

Using Reasonable Accommodations to Prevent the Eviction of Elderly Tenants with Disabilities

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National Housing Law Project

The National Housing Law Project's mission is to advance housing justice for poor people and communities. We achieve this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation's supply of safe and affordable homes by providing technical assistance, trainings, and publications to assist legal services attorneys and tenant advocates, and engaging in public policy and impact litigation.

Introduction

The number of older adults with physical or cognitive limitations is projected to increase significantly. Over the past several decades, disability rights groups have fought to protect the rights of persons with disabilities to access all aspects of life fully, such as employment, education, and housing. For example, the Fair Housing Amendments Act, which added disability as a protected class, stands as a "clear pronouncement of a national commitment to end the unnecessary exclusion of persons with [disabilities] from the American mainstream." These rights are protected and this commitment is furthered through the right that people with disabilities have to reasonable accommodation.

Key Lessons

- The Fair Housing Act and other civil rights laws mandate that housing providers provide reasonable accommodations. The failure to do so may be considered housing discrimination.
- In order to request an accommodation, the requester must show: 1) they have a disability; 2) the request is necessary and 3) the request is reasonable.
- An accommodation is considered to be reasonable if it does not cause an undue financial or administrative burden and if it does not result in a fundamental alteration of the housing provider's services.
- Reasonable accommodations can be powerful tools to prevent the eviction of elderly tenants with disabilities.

What is a Reasonable Accommodation?

In the housing context, a reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

A housing provider must grant a requested reasonable accommodation if it is *necessary to accommodate the disability* and *does not create an undue financial or administrative burden*. Failure to provide a reasonable accommodation may be construed as discrimination. Practically, a reasonable accommodation helps eliminate barriers to full use and enjoyment of housing for individuals with disabilities.

Reasonable accommodation rules arise from a number of sources. The Fair Housing Amendments Act (FHAA),¹ the Americans with Disabilities Act (ADA),² and the Rehabilitation Act of 1973³ are federal laws that require reasonable accommodation for individuals with disabilities. They can be valuable tools to prevent the eviction of elderly tenants with disabilities.

The Reasonable Accommodation Process

There are a number of components to the reasonable accommodation process: request for accommodation, verification, reasonableness, and the interactive process.

Request for Accommodation

Once a tenant tells a housing provider that they are disabled and need something changed in order to accommodate their disability, the provider is obligated to begin the reasonable accommodation process. A request may be oral or written. A housing provider may adopt a formal proceeding for requesting a reasonable accommodation. However, a reasonable accommodation request cannot be denied if a tenant fails to fill out a form or follow the formal proceeding.⁴ **The best practice is to request the accommodation in writing, so that there is a clear record of the request.**

Requests should include the following elements:

1. **Disability:** This section needs to demonstrate that the tenant has a disability that could be accommodated by the specific request.
 - » It does NOT need to state the name of the disability. A housing provider cannot ask about the diagnosis, treatment, or the nature or extent of the disability.⁵ Some clients may not want the name of their disability revealed for a number of reasons, including the stigma around certain disabilities.

Federal Definition of Disability for the Purpose of Reasonable Accommodation⁶

Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.

2. **Necessary Accommodations:** The request must include how the accommodation is related to the person's disability and how it will help the tenant access or remain in the housing program. The request should state specifically what accommodation the tenant is seeking. For example, this section might request a designated parking area, a cosigner for the lease, or that rent is accepted at a later date in the month.

Verification of the Need for an Accommodation

Housing providers are permitted to verify the need for an accommodation under certain circumstances. There are three possible verification scenarios:

1. If a person's disability is obvious or known, and the need for the requested accommodation is known, then the housing provider should not ask for any more information.⁷
2. If the disability is known or obvious, but the need is not, then the housing provider should ask only for information necessary to verify the need for the accommodation.⁸
3. If neither the disability nor the need for the accommodation is readily apparent, the housing provider may ask for verification of both the disability and the need for the accommodation.⁹
 - » In some cases, the housing provider should allow the individual to self-certify their disability. For example, an applicant/participant may provide proof of SSI (if younger than 62) or SSDI benefits in order to certify.
 - » A doctor or other medical professional, a peer support group, a non-medical service agency, or any reliable third party who is in a position to know about the individual's disability may provide verification of the disability and the need for the accommodation.

Reasonableness

If a housing provider has verified the need for the accommodation and the requested accommodation is reasonable, as defined by law, then they must provide it.¹⁰ The term “reasonable” means that the accommodation does not cause the housing provider an undue burden or fundamentally alter the nature of the program. Each request must be analyzed on a case-by-case basis.

