



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

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**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

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

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.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

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

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

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 rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. 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. However, 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 such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, 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 attorney 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 attorney 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 Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney 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 attorney 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.

6. What is a "reasonable accommodation" for purposes of the Act?

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since 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. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

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.

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 served basis. The provider must 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 provider must 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 housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. 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. In addition, a request for 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.

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 without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. 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: 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. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – 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. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and 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.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of 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 that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. 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. 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, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, 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), if it is the provider's practice to assess tenants for any damage they cause to the premises.

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. However, 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), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, 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, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, 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.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, 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 mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

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. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, 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: 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 provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

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

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine 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.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

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. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

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

about the requester's disability or the disability-related need for the accommodation.

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.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. 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 accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). 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, and (3) shows the relationship between the person's disability and the need for the requested accommodation. 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 benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

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.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
March 5, 2008

**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE MODIFICATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the federal Fair Housing Act¹ (the “Act”), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.⁴

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

² The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(A).

⁴ This Statement does not address the principles relating to reasonable accommodations. For further information see the Joint Statement of the Department of Housing and Urban

This Statement is not intended to provide specific guidance regarding the Act's design and construction requirements for multifamily dwellings built for first occupancy after March 13, 1991. Some of the reasonable modifications discussed in this Statement are features of accessible design that are required for covered multifamily dwellings pursuant to the Act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the Act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, the Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual. All of these are available on HUD's website at www.hud.gov/offices/fheo/disabilities/index.cfm. Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against housing applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their 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 if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."⁵ The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions⁶,

Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, dated May 17, 2004. This Joint Statement is available at www.hud.gov/offices/fheo/disabilities/index.cfm and http://www.usdoj.gov/crt/housing/jointstatement_ra.htm. See also 42 U.S.C. § 3604(f)(3)(B).

This Statement also does not discuss in depth the obligations of housing providers who are recipients of federal financial assistance to make and pay for structural changes to units and common and public areas that are needed as a reasonable accommodation for a person's disability. See Question 31.

⁵ 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.

⁶ The Act contemplates certain limits to the receipt of reasonable accommodations or reasonable modifications. For example, a tenant may be required to deposit money into an interest bearing

placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.

2. 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 homeowners' association to refuse to allow a reasonable modification to the premises when such a 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.

3. 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 the cost of the modification.

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

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

account to ensure that funds are available to restore the interior of a dwelling to its previous state. See, e.g., Question 21 below. A reasonable accommodation can be conditioned on meeting reasonable safety requirements, such as requiring persons who use motorized wheelchairs to operate them in a manner that does not pose a risk to the safety of others or cause damage to other persons' property. See Joint Statement on Reasonable Accommodations, Question 11.

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.”

The term “major life activity” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking. This list of major life activities is not exhaustive.

5. 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 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.

6. 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 benefits⁸ 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.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable modification is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable modification request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

7. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable modification?

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

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

Example 1: An applicant with an obvious mobility impairment who uses a motorized scooter to move around asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested modification.

⁸ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Income ("SSDI") benefits in most cases meet the definition of a disability under the Fair Housing Act, although the converse may not be true. See, e.g., *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Example 2: A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

8. Who must comply with the Fair Housing Act's reasonable modification requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. See, e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 2d 703, 710 (D. Md. 2001), *aff'd*, 2002 WL 2012545 (4th Cir. 2002).

9. What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?⁹

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. A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification. See Reasonable Accommodation Statement, Questions 7 and 8.

Example 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.

⁹ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability, and obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. See Question 31.

Example 2: Because of a hearing disability, a tenant wishes 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 expense.

Example 3: Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense. See also Questions 19, 20 and 21.

Example 4: Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable accommodation, and the housing provider must grant the accommodation.

10. Are reasonable modifications restricted to the interior of a dwelling?

No. Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas such as widening entrances to fitness centers or laundry rooms, or for changes to exteriors of dwelling units such as installing a ramp at the entrance to a dwelling.

11. Is a request for a parking space because of a physical disability a *reasonable accommodation* or a *reasonable modification*?

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

12. What if the structural changes being requested by the tenant or applicant are in a building that is subject to the design and construction requirements of the Fair Housing Act and the requested structural changes are a feature of accessible design that should have already existed in the unit or common area, e.g., doorways wide enough to accommodate a wheelchair, or an accessible entryway to a unit.

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.

For a discussion of the design and construction requirements of the Act, and their applicability, see HUD's website at: www.hud.gov/offices/fheo/disabilities/index.cfm and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

Example 1: A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building that was built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. Under these circumstances, one federal court has held that the tenant may have a potential claim against the housing provider.

Example 2: A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.

Example 3: A tenant with a disability resides in an apartment in a building that was built in 1993 in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

13. Who is responsible for expenses associated with a reasonable modification, e.g., for upkeep or maintenance?

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by

the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

Example 1: Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.

Example 2: Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.

Example 3: A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp. However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

14. In addition to current residents, are prospective tenants and buyers of housing protected by the reasonable modification provisions of the Fair Housing Act?

Yes. A person may make a request for a reasonable modification at any time. An individual may request a reasonable modification of the dwelling at the time that the potential tenancy or purchase is discussed. Under the Act, a housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made. Such conduct would constitute discrimination. The modification does not have to be made, however, unless it is reasonable. See Questions 2, 16, 21 and 23.

15. When and how should an individual request permission to make a modification?

Under the Act, a resident or an applicant for housing makes a reasonable modification request whenever she makes clear to the housing provider that she is requesting permission to make a structural change to the premises because of her disability. She should explain that she has a disability, if not readily apparent or not known to the housing provider, the type of modification she is requesting, and the relationship between the requested modification and her disability.

An applicant or resident is not entitled to receive a reasonable modification unless she requests one. However, 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 modification request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable modification request does

not need to mention the Act or use the words “reasonable modification.” However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability.

Although a reasonable modification 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. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable modification requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

16. Does a person with a disability have to have the housing provider’s approval before making a reasonable modification to the dwelling?

Yes. A person with a disability must have the housing provider’s approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

17. What if the housing provider fails to act promptly on a reasonable modification request?

A provider has an obligation to provide prompt responses to a reasonable modification request. An undue delay in responding to a reasonable modification request may be deemed a failure to permit a reasonable modification.

18. What if the housing provider proposes that the tenant move to a different unit in lieu of making a proposed modification?

The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability.

Example: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, as his request to modify his unit is reasonable and must be approved.

19. What if the housing provider wants an alternative modification or alternative design for the proposed modification that does not cost more but that the housing provider considers more aesthetically pleasing?

In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design. However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design. See Question 24 for a discussion of the restoration requirements.

Example 1: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, as his request to modify his unit is reasonable and must be approved.

