

Making Housing Accessible Through Accommodations and Modifications



Participant Manual



(888) 341-7781 (V/TTY) - Technical Guidance
www.FairHousingFIRST.org

2005-2006



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for
U.S. Dept. of Housing and Urban Development
C-OPC-22667
October 2005**

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Participant Manual
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Using the Participant Manual

Manual Layout and Content

As a participant in the course, the Participant Manual serves as your focal point. It follows the sequence of the class activities and discussion topics. It includes:

- All slides presented by the instructor
- Space for you to take notes
- Key points not contained on slides
- Detailed instructions for exercises
- Resources to supplement the curriculum

Symbols Used

The following symbols are used to indicate various features of the Participant Manual.



Indicates where specific legal cases related to the topic are presented.



Welcome to Fair Housing Accessibility FIRST, a training and technical guidance program created by the U.S. Department of Housing and Urban Development (HUD).

This session is one hour and a half in length.

Fair Housing Accessibility

FIRST

- ☐ Offers training and technical guidance on accessibility requirements of the Fair Housing Act
- ☐ Increases the supply of accessible multifamily housing units nationwide

Notes:

Fair Housing Accessibility **FIRST**



Gathered opinions and ideas from over 850 stakeholders

Stakeholder Groups

- Builders
- Disability rights advocates
- Government officials
- Trade associations
- Property managers
- Media
- Code officials
- Enforcement agencies

Notes:

Fair Housing Accessibility **FIRST**

- ☐ Comprehensive training curriculum
- ☐ Technical guidance via a website and toll free hotline
 - 1-888-341-7781 v/TTY
 - www.FairHousingFIRST.org

Notes:

Making Housing Accessible Through Accommodations and Modifications - Introduction

During this training session, we will discuss:

- The basic concepts of reasonable accommodations and modifications under the Fair Housing Act
- Accommodations and modifications under other federal disability rights laws
- Who is a person with a disability
- The requirements for accommodations and modifications
- Typical accommodations
- Typical modifications

Notes:

Making Housing Accessible Through Accommodations and Modifications - Introduction

At the end of the session, you will:

- Understand and apply the basic rules for accommodations and modifications
- Recognize whether or not a particular request is an accommodation or a modification
- Describe the basic rules to apply if a request is for an accommodation or for a modification
- Recognize typical requests for accommodations and modifications

Notes:

Making Housing Accessible Through Accommodations and Modifications - Introduction

At the end of the session, you will:

- Understand some of the technical criteria that could be used as resources in making typical modifications
- Know more about strategies that can be used to get more information about modification techniques

Notes:

Name four personal learning goals for this session.

Goals should be:

Specific
Measurable
Achievable
Relevant
Timely

Example: I will learn how the Fair Housing Act defines a person with a disability.

Making Housing Accessible Through Accommodations and Modifications - Introduction

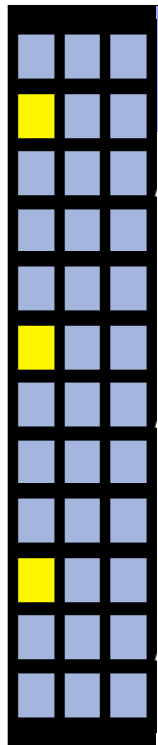
- ☐ Small group exercises will be conducted to reinforce key concepts you have learned
- ☐ You are encouraged to ask questions throughout the training session
- ☐ A questionnaire will be distributed to obtain your feedback on training content, delivery, and materials



Notes:

Who is in your small group?

What are their occupations?