Undue Burden

An undue burden may be financial or administrative.¹¹ In order to determine if an undue financial burden exists, HUD and the DOJ suggest that four factors should be considered:¹² 1) the housing provider’s financial resources; 2) the costs of the requested accommodation; 3) the benefit to the tenant; and 4) the availability of a less expensive accommodation.

Courts have recognized that reasonable accommodations will often cause some amount of financial or other burden.¹³ Some costs are small, such as when a tenant requests a waiver of a parking fee as a reasonable accommodation, which is unlikely to be considered a financial burden. When the costs are higher, such as when a tenant requests the addition of an elevator where none existed before, the costs of the request may cause a significant financial burden.¹⁴ Because a housing provider must analyze an undue financial burden on a case-by-case basis, they cannot deny an accommodation with the reasoning that granting such a request will “open the floodgates” of additional requests.

Fundamental Alteration

A housing provider also does not have to grant a reasonable accommodation request if the request includes services or policies that would “fundamentally alter the nature of the service, program, or activity.”¹⁵ For example, an accommodation may be considered unreasonable if a tenant asks a landlord to provide daily transportation services when the building currently has no such service. Conversely, one court found that allowing a financially eligible relative to rent an apartment for a disabled individual did not fundamentally alter the essential obligations of tenancy, even though the landlord did not ordinarily permit such rentals.¹⁶

The Interactive Process

If a housing provider refuses a requested accommodation, HUD guidelines encourage the provider and tenant to engage in an “interactive process” to discuss alternative accommodations that can satisfy the tenant’s needs without imposing an undue burden or fundamentally altering the provider’s program.¹⁷ While a number of courts view this interactive process as necessary, some dispute remains as to whether the FHAA actually *requires* providers and tenants to engage in such a process.¹⁸ One court held that, even if the FHAA does require an interactive process, there is no liability for failure to engage in this process where a tenant fails to show the existence of a reasonable accommodation.¹⁹ However, another court held that once a provider and tenant have engaged in an interactive process, attempts by the provider to short-circuit that process are actionable.²⁰

Direct Threats to Health and Safety

Nothing in the FHAA requires a landlord to make a dwelling available “to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”²¹ However, this threat must be objective, not subjective. Furthermore, the housing provider has an obligation to provide a reasonable accommodation that may help eliminate the threat.²² A number of courts have found that housing providers violated their fair housing obligations when they refused to consider a reasonable accommodation that would mitigate a threat, even when physical violence was involved.²³ In some cases, courts have even held that a reasonable accommodation may be necessary where a person has pleaded guilty to or been convicted of criminal activity that would threaten the health and safety of others.²⁴

EXAMPLE

A prominent example of how the court has upheld the requirement for housing providers to consider a reasonable accommodation can be found in *Roe v. Sugar River Mills Assoc.*²⁵ In this case, the Plaintiff, who was a person with a mental health disability, threatened another tenant with physical violence by using obscene and offensive language, which resulted in that tenant vacating his unit and the plaintiff receiving a criminal conviction. The court held that the FHAA required a showing that no reasonable accommodation would minimize the risk to others before the plaintiff could be lawfully evicted. In another similar case, a tenant with a mental health disability attacked and seriously injured another resident.²⁶ The attack was in addition to other complaints about the tenant's abusive and threatening behavior. However, the court still held that the tenant must be afforded reasonable accommodation before being denied federally assisted housing.

Other Considerations

Support Animals

People with disabilities often have emotional support animals to help them manage the symptoms of their disabilities.²⁷ Courts have held that no-pet policies should be modified when a disabled tenant requires a support animal.²⁸ The reasonable requirements and conditions that a Public Housing Authority (PHA) places on pet ownership do not apply to animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities.²⁹ Thus, a landlord cannot charge "pet rent" or a pet deposit for a support animal. However, a PHA or landlord may request more information concerning a reasonable accommodation request for a support animal that may pose safety risks.

Some landlords will place restrictions on certain breeds of dogs, such as pitbulls, arguing that they are dangerous or may affect the landlord's insurance. However, an assessment of whether an animal poses a direct threat to the safety of others must be done on an individualized basis.³⁰ Thus, breed, size, and weight limitations cannot be applied to an assistance animal.