Example 2: As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

20. What if the housing provider wants a more costly design for the requested modification?

If the housing provider wishes a modification to be made with more costly materials, in order to satisfy the landlord's aesthetic standards, the tenant must agree only if the housing provider pays those additional costs. Further, as discussed in Questions 21 and 23 below, housing providers may require that the tenant obtain all necessary building permits and may require that the work be performed in a workmanlike manner. If the housing provider requires more costly materials be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well. In such a case, however, the housing provider's design must still meet the tenant's needs.

21. What types of documents and assurances may a housing provider require regarding the modification before granting the reasonable modification?

A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification. A description of the modification to be made may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification. A housing provider may also require that the tenant obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. For example, a housing provider cannot require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. However, the Preamble to the Final Regulations also indicates that there are some conditions that can be placed on a tenant requesting a reasonable modification. For example, in certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, ordinary wear and tear excepted. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

22. May a housing provider or homeowner’s association condition approval of the requested modification on the requester obtaining special liability insurance?

No. Imposition of such a requirement would constitute a violation of the Fair Housing Act.

Example: Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider’s potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

23. Once the housing provider has agreed to a reasonable modification, may she insist that a particular contractor be used to perform the work?

No. The housing provider cannot insist that a particular contractor do the work. The housing provider may only require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary building permits.

24. If a person with a disability has made reasonable modifications to the interior of the dwelling, must she restore *all* of them when she moves out?

The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where “it is reasonable to do so” and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable

wear and tear. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy. See also Question 28.

Example 1: Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.

Example 2: Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.

Example 3: Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

25. Of the reasonable modifications made to the interior of a dwelling that must be restored, must the person with a disability pay to make those restorations when she moves out?

Yes. Reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling must be paid for by the tenant unless the next occupant of the dwelling wants to retain the reasonable modifications and where it is reasonable to do so, the next occupant is willing to establish a new interest bearing escrow account. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider. See also Question 24.

26. If a person with a disability has made a reasonable modification to the exterior of the dwelling, or a common area, must she restore it to its original condition when she moves out?

No. The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored.

27. May a housing provider increase or require a person with a disability to pay a security deposit if she requests a reasonable modification?

No. The housing provider may not require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy. See Questions 21 and 28.

28. May a housing provider take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy?

Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and the terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

Simply because an individual has a disability does not mean that she is less creditworthy than an individual without a disability. The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought. In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established, and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant.

Example 1: Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.

Example 2: Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest bearing escrow account to ensure that funds are available for restoration.

Example 3: A housing provider requires all tenants with disabilities to pay a set sum into an interest bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

29. What if a person with a disability moves into a rental unit and wants the carpet taken up because her wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification?

Depending on the circumstances, removal of carpeting may be either a reasonable accommodation or a reasonable modification.

Example 1: If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.

Example 2: If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy. See Questions 24 and 25.

Example 3: If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

30. Who is responsible for paying for the costs of structural changes to a dwelling unit that has not yet been constructed if a purchaser with a disability needs different or additional features to make the unit meet her disability-related needs?

If the dwelling unit is not subject to the design and construction requirements (i.e., a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to

be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

Example 1: A buyer with a mobility disability is purchasing a single family dwelling under construction and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. If the cabinet costs more than the standard vanity cabinet provided by the builder, the buyer is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by the buyer costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to the buyer.

Example 2: A buyer with a mobility disability is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. The buyer requests that the builder grade the entrance to eliminate the need for the step. If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to the purchaser.

Example 3: A buyer with a mobility disability is purchasing a unit that is subject to the design and construction requirements of the Fair Housing Act. The buyer wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the design and construction provisions of the Act. The buyer is responsible for the costs of installing and paying for the grab bars.

31. Are the rules the same if a person with a disability lives in housing that receives federal financial assistance and the needed structural changes to the unit or common area are the result of the tenant having a disability?

Housing that receives federal financial assistance is covered by both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other means. Housing that receives federal financial assistance and that is provided by state or local entities may also be covered by Title II of the Americans with Disabilities Act.

Example 1: A tenant who uses a wheelchair and who lives in privately owned housing needs a roll-in shower in order to bathe independently. Under the Fair Housing Act the tenant would be responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

Example 2: A tenant who uses a wheelchair and who lives in housing that receives federal financial assistance needs a roll-in shower in order to bathe independently. Under Section 504 of the Rehabilitation Act of 1973, the housing provider would be obligated to pay for and install the roll-in shower as a reasonable accommodation to the tenant unless doing so was an undue financial and administrative burden or unless the housing provider could meet the tenant’s disability-related needs by transferring the tenant to another appropriate unit that contains a roll-in shower.

HUD has provided more detailed information about Section 504’s requirements. See www.hud.gov/offices/fheo/disabilities/sect504.cfm.

32. If a person believes that she has been unlawfully denied a reasonable modification, what should that person do if she wants to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider’s wrongful denial of a request for a reasonable modification, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the “on-line” complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a “pattern or practice” of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application

and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section’s website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice’s policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

Best Practice for Requesting a Reasonable Accommodation

- This is just best practice and is **not** required in order to make a reasonable accommodation request. If your request includes all of this information, it will significantly reduce or even eliminate issues surrounding the approval of your request, and lessen the time it takes.
- Obtain a statement from your health care provider that shows they have a professional relationship with you and provide services or care related to your disability. This statement should indicate:
 - Your name
 - Date of last consultation
 - That you have a disability or a physical or mental impairment (it does not need to disclose the diagnosis)
 - That this impairment substantially limits at least one major life activity or bodily function
 - What accommodation(s) is being requested
 - The change in rule, policy, practice, or structure for which the accommodation is requested
 - The disability-related need for the accommodation