	Making Housing Accessible Through Accommodations and Modifications - Agenda
	<ul style="list-style-type: none">• Overview of the Fair Housing Act's Requirements• Basic Principles of Reasonable Accommodations and Reasonable Modifications• Meeting the Needs of Persons with Disabilities: Reasonable Accommodations• Meeting the Needs of Persons with Disabilities: Reasonable Modifications• Resources

Notes:

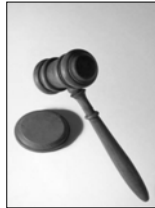
History of the Fair Housing Act

The Fair Housing Act was passed in **1968**

The Fair Housing Amendments Act, with new coverage of disability, was enacted in **1988**

Enforced by:

- The Department of Housing and Urban Development
- The Department of Justice
- State and local fair housing enforcement agencies
- Private lawsuits in federal and state courts



Notes:

Units Covered by the Design and Construction Requirements

The design and construction requirements apply to “covered multifamily dwellings” designed and constructed for first occupancy after March 13, 1991



Units Covered by the Fair Housing Act

The Fair Housing Act design and construction requirements apply to “covered multifamily dwellings” designed and constructed “for first occupancy” after March 13, 1991.

A building was not designed or constructed for first occupancy if:

- It was occupied on or before March 13, 1991
- If the last building permit or renewal of a building permit was issued on or before June 15, 1990

Buildings where the last building permit was issued on or before June 15, 1990 are not covered by the design and construction requirements. Even if the last building permit was issued after June 15, 1990, if the building was occupied on or before March 13, 1991, it is not covered. HUD adopted these dates to allow time for the requirements to be taken into account during the design and construction phase of new properties.

The “first occupancy” language in the statute has been defined in HUD’s Fair Housing Act regulations as “a building that has never before been used for any purpose.” This means buildings that are rehabilitated are not covered by the design and construction requirements even if rehabilitation occurs after March 13, 1991 and even if it is substantial rehabilitation.

Units Covered by the Design and Construction Requirements

“Covered multifamily dwellings” include:

- All dwelling units in buildings containing four or more units, with an elevator
- All ground floor units in buildings containing four or more units, without an elevator

Notes:

Scoping Parameters of the Design and Construction Requirements

What is Covered

- Housing in buildings with four or more units
- Constructed for first occupancy after March 13, 1991
- In elevator buildings, all units
- In buildings without an elevator, ground floor units

What is Not Covered

- Detached single family houses
- Duplexes or triplexes
- Multistory townhouses without elevators

Notes:

Fair Housing Act- Seven Design and Construction Requirements

1. Accessible building entrance on an accessible route
2. Accessible and usable public and common use areas
3. Usable doors
4. Accessible routes into and through covered unit
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
6. Reinforced walls in bathrooms for later installation of grab bars
7. Usable kitchens and bathrooms



Notes:

Fair Housing Act – Seven Design and Construction Requirements (continued)

1. The first is that all covered multifamily dwellings must have ***at least one building entrance on an accessible route*** unless it is impractical to do so because of the terrain or unusual characteristics of the site. Obviously, there is little point in having an accessible unit in buildings that people cannot enter.
 - An accessible route means a continuous, unobstructed path connecting accessible elements and spaces within a building or site that can be negotiated by a person with a disability who uses a wheelchair, and that is also safe for and usable by people with other disabilities.
 - An accessible entrance is a building entrance connected by an accessible route to public transit stops, accessible parking and passenger loading zones, or public streets and sidewalks.
2. The second requirement is that ***covered housing must have accessible and usable public and common-use areas***. Public and common-use areas cover all parts of the housing outside individual units. They include, for example: building-wide fire alarms, parking lots, storage areas, indoor and outdoor recreational areas, lobbies, mailrooms and mailboxes, and laundry areas.
3. The third requirement is that all ***doors that allow passage into and within all premises must be wide enough to allow passage by persons using wheelchairs***.
4. The fourth requirement is that ***there must be an accessible route into and through each covered unit***.
5. The fifth requirement is that ***light switches, electrical outlets, thermostats and other environmental controls must be in accessible locations***.
6. The sixth requirement is ***reinforcements in bathroom walls so that grab bars can be added when needed***. The law does not require installation of grab bars in bathrooms.
7. The seventh requirement is that ***kitchens and bathrooms must be usable*** – that is, designed and constructed so an individual in a wheelchair can maneuver in the space provided.

