



Fair Housing Help Desk for Housing Providers

Frequently Asked Questions About Reasonable Accommodations and Reasonable Modifications



The Equal Rights Center 2018 – All Rights Reserved

The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.

The information contained in this publication is not legal advice and should not be construed as such. For legal advice, please contact an attorney.

Table of Contents



Fair Housing Basics:

Key Definitions and Processes

Key terms necessary to know when navigating disability and fair housing.

1. What qualifies someone as having a disability under the Fair Housing Act? **3**
2. How are disabilities verified? **3**
3. What is a reasonable accommodation? **4**
4. What is a reasonable modification? **4**
5. What is “reasonable”? **4**
6. What if a request is deemed unreasonable? **5**
7. What is an interactive process? **5**
8. How is the need for a reasonable accommodation or modification verified? **6**
9. What information can a housing provider request to verify a reasonable accommodation or modification? **7**
10. Who is responsible for covering the cost of a reasonable accommodation or modification request? **8**
11. What is a service animal? **10**
12. What is an assistance animal? **10**

Fair Housing:

Applied Situations

A series of scenarios describing common questions property managers have about fair housing.

11

Fair Housing Basics:

KEY DEFINITIONS AND PROCESSES



Key terms necessary to know when navigating disability and fair housing.

1. What qualifies someone as having a disability under the Fair Housing Act?

The Fair Housing Act and other federal nondiscrimination laws define a person with a disability as someone who:

- 1) Has a physical or mental impairment that substantially limits one or more major life activities;
- 2) Has a record of such impairment; or
- 3) Is regarded as having such an impairment.

2. How are disabilities verified?

When requesting a reasonable accommodation or modification under the Fair Housing Act, a resident may need to provide documentation that verifies their disability, though this does not apply when referencing an obvious or known disability. If a disability is not obvious, a resident can have a doctor, caseworker, psychologist, social worker, school administrator and/or advocate provide documentation on their behalf. The documentation can also be a record of an impairment such as an Individualized Education Plan from school or an SSDI check. When verification is necessary, the documentation does not need to reveal the underlying diagnosis, however. It is sufficient for the person verifying the disability to only disclose the relevant symptoms of that disability. For example, if a resident is requesting a reasonable accommodation to have a reserved parking spot closest to their unit, the 3rd party verifier does not need to reveal that it is because they are seeking treatment for cancer. It is enough to simply report that they have difficulty walking long distances due to a disability recognized under the FHA.

Fair Housing Basics:

KEY DEFINITIONS AND PROCESSES



3. What is a reasonable accommodation?

A reasonable accommodation is a change in rule, policy, practice, or service that will make it possible for a person with a disability to have an equal opportunity to use and enjoy their home. Examples include not applying an overnight guest policy to a resident's personal care attendant or allowing assistance animals in a "no pets" property.

4. What is a reasonable modification?

A reasonable modification is a structural change to a unit, common area, and/or a public area. Modifications improve the functionality of a space for a person with a disability. Examples include installation of grab bars, ramps, or removal of an obstructing or protruding object.

5. What is "reasonable?"

In order for a requested modification or accommodation to be considered reasonable under the Fair Housing Act, it must:

- 1) Have an identifiable relationship - a nexus - between the request and the individual's disability.
- 2) Not impose an undue financial or administrative burden on the housing provider, or require a fundamental alteration to their services.
- 3) Not present a direct threat to the health or safety of others, or result in serious damage to the property.

Fair Housing Basics:

KEY DEFINITIONS AND PROCESSES



6. What if a request is deemed unreasonable?

If a request does not meet the requirements of a reasonable request (see above), then the housing provider must discuss with the resident why the request is unreasonable, and determine whether an alternative accommodation would effectively answer the resident's disability-related need without causing an undue financial or administrative burden, a fundamental alteration of their services, pose a direct threat to the health and safety of others, or result in serious damage to the property. If an alternative accommodation is not only reasonable to the housing provider, but to the resident as well, then it must be approved.

7. What is an interactive process?

An interactive process is a negotiation. Once a reasonable accommodation or reasonable modification request has been made, a housing provider must evaluate its merits, and whether it would result in an undue financial or administrative burden or fundamental change in service. If additional information is needed or the housing provider has concerns about the specific request, the person with a disability must have the opportunity to supplement or amend their original reasonable accommodation or modification request.

