a prospective tenant's application because of his or her disability or factors relating to the disability
- Landlords may not use stereotypes to reject an applicant

Application: Prohibited Questions

- Landlords may not ask an applicant if she has a disability
- Landlords may not ask for general information about an applicant that relates to disability
 - *E.g. questions about whether an applicant can live independently or evacuate safely, etc. are prohibited*

Application: Permitted questions

A landlord may ask questions that show a tenant is able to meet the same obligations as any other tenant - as long as she asks these questions of *all* prospective tenants

Examples:

- *financial information to show that whether a tenant can pay rent*
- *references for tenant history (cleanliness and damage to apartment beyond normal wear & tear*
- *whether a tenant will comply with the building's rules*

Reasonable Accommodations

- A housing provider must make reasonable accommodations in **rules, policies, practices or services**, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling

In order to get a change in a rule, policy, practice or service, *the tenant must request it!*

Step 1- Requesting an Accommodation

- No particular form required.
- Writing is preferable, but oral requests are OK.
- Request should explain **disability-related** need for the change.

Step 2: LANDLORD'S RESPONSE

- If it's reasonable, must grant it.
- Must be timely and in good faith
- **If the disability is not apparent**, the landlord may ask for verification
- Interactive Process

Step 3- Interactive Process

- A landlord *must* provide a requested accommodation *unless* the landlord can show that doing so will:
 - Impose an “undue burden” or
 - Result in a “fundamental alteration” in the service provided by the landlord.
 - BUT “Accommodations need not be free of all possible cost to the landlord.”

RAAs can be requested even after tenant is served with eviction papers...

- **A reasonable accommodation request can be lodged up until a judgment is issued and sometimes after.**

“[U]ntil a landlord makes a good faith reasonable effort at accommodation, upon request, the landlord’s continued pursuit of an...action for possession is a discriminatory act.”

Reasonable Modifications

- Modification is a physical change. Doesn't include repairs.
- Must be granted if the modifications are necessary to allow the person full enjoyment of the premises
- **Who Pays?**
 - Generally the with a disability,
 - But in **federally funded housing, Landlord pays**
 - E.g. Public Housing, USDA, Project-based section 8, HOME, Comm. Dev. Block Grants (CDBG), Section 202 and 811 Supportive housing for elderly or PWD
 - But **NOT** Section 8 voucher, tax credits

Modifications: Landlord Can...

- Require the tenant to **restore the interior of the premises to the condition that existed before the modification**
- Get assurances that the work will be done properly
- Require the tenant to get necessary building permits
- Required the tenant to set aside a “reasonable” amount of money over a “reasonable” time to pay for restoration

Landlord May NOT

- Increase the security deposit.
- Give a blanket denial
- Refuse housing to a person with a disability because they may need a reasonable modification.

FROM THE LANDLORD'S MOUTH

Real-world Scenarios

From the Landlord's Mouth

- “We won’t consider your reasonable accommodation request unless you fill out our form.”

From the Landlord's Mouth

- “In order to grant your request I’ll need you to sign this release so that I can contact your doctor directly to verify your disability.”

Verification can usually be provided by:

- The Tenant
 - Credible written statement
 - Proof of SSDI, etc.
- Medical professional
- Peer support group
- Non-medical service agency
- **“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.”**

In Response to a RA, a Landlord May Request Information That:

- 1. verifies the person has a disability protected by FHA
- 2. Describes the needed accommodation
- 3. Shows the relationship between the person's disability and the need for the requested accommodation (nexus)

but not if person's disability and need for accommodation is obvious.

ANIMALS IN HOUSING



TERMS TO (UN)CONFUSE FOLKS



- Service Animals: Specifically trained to perform a task
- Emotional Support Animals: Ameliorate by their very presence
- Therapy Animals: Health care milieu
- Comfort Animals: Not a Thing
- Assistance Animals: HUD's term

Service Animals Can Go Anywhere

- Hospitals: Anywhere the patient goes, except
 - Sterile environments, immuno-compromised patients
 - If the animal presents “direct threat” or is not housetrained
- Locked Psychiatric Ward
- Restaurants and grocery stores
- Transportation
- Housing



Emotional Support Animals

- Scientifically Documented to Ameliorate Psychiatric Disabilities
- Not Limited to Dogs
- Only at home and on airplanes
- No task training required

How Does
all This
Apply to
Housing?



“Assistance” Animals Including Service Dogs and ESA

- Both federal and states laws protect the right of people with disabilities to keep assistance animals, even when a landlord's policy explicitly prohibits pets.
- Landlord generally required to make an exception to its "no pet" policy so that a tenant with a disability can fully use and enjoy his or her dwelling.
- HUD and DOJ joint guidance:
 - <https://www.hud.gov/sites/documents/13-060.PDF>
 - https://www.hud.gov/sites/documents/SERVANIMALS_NTFCFHEO2013-01.PDF



Breed Does Not Matter

Do an
individualized
assessment of
direct threat

No to Fees but Yes to Costs

- No “Pet Deposit” for assistance animals. A housing provider may not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance animal.
- But! The housing provider may charge the individual for the cost of repairing the damage **if the provider regularly charges tenants for any damage they cause to the premises.**

From the Landlord's Mouth

- “I’ll approve an emotional support animal but absolutely **NO** pitbulls.”

“Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm has to be based on the specific animal’s conduct and not speculation based on harm by other similar animals”

From the Landlord's Mouth

- “If you are going to bring in an emotional support animal then you have to pay an additional deposit or pet rent.”

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

From the Landlord's Mouth

- “You didn’t tell me you needed/had an emotional support animal when you moved in and so you can’t have one now.”

- Reasonable accommodation requests can be made at any time.
- HOA discriminated against tenants by denying their reasonable accommodation for an emotional support animal, despite making that request after the animal had already been acquired.

From the Landlord's Mouth

- “I’ll approve your reasonable accommodation request but first I need to see their service animal certification.”

- “For purposes of reasonable accommodation requests, **neither the FHA nor Section 504 requires an assistance animal to be individually trained or certified.**”
- Assistance animals *MAY* be service animals, but they do not have to be.
 - The ADA protects people with service animals (trained to perform a specific task related to a person’s disability)
 - The FHA protects the right to have emotional support animals in housing contexts.

From the Landlord's Mouth

- “You can move from your studio on the 5th floor to a studio on the 1st floor to accommodate your disability but you have to pay the difference in rent/deposit.”

Landlord will argue undue burden, but rent should remain the same absent compelling facts.

Bentley v. Peace and Quiet Realty 2 LLC, 367 F. Supp. 2d 341, 348-349 (E.D. N.Y. 2005) -a tenant's request to move from a rent controlled 4th floor unit to a ground floor unit for same rent not per se unreasonable.

Enforcing Fair Housing Laws

- Complain to Government Fair Housing Agencies
 - State: The Department of Fair Employment and Housing (Must file within 1 year of discrimination)_(800) 884-1684; http://www.dfeh.ca.gov/Complaints_ComplaintProcess.htm
 - Federal: Department of Housing and Urban Development (HUD) (Must file within 1 year of discrimination or 180 days if HUD funded program) (800) 669-9777; http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination
 - FOLLOW UP (ask to speak to investigator directly)
- Evictions: Raise the issue as a defense or counterclaim
- File a lawsuit in state or federal court
 - Generally, must file within 2 years of discrimination
- Contact community agencies

Questions? Contact Me!
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