Fair Housing Act – Safe Harbors for Compliance

1. HUD Fair Housing Accessibility Guidelines and the Supplemental Notice
2. ANSI A117.1 (1986), used with the Fair Housing Act, HUD's regulations, and the Guidelines
3. CABO/ANSI A117.1 (1992) used with the Fair Housing Act, HUD's regulations, and the Guidelines
4. ICC/ANSI A117.1 (1998) used with the Fair Housing Act, HUD's regulations, and the Guidelines
5. The Fair Housing Act Design Manual (1998)
6. Code Requirements for Housing Accessibility 2000 (ICC/CRHA)
7. International Building Code 2000 with 2001 Supplement
8. International Building Code 2003, with one condition*

Fair Housing Act – Safe Harbors for Compliance

There are eight safe harbors for compliance with the Fair Housing Act. Compliance with any one of the eight will fulfill the Fair Housing Act's access requirements.

If a particular safe harbor is chosen for use in a particular property, housing must comply with all of the provisions of that safe harbor in order for there to be a safe harbor. So it is unwise to pick and choose among the provisions of different safe harbor standards.

These are the eight access standards that HUD has identified as safe harbors:

1. *The Fair Housing Act Accessibility Guidelines* (issued on March 6, 1991), and the Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines (issued June 28, 1994).
2. *ANSI A117.1 (1986)*, used with the Fair Housing Act, HUD's Fair Housing Act regulations, and the Guidelines.
3. *CABO/ANSI A117.1 (1992)*, used with the Fair Housing Act, HUD's Fair Housing Act regulations, and the Guidelines.
4. *ICC/ANSI A117.1 (1998)*, used with the Fair Housing Act, HUD's Fair Housing Act regulations, and the Guidelines.

**Fair Housing Act –
Safe Harbors for Compliance (continued)**

5. The Fair Housing Act Design Manual (1998)
6. Code Requirements for Housing Accessibility 2000 (CRHA) published by the International Code Council in October, 2000.
7. International Building Code 2000 (IBC), as amended by the IBC's 2001 Supplement to the International Codes.
8. International Building Code 2003(IBC), *with one condition**

* Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating that: "ICC interprets Section 1104.1, and specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.

It is important to note that the ANSI A117.1 standard contains only technical criteria, whereas the Fair Housing Act, the regulations and the Guidelines contain both scoping and technical criteria. Therefore, in using any of the ANSI standards it is necessary to also consult the Act, HUD's regulations, and the Guidelines.

Other means of providing access that provide an equal or greater degree of accessibility may also be used to comply with the Fair Housing Act's access requirements, but they are not a safe harbor.

This training relies on the provisions of the Fair Housing Act, the Guidelines and Supplemental Questions and Answers, ANSI A117.1 (1986) and the Fair Housing Act Design Manual for the guidance that it provides about compliance with the technical design and construction requirements in the Act.

Other Key Fair Housing Act Requirements

- ☐ Apply to all housing transactions and to all kinds of housing
- ☐ Apply regardless of when the housing was constructed
- ☐ Require accommodations and permission for modifications that meet the needs of people with disabilities



Other Fair Housing Act Requirements

The Fair Housing Act contains other requirements, beyond the design and construction requirements, to assure that people with disabilities are able to use and enjoy housing. These requirements apply to all forms of housing and to all housing-related transactions, regardless of when the property was built and regardless of whether the design and construction requirements apply.

Congress added two key requirements to the Fair Housing Act that only apply to people with disabilities. In doing this, Congress recognized that protecting housing rights for people with disabilities required providing additional protections to make sure that housing is available to and usable by people with disabilities.

The Act says that it is discrimination, and a violation of the law, to fail or refuse to make reasonable accommodations to meet the needs of people with disabilities, and that it is discrimination to fail or refuse to permit reasonable modifications to meet the needs of people with disabilities.

