

Requests for Reasonable Accommodations and/or Modifications

Page 1

A reasonable *accommodation* is some exception or change that a housing provider makes to rules, policies, services, or regulations that will assist a resident or applicant with a disability in taking advantage of a housing program and/or dwelling. A reasonable *modification* is an alteration to the physical premises allowing a person with a disability to overcome obstacles that interfere with his/her use of the dwelling and/or common areas. The accommodation and/or modification must be necessary for the individual with the disability to enjoy and/or fully use services offered to other residents and/or the individual dwelling unit.

Reasonable accommodations can include but are not limited to:

- A change in the rules or policies or how a housing provider does things that would make it easier for you to live in the dwelling;
- Permitting a seeing eye dog for a household in a community where pets are not allowed, or not charging a deposit for a service animal though the housing provider charges deposits for pets;
- Permitting an outside agency to assist a disabled resident to meet the terms of the lease;
- Permitting a live-in Personal Care Attendant to live with a disabled resident who might need 24 hour assistance; or
- A change in the way a housing provider communicates with or gives information, such as increasing the font size of typed documents to a person with a visual impairment or providing reminders of rent due for someone with a mental disability who needs reminders.

Reasonable modifications can include, but are not limited to:

- A structural change or repair in your apartment or another part of the apartment complex that would make it easier for you to live in the dwelling; or
- Altering your apartment so that the unit can be accessed and used by a person in a wheelchair.

NOTE: The individual requesting the modification may be responsible for the costs incurred in providing a reasonable modification to the premises. This individual may also be responsible for costs incurred in restoring the modification to original condition. The housing provider may request that a licensed contractor be obtained to make the modifications and/or restorations. If you and/or your housing provider have any questions regarding these provisions, please do not hesitate to contact the Fair Housing of the Dakotas.

A resident or applicant is entitled by law to a reasonable accommodation and/or modification when needed because of a disability of the resident, applicant, and/or a

Requests for Reasonable Accommodations and/or Modifications

Page 2

person associated with a resident or applicant, such as a guest. Housing providers must grant all requests for reasonable accommodations and/or modifications that are needed as a result of a disability if the request is not unduly burdensome or a fundamental alteration of the housing program. If a request is denied, you have the right to know the reasons in writing.

There must be a verifiable disability involved in order for the household to qualify for a reasonable accommodation and/or modification. The housing provider is required by law to keep all information about the disability confidential. A person has a disability if he/she 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. Most serious medically treated conditions are considered to be a disability. A disabled resident must still be able to meet essential obligations of tenancy – they must be able to pay rent, to care for the apartment, to report required information to the manager, avoid disturbing their neighbors, etc., but there is no requirement that they be able to do these things without assistance.

Using the attached forms will help you and your housing provider to better formulate the request and implement any follow up necessary. The attached forms include:

- A Request for a Reasonable Accommodation and/or Modification. This form explains your request and your need for the accommodation. (For you to complete.)
- Verification of the need for an Accommodation and/or Modification. (For your health care provider, such as a doctor, nurse, therapist, or social worker, to complete.)
- Approval or Denial of a Request for a Reasonable Accommodation and/or Modification. (For your housing provider to complete.)

What follows is more information about reasonable accommodations and modifications. Should you have any questions or require assistance, please contact the Fair Housing of the Dakotas.

The following is a synopsis of discussions with our attorney, legal representation from the Department of Housing and Urban Development, and review of case law. This is not a formal legal opinion, but instead suggested guidance to utilize in reviewing requests for Reasonable Accommodations and/or Reasonable Modifications. As always, please feel free to contact the Fair Housing of the Dakotas and/or the Department of Housing and Urban Development with any questions, comments and/or concerns you may have in regards to fair housing issues. We often mediate accommodation/modification concerns and, if unable to provide the consumer and/or provider with needed information, we can either refer the issue to appropriate sources

or secure the information from the appropriate source.