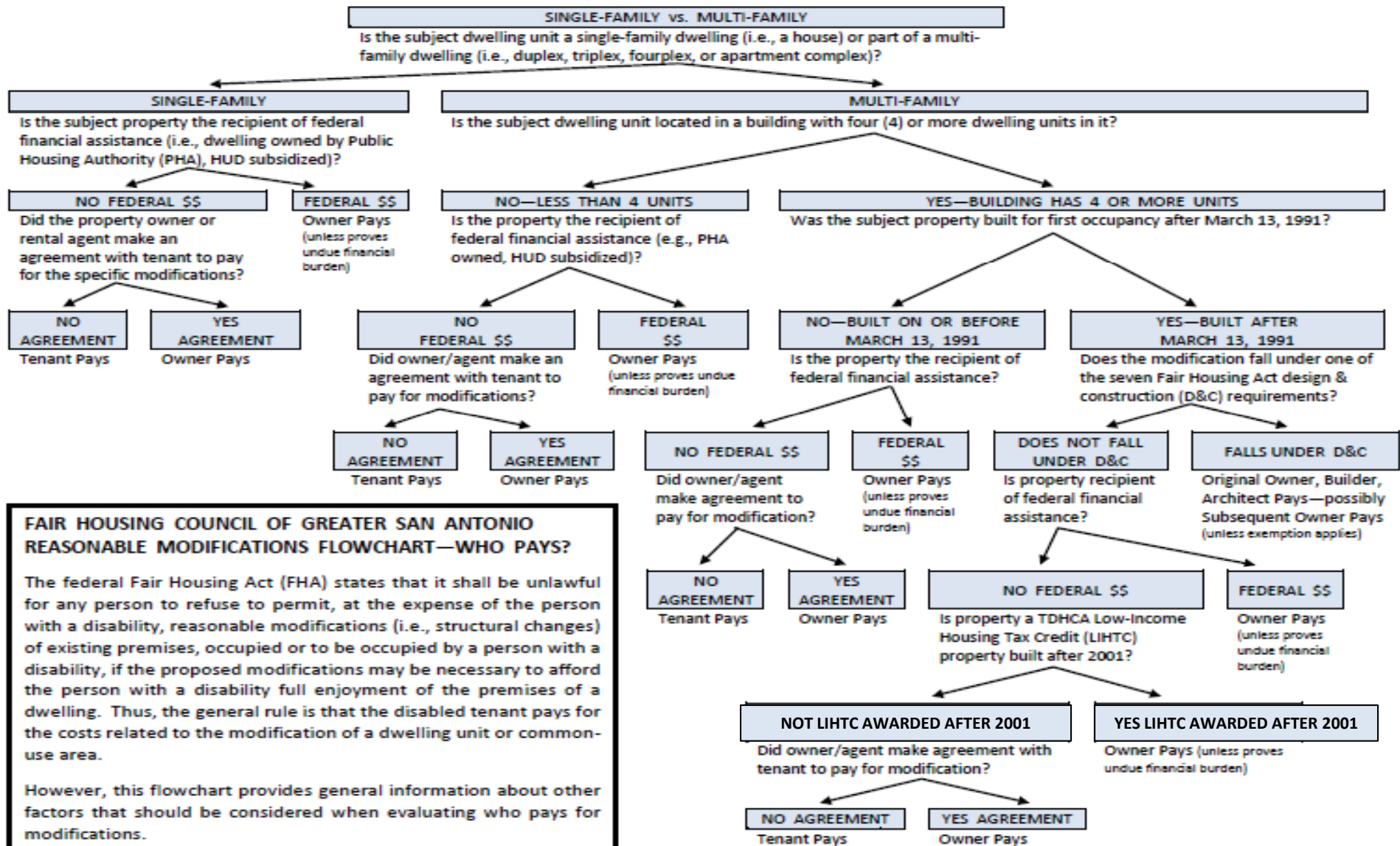
What if My Housing Provider Denies My Request?

- Don't be afraid to be your own advocate
 - Ask the provider for the reason why the request was denied
 - Keep copies or originals of all the documentation you submitted
 - If feasible, make your request in writing or by email, keep records of the request.
 - A housing provider may not require you to submit your reasonable accommodation request via a specific method or on a specific form
 - A housing provide may not require specific types of evidence if the information you provide them meets the requirements covered in this webinar and in HUD's guidance
 - The housing provider may not require you to provide notarized statements or to make statements under penalty of perjury
- File a complaint with the Department of Housing and Urban Development (HUD)
 - HUD administers many housing programs in the United States and will be able to forward your complaint to the proper jurisdiction
 - Contact information for HUD is on the next slide
- File a complaint with the Texas Workforce Commission's (TWC) Civil Rights Division
 - TWC is the agency in Texas responsible for enforcing the Fair Housing Act
 - Contact information for TWC is on the next slide
- Does the housing provider participate in any of TDHCA's programs, such as the Low Income Housing Tax Credit (LIHTC) program?
 - File a complaint with TDHCA online or in writing. If an accommodation is required you may also file a complaint by phone. Contact information is on the next slide



Reasonable Modifications Flowchart – Who Pays?

Source: Fair Housing Council of Greater San Antonio





U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors of
Public and Indian Housing (PIH); Housing;
Community Planning and Development
(CPD); Fair Housing and Equal Opportunity;
and Regional Counsel; CPD, PIH, and
Housing Program Providers

FHEO Notice: **FHEO-2020-01**
Issued: January 28, 2020
Expires: Effective until Amended,
Superseded, or Rescinded.

Subject: Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHA) with respect to animals that individuals with disabilities may request as reasonable accommodations. There are two types of assistance animals: (1) service animals, and (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to in this guidance as a "support animal"). Persons with disabilities may request a reasonable accommodation for service animals and other types of assistance animals, including support animals, under the FHA. This guidance provides housing providers with a set of best practices for complying with the FHA when assessing requests for reasonable accommodations to keep animals in housing, including the information that a housing provider may need to know from a health care professional about an individual's need for an assistance animal in housing. This guidance replaces HUD's prior guidance, FHEO-2013-01, on housing providers' obligations regarding service animals and assistance animals. In particular, this guidance provides a set of best practices regarding the type and amount of documentation a housing provider may ask an individual with a disability to provide in support of an accommodation request for a support animal, including documentation of a disability (that is, physical or mental impairments that substantially limit at least one major life activity) or a disability-related need for a support animal when the disability or disability-related need for the animal is non-obvious and not known to the housing provider. By providing greater clarity through this guidance, HUD seeks to provide housing providers with a tool they may use to reduce burdens that they may face when they are uncertain about the type and amount of documentation they may need and may be permitted to request when an individual seeks to keep a support animal in housing. Housing providers may be subject to the requirements of several civil rights laws, including but not limited to the FHA, Section 504 of the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA). This guidance does not address how HUD will process complaints against housing providers under Section 504 or the ADA.

2. **Applicability:** This notice applies to all housing providers covered by the FHA.¹
3. **Organization:** There are two sections to this notice. The first, “Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act,” recommends a set of best practices for complying with the FHA when assessing accommodation requests involving animals to assist housing providers and help them avoid violations of the FHA. The second section to this notice, “Guidance on Documenting an Individual’s Need for Assistance Animals in Housing,” provides guidance on information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider about his or her disability-related need for the requested accommodation, including supporting information from a health care professional.

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, or your local HUD Office of Fair Housing and Equal Opportunity.

Anna María Farías, Assistant Secretary for
Fair Housing and Equal Opportunity

¹ The Fair Housing Act covers virtually all types of housing, including privately owned housing and federally assisted housing, with a few limited exceptions.

Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act²

The Fair Housing Act (FHA) makes it unlawful for a housing provider³ to refuse to make a reasonable accommodation that a person with a disability may need in order to have equal opportunity to enjoy and use a dwelling.⁴ One common request housing providers receive is for a reasonable accommodation to providers’ pet or no animal policies so that individuals with disabilities are permitted to use assistance animals in housing,⁵ including public and common use areas.