Reasonable Accommodation Requirements

- Reasonable accommodations are changes to usual policies, rules, practices, or services
 - That may be needed by a person with a disability
 - In order to benefit from housing
 - Because of the disability
- Reasonable accommodation requirements apply to builders, developers, property managers, homeowners associations, and others engaged in housing-related activities
- Reasonable accommodations are paid for by the entity providing housing or housing services

Making Reasonable Accommodations

A reasonable accommodation is a change to usual policies, procedures, or services that is needed by a person with a disability because they are disabled and because they need that change in order to benefit from the housing. 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.

Reasonable accommodations apply to rules, policies, practices, and services provided by any person in a housing-related setting. Builders, developers, property managers, property owners, architects, and many others are required to make reasonable accommodations. The obligation to make reasonable accommodations applies at any point in a housing transaction; its application does not depend on whether the design and construction requirements apply to the housing. Reasonable accommodation principles apply regardless of the type of housing, and they also apply to all types of housing-related activities, not just the built environment.

Reasonable accommodations under the Fair Housing Act are made and paid for by the housing provider or other entity providing the services or housing, not by the person with a disability.

Reasonable Modification Requirements

- Reasonable modifications are structural changes to housing
 - That may be needed by a person with a disability
 - In order to benefit from the housing
 - Because of the disability
- Reasonable modification requirements apply to builders, developers, property managers, homeowners associations and others engaged in housing related activities
- Reasonable modifications are paid for by the person with a disability, unless federal funding is involved.

Making Reasonable Modifications

A reasonable modification is a change to existing premises that is needed by a person with a disability who is, or who is going to, occupy the housing. Under the Fair Housing Act, reasonable modifications are made at the expense of the person requesting the modification. Modifications may be requested for individual units or for common use areas.

Builders, developers, property managers, architects and others have to permit reasonable modifications if they are needed for a person with a disability to benefit from housing.

Reasonable modification requirements are independent of the Fair Housing Act's design and construction requirements. Reasonable modifications may be requested in older properties built before 1991, in single family as well as multifamily housing, in manufactured housing and in properties that are covered by design and construction requirements. If there is federal funding involved, other laws may require that modifications be made and paid for by the housing provider, not by the person with the disability.

Accommodations and Modifications: What are the Differences?

SAME:

- Must be needed by a person with a disability because of the disability
- Must be reasonable
- Apply to builders, developers and architects as well as property managers

DIFFERENT:

- Reasonable accommodations apply to policies, rules, procedures and services while reasonable modifications apply to structural changes
- The entity providing housing pays for accommodation; the person with a disability pays for modification

Accommodations and Modifications— How are they similar? How are they different?

Reasonable accommodations and modifications are both required by the Fair Housing Act as different ways to provide people with disabilities with access to housing and the services and policies that relate to housing.

Both accommodations and modifications must be needed by a person with a disability because of the disability. They must be needed for the person to use and enjoy the housing. Both must be reasonable. Builders, developers, architects, property managers, municipalities, and other entities involved in the provision of residential housing and lending may be required to make accommodations and permit modifications.

The obligation to make reasonable accommodations and permit reasonable modifications does not apply in two situations. The first is for owners of single family housing who own three or fewer single family houses at one time, who sell or rent without the services of a real estate agent or broker and without discriminatory advertising or statements. The second exemption is for housing that contains living quarters for four or fewer households where the owner of the property occupies one of the units.

**Accommodations and Modifications—
How are they similar? How are they different?**

Accommodations and modifications are different in two fundamental ways: First, accommodations address adjustments in rules, policies, procedures and services, while modifications are structural changes. Second, for accommodations, the entity providing housing or housing-related services must provide and pay for accommodations. Modifications, on the other hand, are the responsibility of the person with a disability, or a person associated with them, rather than the housing provider.

What are Accommodations and Modifications?

Adding a ramp at the front door of a newly constructed single family house?

Meeting a disabled applicant at an accessible location?

Providing an accessible parking space?

Widening a bathroom door in a single family house?