Late Payment of Rent

Many tenants with disabilities are also dependent upon Social Security Income (SSI) or Social Security Disability benefits as their only source of income. However, these programs tend to disburse their benefits from the third to the fifth of the month (or even later if a holiday falls during this period). This can present problems for tenants who are subject to late fees if rent is not paid on time. A person with a disability can make a request to pay rent late as a reasonable accommodation of their disabilities. This is based on the argument that they are dependent on SSI or SSDI because of their disability and if the benefits are paid later in the month, they should not be penalized.

Hoarding, Poor Housekeeping, and Pest Control

Some people with disabilities may have difficulty maintaining proper housekeeping due to mobility issues, mental health conditions, or a lack of outside support. The American Psychiatric Association now recognizes hoarding as an official psychiatric disorder.³¹ Poor housekeeping and hoarding can be connected with infestations of bedbugs, cockroaches, and other types of vermin. Landlords often first recognize hoarding and poor housekeeping when infestations emerge. In response to these issues, landlords will give a tenant a short amount of time to clean a unit or prepare it for treatment by a pest control company. Unfortunately, these timelines are often impossible for a person with disabilities to meet. However, a person with a disability can request more time to address hoarding or housekeeping issues or to prepare for pest control.

More Time to Vacate a Property

People with disabilities often have difficulty vacating a property in a timely manner due to mobility issues, mental health symptoms, or the difficulty in locating an accessible unit. However, the courts have recognized that a reasonable accommodation can be requested at any time during the eviction process, up until the tenant vacates the property. Thus, a person with a disability can request more time to vacate a property if the failure to vacate promptly is related to their disability.

Additional Resources

- [National Housing Law Project](#)
- [Joint Statement of the Department of Housing And Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act \(May 17, 2004\)](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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Endnotes

- 1 42 U.S.C.A. §§3601, et seq (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).
- 2 42 U.S.C.A. §§ 12131, et seq (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).
- 3 29 U.S.C.A. §794 (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).
- 4 Joint Statement of The Department of Housing and Urban Development and Department of Justice, REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT (2004)[hereinafter Joint Statement].
- 5 Department of Housing and Urban Development, Public Housing Occupancy Guidebook 19 (2003) [hereinafter Public Housing Guidebook].
- 6 29 U.S.C. §706(8) (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-0); 42 U.S.C. §3602(h) (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-0); 42 U.S.C. §12101 (West, Westlaw through Pub.L. 110-325 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 1-1-09) (clarifying definition of disabled); 24 C.F.R. §8.3 (2016); 24 C.F.R. §100.201 (2016); 28 C.F.R. 35.104 (West 2016).
The scope of the term “disability” under the ADA was significantly expanded by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which took effect on January 1, 2009. As part of this expansion, the ADAAA provides a non-exhaustive list of major life activities, including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Additionally, a major life activity includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- 7 Joint Statement, supra at 12.
- 8 Id.
- 9 Id at 13.
- 10 See 42.U.S.C. §3604(f)(3)(B).
- 11 24 C.F.R. §8.11 (2016).