Assistance animals are not pets. They are animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities.⁶ There are two types of assistance animals: (1) service animals, and (2) other animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to in this guidance as a “support animal”).⁷ An animal that does not qualify as a service animal or other type of assistance animal is a pet for purposes of the FHA and may be treated as a pet for purposes of the lease and the housing provider’s rules and policies. A housing provider may exclude or charge a fee or deposit for pets in its discretion and subject to local law but not for service animals or other assistance animals.⁸

² This document is an integral part of U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity Notice FHEO-2020-01, dated January 28, 2020 (sometimes referred to as the “Assistance Animal Notice”).

³ The term “housing provider” refers to any person or entity engaging in conduct covered by the FHA. Courts have applied the FHA to individuals, corporations, partnerships, associations, property owners, housing managers, homeowners and condominium associations, cooperatives, lenders, insurers, real estate agents, brokerage services, state and local governments, colleges and universities, as well as others involved in the provision of housing, residential lending, and other real estate-related services.

⁴ 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204. Unless otherwise specified, all citations refer to those authorities effective as of the date of the publication of this guidance.

⁵ For purposes of this guidance, the term “housing” refers to all housing covered by the Fair Housing Act, including apartments, condominiums, cooperatives, single family homes, nursing homes, assisted living facilities, group homes, domestic violence shelters, emergency shelters, homeless shelters, dormitories, and other types of housing covered by the FHA.

⁶ See 24 C.F.R. § 5.303(a).

⁷ Under the FHA, a disability is a physical or mental impairment that substantially limits one or more major life activities. See 24 C.F.R. § 100.201.

⁸ See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act (“Joint Statement”), Q and A 11 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>; *Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt.*, 778 F. Supp. 2d 1028 (D.N.D. 2011). HUD views the Joint Statement as well-reasoned guidance on some of the topics addressed in this guidance. The Joint Statement, available to the public since 2004, has been cited from time to time by courts. See, e.g., *Bhogaita v. Altamonte Heights Condo. Ass’n*, 765 F.3d 1277, 1286 (11th Cir. 2014); *Sinisgallo*

As of the date of the issuance of this guidance, FHA complaints concerning denial of reasonable accommodations and disability access comprise almost 60% of all FHA complaints and those involving requests for reasonable accommodations for assistance animals are significantly increasing. In fact, such complaints are one of the most common types of fair housing complaints that HUD receives. In addition, most HUD charges of discrimination against a housing provider following a full investigation involve the denial of a reasonable accommodation to a person who has a physical or mental disability that the housing provider cannot readily observe.⁹

HUD is providing this guidance to help housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability who simply wants to have a pet or avoid the costs and limitations imposed by housing providers' pet policies, such as pet fees or deposits. The guidance may also help persons with a disability who request a reasonable accommodation to use an assistance animal in housing.

While most requests for reasonable accommodations involve one animal, requests sometimes involve more than one animal (for example, a person has a disability-related need for both animals, or two people living together each have a disability-related need for a separate assistance animal). The decision-making process in this guidance can be used for all requests for exceptions or modifications to housing providers' rules, policies, practices, and/or procedures so persons with disabilities can have assistance animals in the housing where they reside.

This guidance is provided as a tool for housing providers and persons with a disability to use at their discretion and provides a set of best practices for addressing requests for reasonable accommodations to keep animals in housing where individuals with disabilities reside or seek to reside. It should be read together with HUD's regulations prohibiting discrimination under the FHA¹⁰ —with which housing providers must comply— and the HUD/Department of Justice (DOJ) Joint Statement on Reasonable Accommodation under the Fair Housing Act, available at <https://www.hud.gov/sites/documents/huddojstatement.pdf>. A housing provider may also be subject to the Americans with Disabilities Act (ADA) and therefore should also refer to DOJ's regulations implementing Title II and Title III of the ADA at 28 C.F.R. parts 35 and 36, and DOJ's guidance on service animals, *Frequently Asked Questions about Service Animals and the ADA* at https://www.ada.gov/regs2010/service_animal_qa.html and *ADA Requirements: Service Animals* at https://www.ada.gov/service_animals_2010.htm. This guidance replaces HUD's prior guidance on housing providers' obligations regarding service animals and assistance animals.¹¹ Housing

v. Town of Islip Hous. Auth., 865 F. Supp. 2d 307, 336-42 (E.D.N.Y. 2012). However, HUD does not intend to imply that the Joint Statement is independently binding statutory or regulatory authority. HUD understands it to be subject to applicable limitations on the use of guidance. See "Treatment as a Guidance Document" on p.5 for a citation of authorities on permissible use of guidance.

⁹ See, e.g., *HUD v. Castillo Condominium Ass'n*, No. 12-M-034-FH-9, 2014 HUD ALJ LEXIS 2 (HUD Sec'y, October 02, 2014) aff'd, 821 F.3d 92 (1st Cir. 2016); *HUD v. Riverbay*, No. 11-F-052-FH-18, 2012 HUD ALJ LEXIS 15 (HUD ALJ, May 07, 2012), aff'd, 2012 ALJ LEXIS 19 (HUD Sec'y June 06, 2012).

¹⁰ 24 C.F.R. Part 100.

¹¹ FHEO-2013-01.

providers should not reassess requests for reasonable accommodations that were granted prior to the issuance of this guidance in compliance with the FHA.

Treatment as a Guidance Document

As a guidance document, this document does not expand or alter housing providers' obligations under the Fair Housing Act or HUD's implementing regulations. It should be construed consistently with Executive Order 13891 of October 9, 2019 entitled "Promoting the Rule of Law Through Improved Agency Guidance Documents," Executive Order 13892 of October 9, 2019 entitled "Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication," the Office of Management and Budget Memorandum M-20-02 entitled "Guidance Implementing Executive Order 13891, Titled 'Promoting the Rule of Law Through Improved Agency Guidance Documents,'" the Department of Justice Memorandum of January 25, 2018 entitled "Limiting Use of Agency Guidance Documents in Affirmative Civil Enforcement Cases," and the Department of Justice Memorandum of November 16, 2017 entitled "Prohibition on Improper Guidance Documents."

Part I: Service Animals

The FHA requires housing providers to modify or make exceptions to policies governing animals when it may be necessary to permit persons with disabilities to utilize animals.¹² Because HUD interprets the FHA to require access for individuals who use service animals, housing providers should initially follow the analysis that DOJ has determined is used for assessing whether an animal is a service animal under the ADA.¹³ The Department of Justice's ADA regulations generally require state and local governments and public accommodations to permit the use of service animals by an individual with a disability.¹⁴ For support animals and other assistance animals that may be necessary in housing, although the ADA does not provide for access, housing providers must comply with the FHA, which does provide for access.¹⁵

¹² 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204. See also Pet Ownership for the Elderly and Persons with Disabilities – Final Rule, 73 Fed. Reg. 63833 (Oct. 27, 2008).

¹³ 24 C.F.R. § 100.204(b).

¹⁴ 28 C.F.R. §§ 35.136(g); 36.302(c)(7).