Verbally describing a plan to a blind person?

Communicating in writing during construction with a deaf purchaser?

Providing grab bars in a newly constructed condominium?

Changing your usual policies to permit a service animal to go on a house inspection?

Notes:

Other Laws Also Address Accommodations and Modifications

Other laws require similar kinds of accommodations and modifications:

- Section 504 of the 1973 Rehabilitation Act
- Americans with Disabilities Act, Title II
- Americans with Disabilities Act, Title III



Other Laws Also Address Accommodations and Modifications

The Fair Housing Act is not the only federal disability rights law that applies to housing-related activities and meeting the needs of people with disabilities. In particular, three other federal disability rights laws have provisions that require entities covered by them to make accommodations.

The first two laws may be considered together: Section 504 of the 1973 Rehabilitation Act and Title II of the Americans with Disabilities Act. Section 504 applies to recipients of federal assistance in the operation of their programs or activities. Recipients include private non-profit groups that receive funding as well as states, cities, counties and others. For housing that may include funding through public housing authorities, HOPE VI, HOME, and state or city funding if the state or city receives federal financial assistance.

Title II of the ADA applies to housing that is operated by a governmental unit, including states, cities or counties.

Under BOTH of these laws, the concepts of reasonable accommodations and reasonable modifications are merged into one obligation: if a person with a disability needs either an adjustment to policies, rules or services OR a structural modification, the housing-related entity must provide it AND pay for it. Under these laws, either a modification or an accommodation is called an accommodation.

Other Laws (continued)

The principle behind this interpretation is simple: If federal money or a state or local government is providing the housing, the burden is on the government entity to provide what is needed for a person with a disability to benefit from the housing. In addition, much of the housing that is funded by, or operated by, the government serves low and moderate income people, the people who are least likely to be able to pay for accessibility themselves.

The remaining federal law, the Americans with Disabilities Act, or ADA, Title III, applies to places of public accommodation—that is, places that serve the general public. For those places, such as locations where sales operations take place, the ADA requires that adjustments to policies, practices and procedures be made to meet the needs of people with disabilities. Title III refers to this process as a reasonable modification.

Title III also requires the removal of structural barriers to people with disabilities if it is readily achievable. If barrier removal is not readily achievable, it requires that goods or services be provided through alternative methods. While a detailed discussion of Title III is beyond the scope of this training, sales or business offices and other places that serve the public should have barriers removed, regardless of a specific request from an individual, if it is readily achievable. If it is not readily achievable, services should be offered in other ways that reach people with disabilities.

	Making Housing Accessible Through Accommodations and Modifications - Agenda
	• Overview of the Fair Housing Act's Requirements
	• Basic Principles of Reasonable Accommodations and Modifications
	• Meeting the Needs of People with Disabilities: Reasonable Accommodations
	• Meeting the Needs of People with Disabilities: Reasonable Modifications
	• Resources

Notes:

Meeting Disability-Related Needs

- The Fair Housing Act's obligation to make reasonable accommodations and modifications is a legal obligation
- The context of the obligation is to meet the disability-related needs of customers so that they can have an equal opportunity to use and enjoy housing



Meeting Disability-Related Needs

When Congress was considering the 1988 amendments to the Fair Housing Act and the reasonable accommodation and modification provisions, it made it clear that the reason the reasonable accommodation and modification requirements were included in the law was to ensure that the disability-related needs of customers were met. The Fair Housing Act is a broad mandate to eliminate discrimination against people with disabilities and equalize housing opportunities for them. These provisions go beyond simple equal treatment and recognize that for some people with disabilities, equal treatment does not ensure equal opportunity.

The legislative history of the 1988 amendments to the Act says:

The concept of "reasonable accommodation" has a long history in regulations and case law dealing with discrimination on the basis of handicap. A discriminatory rule, policy, practice or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. This section would require that changes be made to such traditional practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.