Provisions for Persons with Disabilities

Definition of Disability:

- a physical or mental impairment which substantially limits one or more of a person's major life activities;
- a record of having such an impairment; and/or
- being regarded as having such an impairment.

This definition does not include current, illegal use of or addiction to a controlled substance. An individual shall not be considered to have a disability solely because that individual is a transvestite.

Definition of Major Life Activities includes, but is not limited to, activities such as:

- caring for one's self
- performing manual tasks
- walking
- seeing
- hearing
- speaking
- breathing
- learning
- working

Who is covered:

- Persons with mobility impairments such as orthopedic disabilities
- Persons with sensory losses such as deafness and/or blindness
- Persons with mental disabilities such as cognitive disabilities, head injuries, cerebral palsy
- Persons with environmental sensitivities (MCS)
- Persons with mental illnesses
- Persons with hidden disabilities such as epilepsy, heart conditions, diabetes, chronic fatigue syndrome, learning disabilities, cancer, AIDS/HIV, etc.
- Persons with age related disabilities such as arthritis, dementia, heart conditions, etc.
- Persons who are recovering alcoholics and/or drug addicts

Disabilities may also be temporary such as pregnancy, recovering from surgery and/or an injury, etc.

Requests for Reasonable Accommodations and/or Modifications

What are the exemptions:

- Persons currently using illegal, controlled substances
 - Persons who have been convicted of illegal manufacture and/or distribution of controlled substances
 - Persons who pose a direct threat to the health and safety of others
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Reasonable Accommodation and/or Modification Requests

Accommodation:

An exception to the rules and regulations allowing a person with a disability full use or enjoyment of the premises.

Modification:

Right to alter the physical premises to overcome obstacles interfering with the use of a dwelling unit for those with disabilities.

What are the most common areas requiring accommodations and/or modifications requests?

Architectural accessibility

Parking

Kitchens

Hardware

Full access to common use areas

Entrances

Bathrooms

Path of travel within a dwelling

Environmental controls

Programs

Changes in rules, policies, practices or services so that a person with a disability can participate as fully in activities related to housing as could a person without a disability, such as a request for a service animal or foregoing an eviction to allow a case manager an opportunity to implement a treatment plan assisting the consumer with lease compliance.

Exceptions:

If the housing provider can demonstrate that providing an accommodation or modification would:

- impose an "undue burden"
- constitute a "fundamental alteration" in the service provided by the housing provider

Can the housing provider ask about a tenant's disability or need for an accommodation and/or modification?

- A housing provider cannot ask about a disability unless it is used for qualification to housing designed for people with disabilities;
- A consumer should request the accommodation/modification first and it should be in writing (although it is not required to be writing);
- There is no limit on the number of accommodations/modifications requested and/or the number of times a consumer may request these needs;
- A housing provider cannot impose an accommodation/modification on a consumer who does not want one;
- A consumer is entitled to an accommodation/modification that affords equal opportunities to use and enjoy a dwelling, even if the accommodation/modification provided is not the one preferred by the consumer.

Can the provider ask for proof of the disability and/or need for the accommodation/modification:

- A housing provider can ask for verification of the disability and the need for the adaptation in writing from a qualified professional unless it is a readily apparent disability and need;
- The verification of the disability does not have to include a statement of what the disability is;
- A consumer does not have to provide and/or disclose medical records.

Medical Professional defined:

A medical professional is defined broadly under the EEOC employment guidance regarding reasonable accommodation requests, at least for purposes of putting one on notice of the request for accommodation. Medical professionals can include social workers, paraprofessionals, chiropractors, etc. A request for a reasonable accommodation and/or modification triggers an affirmative duty on the part of the housing provider to exchange information with the consumer.

Case law on the issue of questioning the credentials of a medical professional to submit verification of a disability and/or the need for a reasonable accommodation is not completely developed, at least to the advantage of the housing provider. However, if, for example, a tenant with a mental disability submits a request for an accommodation that is verified by a chiropractor, the housing provider may seek additional information. The housing provider can request further verification of the need for the accommodation and further verification that the tenant is a qualified person with a disability. Again, a request for an accommodation and/or a modification, at the very least, puts the housing provider on notice that the need for an accommodation and/or a modification may exist. Denying the request without further review of information could lead to a violation of fair housing provisions.