¹⁵ Specifically, under the Fair Housing Act, housing providers are obligated to permit, as a reasonable accommodation, the use of animals that work, provide assistance, or perform tasks that benefit persons with disabilities, or provide emotional support to alleviate a symptom or effect of a disability. Separate regulations govern airlines and other common carriers, which are outside the scope of this guidance.

What is a service animal?

Under the ADA, “*service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.”¹⁶

As a best practice, housing providers may use the following questions to help them determine if an animal is a service animal under the ADA:¹⁷

1. Is the animal a dog?
 - If “yes,” proceed to the next question.
 - If “no,” the animal is not a service animal but may be another type of assistance animal for which a reasonable accommodation is needed.¹⁸ Proceed to Part II below.
2. Is it readily apparent that the dog is trained to do work or perform tasks for the benefit of an individual with a disability?
 - If “yes,” further inquiries are unnecessary and inappropriate because the animal is a service animal.¹⁹
 - If “no,” proceed to the next question.

It is *readily apparent* when the dog is observed:

- guiding an individual who is blind or has low vision
- pulling a wheelchair
- providing assistance with stability or balance to an individual with an observable mobility disability²⁰

3. It is advisable for the housing provider to limit its inquiries to the following two questions:
 - The housing provider may ask in substance: (1) “Is the animal required because of a

¹⁶ 28 C.F.R. §§ 35.104; 36.104 (emphasis added).

¹⁷ 28 C.F.R. §§ 35.136; 36.302(c).

¹⁸ Although a miniature horse is not a service animal, DOJ has determined that the same type of analysis is applied to determine whether a miniature horse should be provided access, although additional considerations, beyond the scope of this guidance, apply. *See* 28 C.F.R. §§ 35.136(i); 36.302(c)(9).

¹⁹ 28 C.F.R. §§ 35.136(f); 36.302(c)(6).

²⁰ 28 C.F.R. §§ 35.136(f); 36.302(c)(6).

disability?” and (2) “What work or task has the animal been trained to perform?”²¹ Do not ask about the nature or extent of the person’s disability, and do not ask for documentation. A housing provider, at its discretion, may make the truth and accuracy of information provided during the process part of the representations made by the tenant under a lease or similar housing agreement to the extent that the lease or agreement requires the truth and accuracy of other material information.

- If the answer to question (1) is “yes” and work or a task is identified in response to question (2), grant the requested accommodation, if otherwise reasonable, because the animal qualifies as a service animal.
- If the answer to either question is “no” or “none,” the animal does not qualify as a service animal under federal law but may be a support animal or other type of assistance animal that needs to be accommodated. HUD offers guidance to housing providers on this in Part II.

Performing “work or tasks” means that the dog is trained to take a specific action when needed to assist the person with a disability.

- If the individual identifies at least one action the dog is trained to take which is helpful to the disability other than emotional support, the dog should be considered a service animal and permitted in housing, including public and common use areas. Housing providers should not make further inquiries.
- If no specific work or task is identified, the dog should not be considered a service animal but may be another type of animal for which a reasonable accommodation may be required. Emotional support, comfort, well-being, and companionship are not a specific work or task for purposes of analysis under the ADA.

For more information, refer to the ADA rules and service animal guidance on DOJ’s ADA Home Page at www.ada.gov²² or call the ADA Information Line at 1-800-514-0301.

Part II: Analysis of reasonable accommodation requests under the Fair Housing Act for assistance animals other than service animals

A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have equal opportunity to use and enjoy a dwelling, including public and common use spaces.

Remember: While it is not necessary to submit a written request or to use the words “reasonable accommodation,” “assistance animal,” or any other special words to request a reasonable accommodation under the FHA, persons making a request are encouraged to do so in order to avoid

²¹ 28 C.F.R. §§ 35.136(f); 36.302(c)(6).

²² See *Frequently Asked Questions About Service Animals and the ADA* at https://www.ada.gov/regs2010/service_animal_qa.html; *ADA Requirements: Service Animals* at https://www.ada.gov/service_animals_2010.htm.

miscommunication.²³ Persons with disabilities may also want to keep a copy of their reasonable accommodation requests and supporting documentation in case there is a later dispute about when or whether a reasonable accommodation request was made. Likewise, housing providers may find it helpful to have a consistently maintained list of reasonable accommodation requests.²⁴

A resident may request a reasonable accommodation either before or after acquiring the assistance animal.²⁵ An accommodation also may be requested after a housing provider seeks to terminate the resident's lease or tenancy because of the animal's presence, although such timing may create an inference against good faith on the part of the person seeking a reasonable accommodation. However, under the FHA, a person with a disability may make a reasonable accommodation request at any time, and the housing provider must consider the reasonable accommodation request even if the resident made the request after bringing the animal into the housing.²⁶

As a best practice, housing providers may use the following questions to help them make a decision when the animal does not meet the definition of service animal.²⁷

4. Has the individual requested a reasonable accommodation — that is, asked to get or keep an animal in connection with a physical or mental impairment or disability?

Note: The request for a reasonable accommodation with respect to an assistance animal may be oral or written. It may be made by others on behalf of the individual, including a person legally residing in the unit with the requesting individual or a legal guardian or authorized representative.²⁸

- If “yes,” proceed to Part III.
- If “no,” the housing provider is not required to grant a reasonable accommodation that has not been requested.

Part III: Criteria for assessing whether to grant the requested accommodation

As a best practice, housing providers may use the following questions to help them assess whether

²³ See Joint Statement, Q and A 12 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

²⁴ See Joint Statement, Q and A 13 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

²⁵ See Joint Statement, Q and A 12 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

²⁶ See 24 C.F.R. § 100.204(a).

²⁷ See *Janush v. Charities Hous. Dev. Corp.*, 169 F.Supp.2d 1133, 1136-37 (N.D. Cal., 2000) (rejecting an argument that a definition of “service dog” should be read into the Fair Housing Act to create a rule that accommodation of animals other than service dogs is per se unreasonable, instead finding that “the law imposes on defendants the obligation to consider each request individually and to grant requests that are reasonable.”).

²⁸ See Joint Statement, Q and A 12 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

to grant the requested accommodation.

5. Does the person have an observable disability or does the housing provider (or agent making the determination for the housing provider) already have information giving them reason to believe that the person has a disability?
 - If “yes,” skip to question #7 to determine if there is a connection between the person’s disability and the animal.
 - If “no,” continue to the next question.

Observable and Non-Observable Disabilities

Under the FHA, a disability is a physical or mental impairment that substantially limits one or more major life activities. While some impairments may seem invisible, others can be readily observed. Observable impairments include blindness or low vision, deafness or being hard of hearing, mobility limitations, and other types of impairments with observable symptoms or effects, such as intellectual impairments (including some types of autism), neurological impairments (*e.g.*, stroke, Parkinson’s disease, cerebral palsy, epilepsy, or brain injury), mental illness, or other diseases or conditions that affect major life activities or bodily functions.²⁹ Observable impairments generally tend to be obvious and would not be reasonably attributable to non-medical causes by a lay person.