H.R. Rep. No. 10-711, 100th Cong., 2d Sess., 25, reprinted in 1988 U.S.C.C.A.N. 2173, 2186.

Basic Principles for Accommodations And Modifications: Who Is Protected?

- Reasonable accommodations and modifications may benefit
 - A buyer or renter with a disability
 - A person with a disability who will live in the unit
 - A person who is associated with a person with a disability



Basic Principles for Accommodations and Modifications: Who is Protected?

There are some basic principles that apply to both reasonable accommodations and reasonable modifications.

First, the right to seek a reasonable accommodation or modification belongs to a variety of people, including people who are not themselves disabled. The Fair Housing Act protects not only buyers or renters who are disabled themselves, but also households that have a person with a disability as a member of the household, such as a child, and people who are not disabled but are associated with people who are disabled.

The Fair Housing Act protects against discrimination because of the disability of a buyer or renter, a person residing in or intending to reside in a unit, and any person associated with a person with a disability. 42 U.S.C. 3604(f)(2).

Who Is Disabled?

- The Fair Housing Act defines disability
 - As having a physical or mental impairment that substantially limits one or more major life activities
 - As having a history of such an impairment
 - As being regarded as having such an impairment
- If the disability is obvious it need not be documented
- If the disability is not obvious,
 - Supporting documentation may be required from a third party

Who is Disabled?

Another important question is how to identify whether someone has a disability within the meaning of the Act.

The legal definitions in the Act address three different types of situations. (We use the term “disability” in this training rather than “handicap,” because disability is the preferred term.)

First, a person who has a physical or mental impairment that substantially limits one or more major life activities is considered to be disabled. A “major life activity” includes caring for one’s self, walking, seeing, breathing, speaking and other kinds of activities. The limitation on life’s major activities cannot be insubstantial; it must be significant.

Who is Disabled? (continued)

A person who has a history of being disabled is covered even if they are currently not disabled.

Finally, a person who is regarded as being disabled is covered, even if they are not in fact disabled. This category includes people who are treated as if they are disabled whether they are or are not disabled and people who are disabled only because of the attitudes of other people.

How a person looks does not necessarily determine whether someone is disabled or not.



One court pointed out that “[D]iscrimination against the handicapped often begins with the thought that she looks just like me -- that she's normal -- when in fact the handicapped person is in some significant respect different. Prejudice, it bears recalling, includes not just mistreating another because of the difference of her outward appearance but also assuming others are the same because of their appearance, when they are not.” Shapiro v. Cadman Towers, 844 F. Supp.116 (2nd Cir. 1995).

It is not permitted to ask about a person’s disability except in limited circumstances. Questions may not be asked about the type of disability, the diagnosis, medical history or records, or whether someone does or does not take medications. There are three situations where questions can be asked:

- Applicants for housing designed for people with disabilities may be asked if they meet the qualifications. For example, if there are special units designed for persons with disabilities, applicants may be asked if they have a disability that causes them to need an accessible unit.
- Applicants for housing that is set up under a federal statute that sets disability-based qualifications for admission may be asked if they qualify for that housing. For example, some HUD housing requires that persons have a particular type of disability to live there—the HOPWA program is limited to people with AIDS.

Who is Disabled? (continued)

HUD and the Department of Justice have said that if a person's disability is obvious, or otherwise known to the provider, then the provider may not request any additional information about the requester's disability. If the disability is not apparent, a housing provider may request information to verify that the person meets the Act's definition of disability.

Supporting documents when a disability is not obvious may include:

- A housing provider may accept a statement by the disabled person him or herself, but is not required to do so if the disability is not apparent
- A statement by a doctor or other medical professional
- A statement from a peer support group
- A statement from a social service agency or counselor
- A statement from a case manager
- Documents showing receipt of SSI disability or SSDI disability
- Any information from a reliable third party that is in a position to know about the person's 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. Imposing expensive or burdensome requirements to "prove" either a disability or a need for an accommodation may risk a fair housing complaint.