The result of a successful interactive process is not necessarily that a tenant gets the exact accommodation or modification that they initially sought, but that both parties reach a resolution that allows the person with a disability to use and enjoy their housing without causing the housing provider undue harm.



8. How is the need for a reasonable accommodation or reasonable modification verified?

Depending on the disability type and details of the disability-related request, there are different appropriate actions that a housing provider can take to verify a reasonable accommodation or reasonable modification request:

- ◆ If the disability is obvious or known by the housing provider AND the need for the accommodation is also readily apparent or known by the housing provider, then the housing provider may not request any additional information about the disability or the need for the accommodation.
- ◆ If the disability is obvious or known by the housing provider BUT the need for the accommodation is not readily apparent or known by the housing provider, then the housing provider can only request information necessary to evaluate the need for the accommodation and how it relates to the disability.
- ◆ If the disability is not obvious or known by the housing provider AND the need for the accommodation is not readily apparent or known by the housing provider, then the housing provider can request: (i) verification that an individual meets the FHA's definition of having a disability, (ii) description of the needed accommodation, and (iii) the relationship between their disability and the requested accommodation.

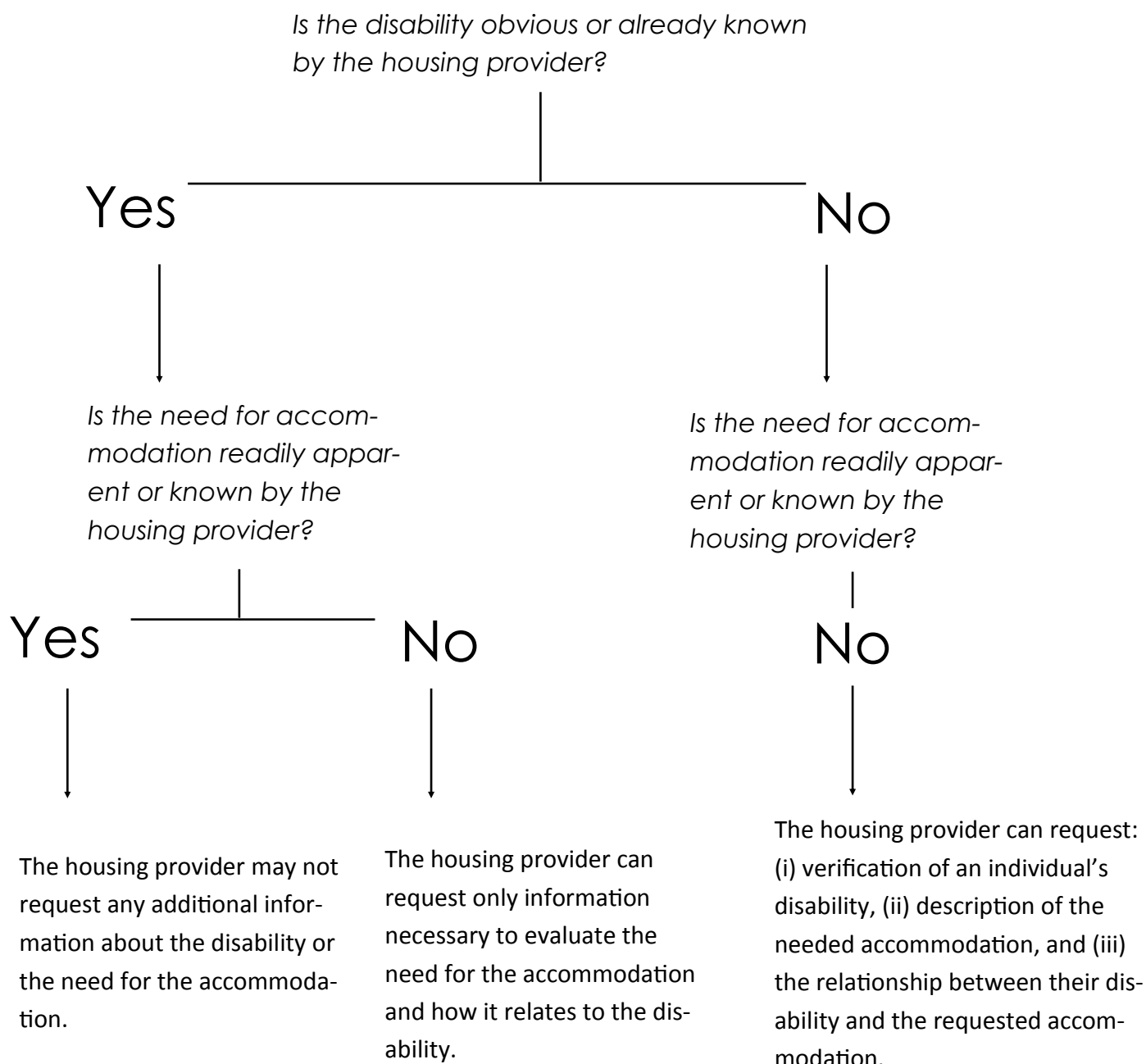
Remember, each request must be handled on a case-by-case basis, and it's possible for the verification process to change based off the disability-related need and the underlying reason for that request. If a resident has verified a non-obvious disability for one request, it is not necessary for them to verify that need again if the second request cites the same symptoms or effects of the disability. However, if the resident has multiple disabilities and you are unable to determine the relationship between the disability and the requested accommodation, it could be appropriate to request that they submit additional documentation.