Certain impairments, however, especially including impairments that may form the basis for a request for an emotional support animal, may not be observable. In those instances, a housing provider may request information regarding both the disability and the disability-related need for the animal. Housing providers are not entitled to know an individual’s diagnosis.

6. Has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?³⁰
 - If “yes,” proceed to question #7. A housing provider, at its discretion, may make the truth and accuracy of information provided during the process part of the representations made by the tenant under a lease or similar housing agreement to the extent that the lease or agreement requires the truth and accuracy of other material information.
 - If “no,” the housing provider is not required to grant the accommodation unless this information is provided but may not deny the accommodation on the grounds that the person requesting the accommodation has not provided this information until the requester has been provided a reasonable opportunity to do so.³¹ To assist the person requesting the

²⁹ See 24 C.F.R. § 100.201.

³⁰ See Joint Statement, Q and A 17 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

³¹ This would not permit the housing provider to require any independent evaluation or diagnosis specifically obtained for the housing provider or for the housing provider to engage in its own direct

accommodation to understand what information the housing provider is seeking, the housing provider is encouraged to direct the requester to the Guidance on Documenting an Individual's Need for Assistance Animals in Housing. Referring the requester to that Guidance will also help ensure that the housing provider receives the disability-related information that is actually needed to make a reasonable accommodation decision.

Information About Disability May Include . . .

- A determination of disability from a federal, state, or local government agency.
- Receipt of disability benefits or services (Social Security Disability Income (SSDI), Medicare or Supplemental Security Income (SSI) for a person under age 65, veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency.
- Eligibility for housing assistance or a housing voucher received because of disability.
- Information confirming disability from a health care professional – *e.g.*, physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse.

Note that a determination that an individual does not qualify as having a disability for purposes of a benefit or other program does not necessarily mean the individual does not have a disability for purposes of the FHA, Section 504, or the ADA.³²

Disability Determination

Note that under DOJ's regulations implementing the ADA Amendments Act of 2008, which HUD considers instructive when determining whether a person has a disability under the FHA, some types of impairments will, in virtually all cases, be found to impose a substantial limitation on a major life activity resulting in a determination of a disability.³³ Examples include deafness, blindness, intellectual disabilities, partially or completely missing limbs or mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, muscular dystrophy, multiple sclerosis, Human Immunodeficiency Virus (HIV) infection, major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia.³⁴ This does not mean that other conditions are not disabilities. It simply means that in virtually all cases these conditions will be covered as disabilities. While housing providers will be unable to observe or identify some of these impairments, individuals with disabilities sometimes voluntarily provide more details about their disability than the housing provider actually needs to make decisions on accommodation requests. When this information is provided, housing providers should consider it.

evaluation. *See* Joint Statement, Q and A 17-18 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

³² *See* Joint Statement, Q and A 18 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

³³ *See* 28 C.F.R. §§ 35.108(d)(2); 36.105(d)(2).

³⁴ *See* 28 C.F.R. §§ 35.108(d)(2)(iii); 36.105(d)(2)(iii).

Documentation from the Internet

Some websites sell certificates, registrations, and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee. Under the Fair Housing Act, a housing provider may request reliable documentation when an individual requesting a reasonable accommodation has a disability and disability-related need for an accommodation that are not obvious or otherwise known.³⁵ In HUD's experience, such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal.

By contrast, many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a person's health care professional that confirms a person's disability and/or need for an animal when the provider has personal knowledge of the individual.

7. Has the person requesting the accommodation provided information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability?³⁶
 - If "yes," proceed to Part IV. A housing provider, at its discretion, may make the truth and accuracy of information provided during the process part of the representations made by the tenant under a lease or similar housing agreement to the extent that the lease or agreement requires the truth and accuracy of other material information.
 - If "no," the housing provider is not required to grant the accommodation unless this information is provided but may not deny the accommodation on the grounds that the person requesting the accommodation has not provided this information until the requester has been provided a reasonable opportunity to do so. To assist the person requesting the accommodation to understand what information the housing provider is seeking, the housing provider is encouraged to direct the requester to the Guidance on Documenting an Individual's Need for Assistance Animals in Housing. Referring the requester to that Guidance will also help ensure that the housing provider receives the disability-related information that is actually needed to make a reasonable accommodation decision.

³⁵ See Joint Statement, Q and A 18 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

³⁶ See *Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt.*, 778 F. Supp. 2d 1028 (D.N.D. 2011) (determining that, in housing, a broader variety of assistance animals may be necessary as a reasonable accommodation, regardless of specific training).

Information Confirming Disability-Related Need for an Assistance Animal. . .

- Reasonably supporting information often consists of information from a licensed health care professional – *e.g.*, physician, optometrist, psychiatrist, psychologist, physician’s assistant, nurse practitioner, or nurse – general to the condition but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal.
- A relationship or connection between the disability and the need for the assistance animal must be provided. This is particularly the case where the disability is non-observable, and/or the animal provides therapeutic emotional support.
- For non-observable disabilities and animals that provide therapeutic emotional support, a housing provider may ask for information that is consistent with that identified in the Guidance on Documenting an Individual’s Need for Assistance Animals in Housing (*see Questions 6 and 7) in order to conduct an individualized assessment of whether it must provide the accommodation under the Fair Housing Act. The lack of such documentation in many cases may be reasonable grounds for denying a requested accommodation.

Part IV: Type of Animal

8. Is the animal commonly kept in households?

- If “yes,” the reasonable accommodation should be provided under the FHA unless the general exceptions described below exist.³⁷
- If “no,” a reasonable accommodation need not be provided, but note the very rare circumstances described below.

Animals commonly kept in households. If the animal is a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes, then the reasonable accommodation should be granted because the requestor has provided information confirming that there is a disability-related need for the animal.³⁸ For purposes of this assessment, reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals.

Unique animals. If the individual is requesting to keep a unique type of animal that is not commonly kept in households as described above, then the requestor has the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal. The individual is encouraged to submit documentation from a health care professional confirming the need for this animal, which includes information of the type set out in the Guidance on Documenting an Individual’s Need for Assistance Animals in Housing. While this guidance

³⁷ See, *e.g.*, *Majors v. Hous. Auth. of the Cnty. of DeKalb Georgia*, 652 F.2d 454, 457 (5th Cir. 1981) (enforcing a “no pets” rule against an individual with a disability who needs an animal as a reasonable accommodation effectively deprives the individual of the benefits of the housing).

³⁸ See 24 C.F.R. § 100.204(a).

does not establish any type of new documentary threshold, the lack of such documentation in many cases may be reasonable grounds for denying a requested accommodation. If the housing provider enforces a “no pets” policy or a policy prohibiting the type of animal the individual seeks to have, the housing provider may take reasonable steps to enforce the policy if the requester obtains the animal before submitting reliable documentation from a health care provider that reasonably supports the requestor’s disability-related need for the animal. As a best practice, the housing provider should make a determination promptly, generally within 10 days of receiving documentation.³⁹

Reasonable accommodations may be necessary when the need for a unique animal involves unique circumstances ...

