

REASONABLE ACCOMMODATION

Thurman G. Miles, Director
Fort Worth FHEO
Center

Woodrow Colbert
Oklahoma City FHEO
Center

Disability discrimination prohibited by FHA

- ▶ FHA prohibits discrimination against applicants or residents because of their disability or anyone associated with them.
- ▶ Unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodation may be necessary for persons with disabilities to use and enjoy the dwelling.

Discrimination continued

- ▶ Unlawful to refuse residency to persons with disabilities or placing conditions on their residency because they may require reasonable accommodations.
- ▶ In certain circumstances, the Act requires that housing providers allows residents to make reasonable structural modifications to units and common areas when those modifications are necessary for a person with a disability to have full enjoyment of a dwelling.

Housing providers covered

- ▶ Privately owned
- ▶ Publicly owned
- ▶ Housing subsidized by the federal government
- ▶ Housing rented through use of Section 8 vouchers



Who qualifies as a person with a disability?

- ▶ Physical or mental impairment that substantially limits one or more major life activities
- ▶ Individuals regarded as having such an impairment
- ▶ Individuals with a record of such an impairment
- ▶ Substantially limits suggests the limitation is significant or to a large degree
- ▶ Major life activity seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking

PERSONS NOT COVERED

- ▶ Juvenile offenders, or sex offenders are not persons with disabilities protected by the Act.
- ▶ Current illegal use of controlled substances
- ▶ Persons 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 reduced by reasonable accommodation.

DETERMINING IF A PERSON 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.
- ▶ Determination must rely on an individualized assessment based on reliable objective evidence.

Determination continued

- ▶ Nature, duration, and severity of the risk of injury;
- ▶ Probability that injury will actually occur
- ▶ Is there any reasonable accommodations that will eliminate the direct threat?
- ▶ Any intervening treatment or medication that has eliminated the direct threat.
- ▶ Provider must have reliable, objective evidence of a direct threat before excluding the disabled person.

EXAMPLE

- ▶ Application shows current residence as Cambridge House.
- ▶ Provider knows Cambridge House is a group home for women receiving treatment for alcoholism.
- ▶ Based solely on that info & his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant.

EXAMPLE CONT'D

- ▶ Unlawful because based on generalized stereotype rather than individualized assessment
- ▶ Manager could have checked references to the same extent and manner as other applicants

This Photo by Unknown Author is licensed under CC BY-SA

What is a reasonable accommodation?

- ▶ 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 the dwelling
- ▶ There must be an identifiable relationship or nexus between the requested accommodation and the person's disability.

EXAMPLE

- ▶ Provider has a no pets policy
- ▶ Deaf tenant request he be allowed to keep a dog 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, phone, etc.
- ▶ Provider must make an exception to his no pets policy to accommodate this tenant.

Any instances where a provider can deny accommodation?

- ▶ If the request was not made by or on behalf of a person with a disability
- ▶ Providing the accommodation is not reasonable
- ▶ Undue financial or administrative burden

Undue financial or administrative burden

- ▶ Must be determined on a case by case basis
 - COSTS
 - FINANCIAL RESOURCES OF PROVIDER
 - BENEFITS THE ACCOMMODATION WOULD PROVIDE THE REQUESTOR
 - AVAILABILITY OF ALTERNATIVE ACCOMMODATIONS THAT WOULD MEED THE DISABILITY RELATED NEEDS

BURDEN CONT'D

- ▶ Discuss alternatives with the requestor
- ▶ Determine whether there is an alternative that addresses the need without a fundamental alteration or undue financial burden.

FUNDAMENTAL ALTERATION

- ▶ Request that alters the essential nature of provider's operations.
- ▶ A failure to reach an agreement on an accommodation request is in effect a denial.
- ▶ Housing providers may not require persons with disabilities to pay extra deposits as a condition of receiving a reasonable accommodation.

How requested?

- ▶ Whenever a resident or applicant makes clear that she is requesting an exception, change or adjustment to a rule, policy, practice, or service because of her disability.
- ▶ Type of accommodation should be explained
- ▶ If the need for the accommodation is not readily apparent or known to provider, explain the relationship between the accommodation requested and her disability.

REQUEST CONTINUED

- ▶ The Act does not require that the request be made in a particular manner or particular time.
- ▶ The request may be made by a family member or someone else acting on her behalf.
- ▶ The requestor need not mention the words "reasonable accommodation", but it must be clear that the request is an exception, change or adjustment of a rule or policy.
- ▶ It is helpful if the request is in writing but not required.

Failure to respond promptly

- ▶ Provider has an obligation to provide prompt responses to reasonable accommodation requests.
- ▶ Undue delays can be deemed a failure to provide the accommodation.

Information a Provider can request from a disabled person

- ▶ Information necessary to evaluate if a requested accommodation may be necessary because of a disability.
- ▶ If the person's disability is obvious or otherwise known to the provider, and if the need for the accommodation is readily apparent, the provider may not request any additional information about the requestor's disability or disability related need for the accommodation.

Information Necessary

- ▶ Necessary to verify that the person meets the Act's definition of disability (reliable information)
- ▶ Information that describes the accommodation
- ▶ Information that shows the relationship between the disability and the requested accommodation.
- ▶ Once this information is established, the provider must provide the requested accommodation.
- ▶ Provider should only request information that is necessary to evaluate the need for the accommodation.

HUD/DOJ JOINT STATEMENT

- ▶ SOURCE OF THIS INFORMATION
- ▶ Person may file a complaint with HUD within one year of the occurrence of the alleged denial.
- ▶ May file a lawsuit in federal court within two years of the occurrence.
- ▶ 1-888-560-8913 HUD

