

THE COMMUNITY BUILDER

Association Accommodation

As a community manager for many years and working with a national developer for many years, I have had and seen my share of requests for reasonable accommodations from residents and purchasers with disabilities. Recently, in the December issue of an industry publication an article discussed this subject as a result of a federal court decision that clarifies the limits of requests for reasonable accommodation.

I thought the entire subject worthy of research and discussion, because if you haven't already, there is a good possibility that your association will receive one of those requests. And while the Fair Housing Act applies to housing providers (defined as landlords, developers), there are also instances where it applies to Associations.

The issue of reasonable accommodation is addressed under the Fair Housing Act (FHA - not to be confused with the Federal Housing Authority). The Fair Housing Act is enforced by the Department of Justice and the Department of Housing and Urban Development. The Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status and disability. The Act makes it unlawful for any person to refuse "to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person."

The following information may get a little technical, but is directly excerpted from the Joint Statement of the Department of Housing and Urban Development and the Department of Justice. I think it is important to fully review this information as the language used and the examples given may save the Association time and money if ever faced with this challenge. Because the information is fairly lengthy, the article will be presented in two parts.

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First, it is important to note that under the Act, the term "handicap" and "disability" have the same legal meaning (noting that the definition of "handicap" contained in the Americans with Disabilities Act is almost verbatim).

1. What is a reasonable modification under the Fair Housing Act?

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The Act makes it unlawful for a housing provider or homeowner's association (includes condominiums) to refuse to allow a reasonable modification to the premises when such modification may be necessary to afford persons with disabilities full enjoyment of the premises

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

Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms, lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area. These examples of reasonable modifications are not exhaustive. (*please note that many of these modifications are applicable to housing providers - meaning landlords or developers selling homes).

2. Who is responsible for the expense of making a reasonable modification?

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying for the cost of the modification.

3. Who qualifies as a person with a disability under the Act?



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The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree".

4. Who is entitled to a reasonable modification under the Fair Housing Act?

Persons who meet the Fair Housing Act's definition of "person with a disability" may be entitled to a reasonable modification under the Act. However, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

Example 1:

A tenant, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the tenant's disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the tenant's expense.

Example 2:

A homeowner with a mobility disability asks the condo association to permit him to change his roofing from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire. There is no evidence that the shingles permitted by the



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homeowner's association provide inadequate fire protection and the person with the disability has not identified a nexus between his disability and the need for clay tiles and fiberglass shingles. The homeowner's association is not required to permit the homeowner's modification because the homeowner's request is not reasonable and there is no nexus between the request and the disability

5. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested reasonable modification?

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 modification, 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 modification, and (3) shows the relationship between the person's disability and the need for the requested modification. 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 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). 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. Such information must be kept confidential and must not be shared with other persons, unless legally required to do so (e.g. a court subpoena).

6. What is the difference between a reasonable accommodation and a reasonable modification under the Fair Housing Act?

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Under the Fair Housing Act, a reasonable modification is a structural change made to the premises whereas a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice or service. Generally, under the Fair Housing Act the housing provider (again a landlord or developer) is responsible for a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or owner or someone acting on behalf of that person is responsible for costs associated with a reasonable modification.

Some examples:

1. Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.
2. Because of a hearing disability, a tenant (Owner) wants to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's (owners) expense.
3. Because of a mobility disability, a tenant (owner) wants to install a ramp outside the building in the common area. This is a reasonable modification and must be permitted at the tenant's (owners) expense.
4. Because of a vision disability, a tenant (owner) requests permission to have a guide dog reside with her in her unit. The housing provider or association has a "no pets" policy. This is a request for a reasonable accommodation, and the request must be granted.

Requests for a parking spaces due to a disability have been treated by the Courts as a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider or the association. For example, courts have required associations to provide an assigned space even though the association did not have a policy for assigned spaces or may have had a waiting list for an assigned space. Associations may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

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Housing providers or homeowner's associations may not condition the approval of the requested modification by placing any additional burdens on the requestor such as additional liability insurance.