Fair Housing Basics:

KEY DEFINITIONS AND PROCESSES



9. What information can a housing provider request to verify a reasonable accommodation or modification?



Fair Housing Basics:

KEY DEFINITIONS AND PROCESSES



10. Who is responsible for covering the cost of a reasonable accommodation or modification request?

For reasonable accommodations, the property management company must cover any costs related to the change in rule, policy, practice, or service that will make it possible for a person with a disability to have an equal opportunity to use and enjoy their home. Remember, for an accommodation to be deemed reasonable, it must not provide an undue financial burden to the housing provider, which means most reasonable accommodations by definition have little or no cost associated with them.

For reasonable modifications, however, there are several factors that affect or influence who is financially responsible for covering the cost of a reasonable modification:

- 1) If the multi-family housing property receives federal funding or assistance, then the housing provider may be responsible for covering the costs associated with the reasonable modification; or
- 2) If the reasonable modification request is due to non-compliance with the accessible design and construction standards outlined in the Fair Housing Act, then the housing provider may be responsible for retrofitting the property so that it meets the accessibility requirements; but
- 3) If the modification request does not trigger either situation above, then the resident with the disability will most likely be responsible for covering the cost of any structural change to a unit, common area, and/or a public area.

(continued on next page)

Fair Housing Basics:

KEY DEFINITIONS AND PROCESSES



10. Who is responsible for covering the cost of a reasonable accommodation or modification request? (cont.)

If it is determined that the resident is responsible for paying for the modification, then the housing provider can only request that the property be returned to its original condition if the structural change would negatively impact the next resident's use. For example, if a renter paid to widen the interior doors in their unit, it is unlikely that this particular structural change would interfere with the next tenant's use or enjoyment of the space. However, if the tenant removed the cabinet underneath the bathroom sink, which provides the only storage in the bathroom, then it might be appropriate to require them to re-install it at the end of their tenancy.

If a resident is unable to cover the costs of a modification(s), then it may be possible to explore making a reasonable accommodation request instead. For example, shared laundry facilities that are inaccessible to a resident with a disability could yield a reasonable modification request for that resident to install laundry in their own unit. But if the resident cannot afford the cost of that modification and there is a policy in place that the shared laundry facilities are only to be used by residents, then the resident may instead request a reasonable accommodation to the laundry policy, allowing their friends, family members, or personal care attendants to do their laundry for them.