Examples:

- The animal is individually trained to do work or perform tasks that cannot be performed by a dog.
- Information from a health care professional confirms that:
 - Allergies prevent the person from using a dog; or
 - Without the animal, the symptoms or effects of the person’s disability will be significantly increased.
- The individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained.

Example: A Unique Type of Support Animal

An individually trained capuchin monkey performs tasks for a person with paralysis caused by a spinal cord injury. The monkey has been trained to retrieve a bottle of water from the refrigerator, unscrew the cap, insert a straw, and place the bottle in a holder so the individual can get a drink of water. The monkey is also trained to switch lights on and off and retrieve requested items from inside cabinets. The individual has a disability-related need for this specific type of animal because the monkey can use its hands to perform manual tasks that a service dog cannot perform.

Part V: General Considerations

- The FHA does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.⁴⁰ A housing provider may, therefore, refuse a reasonable accommodation for an assistance animal if the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal (e.g., keeping the

³⁹ See Joint Statement, Q and A 15 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

⁴⁰ See 24 C.F.R. § 100.202(d).

animal in a secure enclosure).⁴¹

- A reasonable accommodation may include a reasonable accommodation to a land use and zoning law, Homeowners Association (HOA) rule, or co-op rule.⁴²
- A housing provider may not charge a fee for processing a reasonable accommodation request.⁴³
- Pet rules do not apply to service animals and support animals. Thus, housing providers may not limit the breed or size of a dog used as a service animal or support animal just because of the size or breed⁴⁴ but can, as noted, limit based on specific issues with the animal's conduct because it poses a direct threat or a fundamental alteration.⁴⁵
- A housing provider may not charge a deposit, fee, or surcharge for an assistance animal. A housing provider, however, may charge a tenant for damage an assistance animal causes if it is the provider's usual practice to charge for damage caused by tenants (or deduct it from the standard security deposits imposed on all tenants).
- A person with a disability is responsible for feeding, maintaining, providing veterinary care, and controlling his or her assistance animal. The individual may do this on his or her own or with the assistance of family, friends, volunteers, or service providers.
- Individuals with disabilities and housing providers may reference the best practices provided in this guidance in making and responding to reasonable accommodation requests within the scope of this guidance for as long as it remains in effect. HUD strongly encourages individuals with disabilities and housing providers to give careful attention to this guidance when making reasonable accommodation requests and decisions relating to animals.
- Failure to adhere to this guidance does not necessarily constitute a violation by housing providers of the FHA or regulations promulgated thereunder.⁴⁶
- Before denying a reasonable accommodation request due to lack of information confirming an individual's disability or disability-related need for an animal, the housing provider is encouraged to engage in a good-faith dialogue with the requestor called the "interactive process."⁴⁷ The housing provider may not insist on specific types of evidence if the information which is provided or actually known to the housing provider meets the requirements of this guidance (except as provided above). Disclosure of details about the diagnosis or severity of a disability or medical records or a medical examination cannot be required.

⁴¹ See Joint Statement Q and A 4 (May 17, 2004), at

<https://www.hud.gov/sites/documents/huddojstatement.pdf>.

⁴² See *Warren v. Delvista Towers Condo. Ass'n*, 49 F. Supp. 3d 1082 (S.D. Fla. 2014).

⁴³ See Joint Statement, Q and A 11 (May 17, 2004), at

<https://www.hud.gov/sites/documents/huddojstatement.pdf>; *Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt.*, 778 F. Supp. 2d 1028 (D.N.D. 2011).

⁴⁴ See, e.g., *Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277 (11th Cir. 2014) (reasonable accommodation to a housing provider's rule that all dogs must be under 25 pounds).

⁴⁵ See 24 C.F.R. § 100.202(d); Joint Statement, Q and A's 5 & 7 (May 17, 2004), at

<https://www.hud.gov/sites/documents/huddojstatement.pdf>.

⁴⁶ See "Treatment as a Guidance Document" on p.5 for a citation of authorities on permissible use of guidance.

⁴⁷ See Joint Statement, Q and A 7 (May 17, 2004), at

<https://www.hud.gov/sites/documents/huddojstatement.pdf>.

If a reasonable accommodation request, provided under the framework of this guidance, is denied because it would impose a fundamental alteration to the nature of the provider's operations or impose an undue financial and administrative burden, the housing provider should engage in the interactive process to discuss whether an alternative accommodation may be effective in meeting the individual's disability-related needs.⁴⁸

⁴⁸ For guidance on what constitutes a fundamental alteration or an undue financial and administrative burden, refer to the HUD/DOJ Joint Statement on Reasonable Accommodation under the Fair Housing Act, available at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

Guidance on Documenting an Individual’s Need for Assistance Animals in Housing

This section provides best practices for documenting an individual’s need for assistance animals in housing. It offers a summary of information that a housing provider may need to know from a health care professional about an individual’s need for an assistance animal in housing. It is intended to help individuals with disabilities explain to their health care professionals the type of information that housing providers may need to help them make sometimes difficult legal decisions under fair housing laws. It also will help an individual with a disability and their health care provider understand what information may be needed to support an accommodation request when the disability or disability-related need for an accommodation is not readily observable or known by the housing provider. Housing providers may not require a health care professional to use a specific form (including this document), to provide notarized statements, to make statements under penalty of perjury, or to provide an individual’s diagnosis or other detailed information about a person’s physical or mental impairments.⁴⁹ Housing providers and the U.S. Department of Housing and Urban Development rely on professionals to provide accurate information to the best of their personal knowledge, consistent with their professional obligations. This document only provides assistance on the type of information that may be needed under the Fair Housing Act (FHA). The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Further, this document does not create any obligation to provide health-care information and does not authorize or solicit the collection of any information not otherwise permitted by the FHA.⁵⁰

The Appendix to this Guide answers some commonly asked questions about terms and issues below. An understanding of the terms and issues is helpful to providing this information.