Information about a person's disability gained in this way must be kept confidential except to the extent that the information is needed to make a decision related to the person's disability.

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Notes:

Reasonable Accommodations



Reasonable Accommodations

Although reasonable accommodation requirements come into play whenever there is a disability-related reason for an adjustment to any policy or rule, this training focuses on accommodations that arise in the context of building and construction activities.

The Department of Housing and Urban Development and the Department of Justice have issued a "Joint Statement" dealing with general reasonable accommodation principles. For more information about the general principles and specific application of the reasonable accommodation obligation in other housing contexts, review the entire Joint Statement.

Denials of Accommodation

Requests for accommodations:

- May not be required in a particular format
- Are granted if they are practical and feasible
- May be denied if they:
 - Impose undue financial and administrative hardship
 - Constitute a fundamental alteration of the program

Reasonable Accommodations (continued)

A request for a reasonable accommodation cannot be required to be put on a particular form or in a particular format. However, to be treated as a request for a reasonable accommodation, the person to whom the request is made must be able to understand that the accommodation is sought by or on behalf of someone with a disability and that there is a disability-related need for the accommodation.

Accommodations are considered to be reasonable if they are practical and feasible. Not every requested accommodation has to be approved. An accommodation does not have to be approved if it is unreasonable, i.e. if it would:

- Impose an undue financial and administrative burden
- OR
- Constitute a fundamental alteration of the program

Opening a Dialogue

“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.” Jankowski Lee & Associates v. Cisneros

Notes:

Reasonable Accommodation Tips

Dos:

- Do respond with reasonable speed
- Do listen to what is being requested and why
- Do respond to the accommodation that is requested
- Do engage in an interactive process if necessary

Don'ts:

- Don't impose your own ideas about an accommodation; respond to what is requested
- Don't impose conditions or fees on making the accommodation

Notes:

Reasonable Accommodation Checklist

- ✓ Accommodation is for a person with a disability
 - Documents or information confirming disability may be requested when the disability is not obvious
- ✓ Accommodation may be needed for the person to benefit from the housing
 - Documents or information confirming the need for an accommodation may be requested when the need for accommodation is not obvious
- ✓ Accommodation is reasonable
- ✓ Accommodation is approved
- ✓ Approval is not delayed unreasonably or conditioned

Notes:

Reasonable Accommodation Checklist

- ✓ If an accommodation is QUESTIONED, an interactive process occurs
- ✓ If an accommodation is DENIED, it is because the accommodation would be an undue financial and administrative hardship or a fundamental alteration of the program
- ✓ If an accommodation is DENIED, an interactive process occurs to identify alternatives

Reasonable Accommodations (continued)

If an accommodation is approved in a timely fashion, the process is completed. But if the accommodation is questioned or denied, there are more steps:

- If the accommodation is QUESTIONED, an interactive process of discussion between the housing provider and the person with a disability occurs to explore whatever is at issue. Sometimes the discussion is about whether the accommodation is related to the disability; sometimes it is about the burdens of making a particular accommodation and the possibility of other less burdensome alternatives.
- If an accommodation is DENIED, it must be because the accommodation would be an undue financial and administrative hardship or a fundamental alteration of the program. Even if the accommodation is denied, there still must be an interactive process to identify whether there are alternative ways to meet the needs of the disabled person with less burden on the housing provider.



Typical Accommodations in the Building Context

Without question, some of the most common reasonable accommodation questions relate to parking. One of the issues raised most frequently in enforcement is the failure to provide a reasonable accommodation relating to parking.

When parking is provided for residents and visitors, parking options for people with disabilities must provide the same range of options as provided for other residents.