- 12 Joint Statement, *supra* at 8.
- 13 U.S. v. California Mobile Home Park Mgmt Co., 29 F.3d 1413 (9th Cir. 1994)(holding that mobile home park owner, under duty to provide reasonable accommodation imposed by the FHAA, may have to incur reasonable financial costs); *Mejia v. Comonfort*, No. 10cv5767 (C.D. Cal. Nov. 15, 2010) (finding that some costs related to accommodation are allocated to the landlord); *McGary v. City of Portland*, 386 F.3d 1259, 1263 (9th Cir. 2004) (holding that city interfered with the use and enjoyment of the disabled-plaintiff's home by refusing to accommodate its trash-nuisance ordinance, thereby charging him for its nuisance abatement activities); *Giebeler v. M& B Assoc.*, 343 F.3d 1143 (9th Cir. 2003) (holding that landlord interfered with the use and enjoyment of the disabled-plaintiff's prospective home by refusing to accommodate its policy forbidding co-signers on the lease), citing *U.S. Airways, Inc. v. Barnett* 535 U.S. 391 (2002).
- 14 *Congdon v. Strine*, 854 F.Supp. 355, 363 (D.Pa.1994) (finding the installation of a new elevator at a cost of \$65,000 was an undue financial burden), but see *Davis v. Lane Management* 2007 WL 3306959 (S.D. Fla., Nov. 6, 2007)(awarding damages to quadriplegic plaintiff whose landlord refused to fix elevators in an apartment complex for a seven-month period during which the tenant was forced to crawl up stairs to his unit); See also *Bryant Woods*, 124 F.3d at 604-05 (finding that requested zoning variance to expand group home for the handicapped would create an undue burden since the proposed expansion would exacerbate existing parking congestion); *Lapid-Laurel*, 284 F.3d at 466 (finding that requested zoning variance and site plan for a facility for the elderly was not reasonable due to traffic safety issues and inadequate access for emergency vehicles).
- 15 28 C.F.R. §35.130
- 16 *Giebeler*, 343 F.3d at 1157-59.
- 17 Joint Statement, *supra* at 7.
- 18 Compare *Jankowski Lee & Assoc. v. Cisneros*, 91 F.3d 891 (7th Cir. 1996) (stating that “if a landlord is skeptical of a tenant’s alleged disability or the landlord’s ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.”), *United States v. Hialeah Hous. Auth.*, No. 10-12838, 2011 WL 989815 (11th Cir. Mar. 22, 2011), *United States v. District of Columbia*, 538 F.Supp.2d 211 (D.C. 2008), *Hawn v. Shoreline Towers Phas I Condo. Assoc., Inc.*, No. 07-cv-97/RV/EMT, 2009 WL 691378 (N.D. Fla. Mar. 12, 2009), with *Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039 (6th Cir. 2001) (stating that neither the FHAA nor HUD imposes an obligation on landlords or tenants to engage in an interactive process), *Lapid-Laurel, L.L.C. v. Zoning Bd. Of Adjustment of the Twp. of Scotch Plains*, 284 F.3d 442 (3d. Cir. 2002), *Astralis Condo. Assoc. v. United States Dep’t of Hous. and Urban Dev.*, 620 F.3d 62 (1st Cir. 2010).
- 19 *Huberty v. Washington County Hous. & Re-Dev. Auth.*, 374 F.Supp.2d 768 (D. Minn. 2005).
- 20 *Astralis v. United States Dep’t of Hous. And Urban Dev.*, 620 F.3d at 69 (1st Cir. 2010) (stating that delay in granting a reasonable accommodation request constituted a denial); Contrast with: *Overlook Mut. Homes, Inc. v. Spencer*; 415 Fed.Appx. 617 (6th Cir. 2011) (finding that a reasonable accommodation request was not constructively denied because plaintiff was allowed to keep her support animal during the reasonable accommodation request period).
- 21 42 U.S.C §3604(f)(9).
- 22 24 C.F.R. § 9.131 (stating that “(c) In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.”).
- 23 *Super v. D’Amelia & Assocs., LLC*, 2010 WL 3926887 (D. Conn. Sept. 30, 2010) (finding that housing violated FHA and Section 504 when it terminated a tenant’s voucher for assaulting an employee without considering her request for reasonable accommodation which included her seeking mental health treatment.)
- 24 *Housing Auth. of Camden v. Williams*, 2011 WL 1261109 (N.J. Super. Ct. App. Div. Apr. 6, 2011) (unreported). (Court remanding case to consider whether a reasonable accommodation would prevent eviction where a public housing tenant after she threatened a building security guard with a knife and pleaded guilty to terroristic threats.)
- 25 820 F. Supp. 636 (D.N.H. 1993).
- 26 *Roe v. Housing Auth. of Boulder*, 909 F. Supp. 814 (D. Colo. 1995).
- 27 Emotional support animals should be distinguished from service animals pursuant to the Americans with Disabilities Act.
- 28 *Green v. Hous. Auth. of Clackamas County*, 944 F. Supp. 1235 (D. Or. 1998) (finding that the PHA violated the law when they failed to make an exception to their no pet policy for a hearing impaired tenant); *Whittier Terrace Assocs. v. Hampshire*, 532 N.E.2d 712 (Mass. App. Ct. 1989) (stating that an exception to a no pet policy was required for a disabled tenant who was emotionally attached to her cat).
- 29 24 C.F.R. § 960.705 and 24 C.F.R. § 960.707 (2016).
- 30 HUD Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO-2013-01, April 25, 2013.
- 31 The DSM V defines hoarding disorder as: Persistent difficulty discarding or parting with objects, regardless of actual value; The difficulty discarding is due to a perceived need to save and distress associated with discarding; The symptoms result in accumulation of possessions that congest and clutter active living areas and substantially compromise their intended use; The symptoms result in clinically significant distress or interference; The symptoms are not attributable to another medical condition; and they are not better accounted for by another DSM-5 disorder.