When providing this information, health care professionals should use personal knowledge of their patient/client – *i.e.*, the knowledge used to diagnose, advise, counsel, treat, or provide health care or other disability-related services to their patient/client. **Information relating to an individual’s disability and health conditions must be kept confidential and cannot be shared with other**

⁴⁹ See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act (“Joint Statement”), Q and A’s 13, 16-18 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

⁵⁰ This guidance does not expand on the obligations under the FHA or HUD’s regulations and should be construed consistently with Executive Order 13891 of October 9, 2019 entitled “Promoting the Rule of Law Through Improved Agency Guidance Documents,” Executive Order 13892 of October 9, 2019 entitled “Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication,” the Department of Justice Memorandum of January 25, 2018 entitled “Limiting Use of Agency Guidance Documents in Affirmative Civil Enforcement Cases,” and the Department of Justice Memorandum of November 16, 2017 entitled “Prohibition on Improper Guidance Documents.”

persons unless the information is needed for evaluating whether to grant or deny a reasonable accommodation request or unless disclosure is required by law.⁵¹

As a best practice, documentation contemplated in certain circumstances by the Assistance Animals Guidance is recommended to include the following general information:

- The patient's name,
- Whether the health care professional has a professional relationship with that patient/client involving the provision of health care or disability-related services, and
- The type of animal(s) for which the reasonable accommodation is sought (i.e., dog, cat, bird, rabbit, hamster, gerbil, other rodent, fish, turtle, other specified type of domesticated animal, or other specified unique animal).⁵²

Disability-related information. A disability for purposes of fair housing laws exists when a person has a physical or mental impairment that substantially limits one or more major life activities.⁵³ Addiction caused by current, illegal use of a controlled substance does not qualify as a disability.⁵⁴ As a best practice, it is recommended that individuals seeking reasonable accommodations for support animals ask health care professionals to provide information related to the following:

- Whether the patient has a physical or mental impairment,
- Whether the patient's impairment(s) substantially limit at least one major life activity or major bodily function, and
- Whether the patient needs the animal(s) (because it does work, provides assistance, or performs at least one task that benefits the patient because of his or her disability, or because it provides therapeutic emotional support to alleviate a symptom or effect of the disability of the patient/client, and not merely as a pet).

Additionally, if the animal is not a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes, it may be helpful for patients to ask health care professionals to provide the following additional information:

- The date of the last consultation with the patient,
- Any unique circumstances justifying the patient's need for the particular animal (if already owned or identified by the individual) or particular type of animal(s), and
- Whether the health care professional has reliable information about this specific animal or

⁵¹ See Joint Statement, Q and A 18 (May 17, 2004), at <https://www.hud.gov/sites/documents/huddojstatement.pdf>.

⁵² See, e.g., *Janush v. Charities Housing Development Corporation*, 169 F.Supp.2d 1133, 1136-37 (N.D. Cal. 2000) (rejecting an argument that a definition of "service dog" should be read into the Fair Housing Act to create a rule that accommodation of animals other than service dogs is per se unreasonable, finding that "the law imposes on defendants the obligation to consider each request individually and to grant requests that are reasonable.").

⁵³ 24 C.F.R. § 100.201.

⁵⁴ 24 C.F.R. § 100.201.

whether they specifically recommended this type of animal.

It is also recommended that the health care professional sign and date any documentation provided and provide contact information and any professional licensing information.

Appendix

What are assistance animals?

Assistance animals do work, perform tasks, provide assistance, or provide emotional support for a person with a physical or mental impairment that substantially limits at least one major life activity or bodily function.⁵⁵

What are physical or mental impairments?

Physical or mental impairments include: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability; or

Diseases and conditions such 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.⁵⁶

What are major life activities or major bodily functions?

They are: seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, and working.⁵⁷

Other impairments – based on specific facts in individual cases -- may also substantially limit at least one major life activity or bodily function.⁵⁸

What are Some Examples of Work, Tasks, Assistance, and Emotional Support?

⁵⁵ See 24 C.F.R. §§ 5.303; 960.705.

⁵⁶ See 24 C.F.R. § 100.201.

⁵⁷ See 24 C.F.R. § 100.201(b).

⁵⁸ See 24 C.F.R. § 100.201.

Some examples of work and tasks that are commonly performed by service dogs include⁵⁹:

- Assisting individuals who are blind or have low vision with navigation and other tasks,
- Alerting individuals who are deaf or hard of hearing to the presence of people or sounds,
- Providing non-violent protection or rescue work,
- Pulling a wheelchair,
- Alerting a person with epilepsy to an upcoming seizure and assisting the individual during the seizure,
- Alerting individuals to the presence of allergens,
- Retrieving the telephone or summoning emergency assistance, or
- Providing physical support and assistance with balance and stability to individuals with mobility disabilities.

Some other examples of work, tasks or other types of assistance provided by animals include:⁶⁰

- Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors,
- Reminding a person with mental illness to take prescribed medication,
- Alerting a person with diabetes when blood sugar is high or low,
- Taking an action to calm a person with post-traumatic stress disorder (PTSD) during an anxiety attack,
- Assisting the person in dealing with disability-related stress or pain,
- Assisting a person with mental illness to leave the isolation of home or to interact with others,
- Enabling a person to deal with the symptoms or effects of major depression by providing a reason to live, or
- Providing emotional support that alleviates at least one identified symptom or effect of a physical or mental impairment.

What are examples of a patient's need for a unique animal or unique circumstances?⁶¹

- The animal is individually trained to do work or perform tasks that cannot be performed by a dog.
- Information from a health care professional confirms that:
 - Allergies prevent the person from using a dog, or
 - Without the animal, the symptoms or effects of the person's disability will be significantly increased.
- The individual seeks a reasonable accommodation to a land use and zoning law, Homeowners Association (HOA) rule, or condominium or co-op rule.
- The individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained.

⁵⁹ See 28 C.F.R. §§ 35.136(f); 36.302(c)(6).

⁶⁰ See, e.g., *Majors v. Housing Authority of the County of DeKalb Georgia*, 652 F.2d 454, 457 (5th Cir. 1981); *Janush*, 169 F.Supp.2d at 1136-37.

⁶¹ See, e.g., *Anderson v. City of Blue Ash*, 798 F.3d 338, 360-63 (6th Cir. 2015) (seeking a reasonable accommodation to keep a miniature horse as an assistance animal).

HUD Guidance Part 1

Criteria for Deciding Whether to Grant the Accommodation



Does the person have an observable disability or does the housing provider (or agent making the determination for the provider) already have information giving them reason to believe that the person has a disability?

No

Yes

Has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?

Yes

Has the person requesting the accommodation provided information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability?

Yes

No

No

Proceed to Part 2

The housing provider is not required to grant the accommodation unless this information is provided, but may NOT deny the accommodation UNLESS the requester has been provided a reasonable opportunity to provide the information. The provider is encouraged to direct the requester to the Guidance on Documenting an Individual's Need for Assistance Animals in Housing



Part 2 – Type of Animal

Is the animal commonly kept in households?

Yes

Animals commonly kept in households: Dogs, cats, small birds, rabbits, hamsters, gerbils, other rodents, fish, turtles, or other small, domesticated animals that are traditionally kept in the home for pleasure rather than commercial purposes

The accommodation should be provided under the FHA...

...Except reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals.

No

A reasonable accommodation may not need to be provided except in very rare circumstances.

If the individual is requesting to keep a unique animal, then the requestor has the substantial burden of demonstrating the disability-related need for the specific animal.

If the requestor submits documentation from a health care professional confirming the need for this specific type of animal, and why another type of commonly kept animal is cannot perform the task or assistance, then grant the request for the accommodation.