Fair Housing Basics:

KEY DEFINITIONS AND PROCESSES



11. What is a service animal?

The Americans with Disabilities Act defines a service animal as a dog or miniature horse that has been trained to work or perform tasks on behalf of a person with a disability. While a service dog is the most common type of service animal, some people with disabilities choose to have a miniature horse as their service animal instead. Miniature horses weigh nearly the same amount as a service dog (55-100 pounds), but can live and work nearly twice as long. They also have better peripheral and night vision when compared to a guide dog. Furthermore, some people are allergic to dogs or have a generalized fear of them, making a miniature horse a better option for them. Regardless of whether someone has a service dog or miniature horse, service animals can either be trained by their owner or through an agency, but under either circumstance, they do not need a certification stating that they are service animals. As a general rule, they are allowed anywhere the public is allowed to go, including leasing offices, public transportation, restaurants, and retail stores.

12. What is an assistance animal?

Under the Fair Housing Act, an assistance animal is an animal that works, performs tasks or services on behalf of a person with a disability, or provides assistance to that person. They can also provide emotional support that alleviates one or more symptoms or effects of a disability through their presence or companionship. Unlike service animals, they are not limited to being dogs or miniature horses, and they are not allowed in public accommodations. They can, however, be approved as a reasonable accommodation to a resident with a disability and be allowed to reside in the unit with them. They also do not need specialized training or have a certification, but a housing provider could ask for a resident to verify the need for the assistance animal if the reason is not obvious or already known to the housing provider. Examples include helper monkeys or emotional support cats.



FAIR HOUSING: Applied Situations

A series of scenarios describing common questions property managers have about fair housing.

Scenario 1:

I had a resident move into our new building and he submitted several reasonable modification requests. While some were routine (i.e. installing grab bars), others were less common, like lowering wall cabinets in the kitchen, replacing appliances with ones that have controls that are easier to reach, etc.

I know that sometimes we are not required to pay for reasonable modifications, but how do we determine who pays for which modification? What do we do when the resident moves out? Can we charge him to return the unit to its original condition?

The delineation between reasonable accommodation and reasonable modification requests and their related financial responsibilities can sometimes be unclear. Several factors affect the decision of who is accountable for any expenses, such as whether a recently constructed building is compliant with the accessibility and design standards of the FHA, whether the property receives or has received federal funds, whether the reasonable modification needs to be reversed at the termination of tenancy, and whether the request could be interpreted as a reasonable accommodation rather than modification. It is critical to remember that reasonable accommodation and modification requests must be evaluated on a case by case basis; there is no cookie cutter approach that will apply to all scenarios because the facts of each situation vary.

In this scenario as described, the resident would likely be responsible for the cost of lowering kitchen wall cabinets, unless the property receives federal funds, because the alteration goes beyond the minimum accessibility standards required under the FHA. The resident would also likely be responsible for returning the kitchen to its original condition upon move out, unless the property determines otherwise.

(continued on next page)



FAIR HOUSING: Applied Situations

Scenario 1, cont.:

Regarding appliances, you may or may not be responsible for providing accessible substitutes. If the oven needs to be replaced with a model that has controls at the front of the appliance, and your property routinely replaces outdated or non-functioning appliances, then the resident could request that you change your appliance selection policy to include appliances that are accessible. Under that logic, you could be responsible for providing an accessible appliance at no additional charge because the resident is in fact requesting a reasonable accommodation to your policy, not a reasonable modification request. However, if the request was to switch a stackable washer/dryer to a side-by-side washer and dryer, resulting in the moving of appliance closet walls or pipes and drains, then those additional costs could be passed on to the resident. Regardless, the resident would not likely need to replace the affected appliances with at move out because accessible versions would probably not be a detracting factor to the next resident.

Again, you should consider each reasonable accommodation or modification request on a case by case basis. If you are unsure about your responsibilities, it might be most appropriate to reach out to an accessibility consultant, a fair housing organization, a lawyer specializing in these issues, or any combination thereof.



FAIR HOUSING: Applied Situations

Scenario 2:

I've noticed more stories about emotional support animals in the news lately, especially stories about people who have non-traditional emotional support animals like peacocks. We have a resident who knows that some people really need their animals, but he feels that others are pretending to have disabilities in order to have their pets approved in our no pets building. A new couple just moved into our building with their dog. Neither of them appears to have a disability, but they have verified both their disability and the need for an assistance animal, so I approved their request. How do I express to him that his neighbors aren't faking without revealing that they have a disability?