Is the consumer or provider responsible for the financial burden necessary to provide adaptation?

- If the change is architectural, the consumer **may** be required to pay for reasonable modifications. Providers and consumers should check with the Fair Housing of the Dakotas and/or other resources such as the Department of Housing and Urban Development prior to requiring the consumer pay for the modifications.
 - The provider can, under certain circumstances, request the consumer to create an account with deposits equal to the amount necessary to restore the dwelling to original condition, if adaptations made would interfere with the use and enjoyment of the unit by the next consumer;
 - If the change is programmatic, the consumer cannot be charged directly and/or indirectly for the change in service.
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Requests for an Accommodation to a “No Pets” Policy - Understanding Fair Housing Laws as Applied to Service Animals

Requiring insurance coverage for a service animal:

The law prohibits imposition of additional burdens on the residency of a person with a disability if those tenancy provisions would subject that person to different and/or more adverse treatment than a similarly situated person without a disability. Imposing an additional term such as insurance coverage for a service animal would subject a person with a disability to different and/or adverse treatment because of their disability.

A housing provider can enforce the same conditions of tenancy against a person with a disability as are imposed on persons without disabilities. For example, the lease may contain a clause that the tenant is liable for harm caused by his or her negligence. The housing provider would enforce this clause against a tenant who is using a barbecue that malfunctions and causes a fire damaging to another tenant's property and/or person. A housing provider enforces the same provision against a tenant with a disability who fails to control his/her service animal. The key is uniform treatment and enforcement of terms and conditions for which a reasonable accommodation is not required.

Requiring additional security deposits and/or increased rent for a service animal:

The law prohibits imposition of additional burdens on the residency of a person with a disability if those tenancy provisions would subject that person to different and/or more adverse treatment than a similarly situated person without a disability. Imposing an additional term such as a security deposit and/or increased rent for a service animal would subject a person with a disability to different and/or adverse treatment because of their disability.

Requests for Reasonable Accommodations and/or Modifications

Page 7

These charges are not permitted, though deductions from the security deposit for any reasonably necessary additional cleaning work would be permitted, if also charged against tenants without disabilities who leave their units in a condition that requires such additional cleaning.

Requiring proof of current inoculations for service animals:

Requiring proof of inoculation of a service animal would likely be permitted under the following circumstances. A lease agreement includes provisions requiring tenants to abide by all applicable state and local laws. The housing provider enforces these provisions against tenants with respect to storage and/or use of vehicles, equipment, firearms, etc. on the subject premises. There is a local law requiring inoculation and/or licensing of all animals. The housing provider requires proof that the animal meets the local requirements. An alternative rationale for this provision may be that no accommodation that creates a material risk to health and/or safety is reasonable. Proof of inoculation establishes that there is no material risk to health and/or safety in respect to inoculations.

Service animal vs. companion animal vs. comfort animal:

A companion animal and/or comfort animal is a service animal. If there is verification of the disability and the need for the reasonable accommodation that is represented to be the presence of that animal in order for the person with the disability to enjoy equal opportunity, the companion/comfort animal is considered a service animal.

Requiring a service animal have specialized training and the tenant to submit verification of training:

A service animal does not have to receive specialized training in order to be considered a service animal. A service animal need only exhibit the ability to serve the person with the disability as is required for that person's needs.

Tenants who may have visitors with disabilities:

A housing provider cannot deny the right of a tenant whose visitor/s may have disabilities from bringing his/her service animal when visiting the tenant on-site.

For additional information on reasonable accommodations and/or modifications, please review the Fair Housing of the Dakotas' Fact Sheets 2, 3 and 6; and the HUD-DOJ Joint Memo on Reasonable Accommodations.

P049