While the resident may infer that his neighbors filed a disability-related reasonable accommodation request in order to have their dog live with them, it is important that you don't reveal more information than necessary if/when he challenges you about the dog's presence in your "no pets" building. A standard response could be, "under specific circumstances, the Fair Housing Act requires us to make exceptions or changes to our policies, like our 'no pets' rule." It lets the resident know that exceptions can and must happen under the FHA, without specifically highlighting that their neighbors have a disability.



FAIR HOUSING: Applied Situations

Scenario 3:

While this has never happened during my time as a property manager, I've always wondered what would happen if people with disabilities had opposing requests for reasonable accommodations. For example, say someone with a medically verifiable allergy to cats moves in next door to a resident with a medically verified need for an emotional support cat. What would I do? Who gets the reasonable accommodation?

If there are conflicting requests, it is your responsibility to try and satisfy both accommodations. Each individual has a unique disability and goes through their own process of completing a reasonable accommodation request. Therefore, each request should be separately acknowledged and properly accommodated. In most situations, it is possible to accommodate both individuals, especially if you get creative. For example, one resident may need to move to a different floor or part of the building in this scenario.



FAIR HOUSING: Applied Situations

Scenario 4:

We recently had a new condo-owner move into our property after living in an apartment complex for years. When they submitted a request for a reasonable accommodation, they submitted verification of their disability and of their need for the accommodation. However, our condo association denied the request because they didn't provide consent for us to discuss their disability with their healthcare provider. They expressed frustration because it wasn't mandatory when they made the same request with identical documentation at their last apartment building and said it seems highly intrusive. How are we supposed to vet their request if we don't have this information?

Medical records or detailed information about the nature of a disability is not necessary to vet a reasonable accommodation or modification request. If the disability is obvious and the need for the requested accommodation is known, then you should not request any additional information. If the disability is not obvious, however, then verification of the presence of a disability and a description of the nexus between the accommodation and the symptoms or effects of a disability is all the information they need to provide you. It's important to keep in mind that a healthcare provider is not the only entity that can verify a person's disability. Social workers, non-medical service agencies, or peer support groups may also provide verification. In most instances, you will not need to discuss a disability with a healthcare provider in order to grant approval for a reasonable accommodation.



FAIR HOUSING: Applied Situations

Scenario 5:

A resident requested to have a reserved parking spot closest to the building's side entrance because it is the entrance nearest her apartment. We rejected the request and told her that she should use the designated accessible parking spaces near the main entrance because we don't offer reserved parking and the accessible spots are almost always empty. She has complained, stating that this resolution won't work for her because she uses a cane and needs to park as close as possible to her residence in order to limit how many steps she takes. She also said that she doesn't want to use an accessible parking space when she doesn't need the access aisle, whereas someone else might, like wheelchair users. What should we do?

The process of applying for a reasonable accommodation should be interactive. Communication between you and the resident is important in creating a solution that is satisfactory to both parties. In this situation, there is a clear link between the defined disability and the reasonable accommodation request. Since her disability is obvious and the need for her requested accommodation is known, it is your responsibility to approve the accommodation or offer an alternative that would be satisfactory to you and the resident. Remember, a reasonable accommodation request can only be denied if it imposes an undue financial or administrative burden on the housing provider, requires a fundamental alteration to their services, presents a direct threat to the health or safety of others, or results in serious damage to the property. That does not seem to be the case in this situation. The resident is not requesting that an accessible parking space be installed nearer the second entrance, which could result in expenses to the property; instead, they are only requesting a reserved standard parking space nearest the side entrance. Since the alternative accommodation was not acceptable to the resident, you should reevaluate their request and engage in additional interactions with the tenant as needed to arrive at a resolution that meets both of your needs.



FAIR HOUSING: Applied Situations

Scenario 6:

How should I respond to reasonable accommodation requests that seem absurd? What if a tenant asks me to do their grocery shopping for them because their caregiver was on vacation? What if someone demands I kick out the current residents of a ground floor unit so they wouldn't have to use the stairs?

An accommodation request can be deemed unreasonable if it imposes financial or administrative burden on you or fundamentally alters your operations. As a property manager, grocery shopping does not fall under your everyday responsibilities. If an individual asks you to do their grocery shopping, it is likely safe to deny that request because it would fundamentally alter the nature of your operations (but feel free to undertake the request as an exercise in generosity!). Also, a reasonable accommodation does not require you to displace current residents. If a unit is not available on the ground floor, you do not need to transfer the current ground floor residents to a different unit. However, in order to engage in the interactive process, you should provide a reasonable alternative, such as putting the person with a disability on a waiting list for the first available ground floor unit.



FAIR HOUSING: Applied Situations

Scenario 7:

A new resident is claiming their pitbull is an emotional support animal now that our local government has established a breed ban on these and other dog breeds. They have never previously mentioned having a disability. They also do not have any paperwork certifying that their pitbull is a registered emotional support animal or that it has been trained as such. I suspect that they're trying to bend the rules so they can keep their pet. Can I deny their request since pit-bulls are no longer allowed in our county, they didn't provide the certification records I've requested, and the timing of their request is highly suspect?

It is important to remember that a person with a disability can make a reasonable accommodation or modification request at any point in their tenancy – from application through move out or even eviction. People with disabilities are not required to disclose that they have one (or several) disabilities unless they are making a reasonable accommodation or modification request. Since this resident would like for the building to officially recognize that their pitbull is an assistance animal, they are now providing the necessary documentation regarding their disability and the need for their pitbull to reside in their unit with them.

Under the Fair Housing Act, you cannot prevent residents from having emotional support animals or other assistance animals because of a local breed ban. Breed, size, and weight limitations do not apply to assistance or service animals. In the rare circumstance where the property is unable to secure an underlying insurance policy or may lose insurance coverage due to the presence of certain animal breeds on site, then the housing provider should make this known to the resident and begin an interactive process to find a mutually satisfactory resolution to their request. Assistance animals are disability-related accommodations and fall outside the scope of restrictive “pet” rules, regulations, and laws. Since you should not deny a reasonable accommodation request based on breed bans or a no pet policy, their pitbull should be allowed to stay on property if the disability and the disability-related need for the animal has been verified.

Finally, there is no official verification process or registry for emotional support animals. Emotional support animals provide comfort and support, but do not have to have specific training related to a disability. From what you've shared, it appears like the resident has fully complied with the reasonable accommodation procedure outlined in the FHA, and you, as the housing provider, should grant their reasonable accommodation request.



FAIR HOUSING: Applied Situations

Scenario 8:

A resident has filed a complaint with our local fair housing office, claiming that I refused to approve their reasonable accommodation request. That is simply untrue. When the resident submitted the request, I provided them our building's request forms and stated they had to submit those forms before I could consider their request. How could I have denied their request when they never complied with our policies and procedures for submitting a reasonable accommodation request?

While you may request that applicants and residents follow a specific process for requesting a reasonable accommodation or modification, you cannot require them to do so. Reasonable accommodation and modification requests can be made verbally or in writing. If a disability is not obvious, the individual's request must have 3 parts: (i) verification of the presence of a disability, (ii) description of the needed accommodation, and (iii) the relationship between the symptoms or effects of their disability and the requested accommodation. As long as this information is provided, you should evaluate the request, even if the individual with a disability did not follow your formal procedures.



FAIR HOUSING: Applied Situations

Scenario 9:

Our homeowners' association requires we clear our sidewalks of snow within 24 hours. We have a member who is unable to shovel the sidewalk, but his relative is willing to come by and shovel it for him. He requested a reasonable accommodation to the policy, asking that he be allowed 48 hours so that his relative is able to come after the roads have been cleared. The homeowners' association wants to deny the request so that the rules are applied evenly to everyone, but I'm not so sure what we should do. How should we respond to this request?

A reasonable accommodation is a change in rules or policies that allows a person with a disability to enjoy their home to the same extent as someone without a disability. A reasonable accommodation should never be viewed as special treatment or an unfair advantage. It appears that the homeowner's association is not doubting his inability to shovel his sidewalk independently, and his request provides an alternative that would allow him to comply with the overall policy without imposing a financial or administrative burden on you or would fundamentally alter the nature of your operations. Waiting a slightly longer period of time to have the sidewalks cleared is likely a reasonable request, so our advice would be that the homeowners' association approve it.