Parking Accommodations

Reasonable accommodations in parking include:

- Providing reserved or designated parking spaces
- Waiving first come, first served parking policy
- Waiving fee charged for parking near building
- Providing accessible parking spaces
- Providing van accessible parking spaces
- Providing striping, signage, curb cuts or ramps to access accessible parking spaces



Notes:



Typical Accommodations in the Building Context (continued)

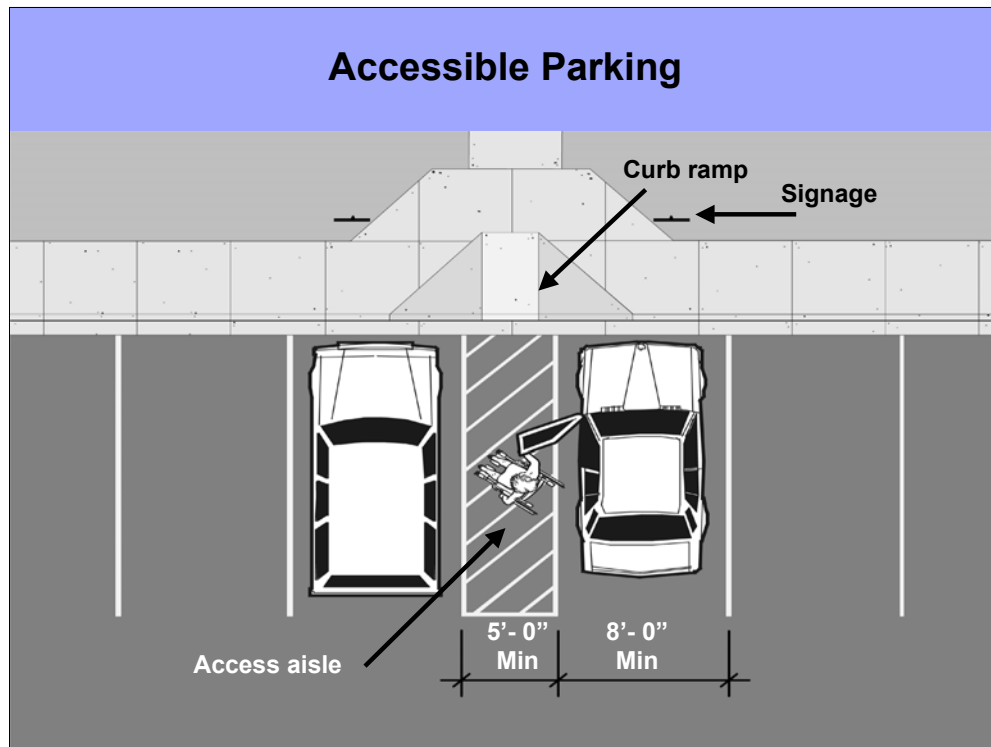
Ancillary costs borne by the housing provider in providing parking may include:

- The cost of re-striping the parking lot to indicate an accessible parking space or an access aisle that provides access to the parking space
- The cost of signage for an accessible or designated parking space
- The provision of a ramp or curb cut to provide access to the sidewalk, where the ramp or curb cut is necessary to give the person with a disability the same opportunity to have access to the property's amenities as is provided for non-disabled people



Typical Accommodations in the Building Context (continued)

Two common questions in making reasonable accommodations by providing reserved or accessible parking spaces for people with disabilities are (1) how many? and (2) what should the dimensions be?



Typical Accommodations in the Building Context (continued)

There is no single mandated standard for a voluntarily supplied accessible parking space. Each request may include different features or encompass different requirements.

Here are some suggestions to consider in providing accessible parking. These standards are based on commonly applied accessibility requirements found in the American National Standards Institute (ANSI) standards and the ADA Accessibility Guidelines (ADAAG).

Accessible parking spaces should be located on level locations near building entrances. An accessible parking space should be at least 8 feet wide. The access aisle beside it should be at least 5 feet wide. Two handicapped parking spaces may share the same access aisle. There should be a permanent sign containing the universal accessibility symbol at each space. The sign should be placed so it is not obscured by a parked car. The universal symbol of access should be painted on the pavement in the parking space.

A space that is designed for van parking should be at least 8 feet wide and should have an access aisle that is also at least 8 feet wide.

Other Typical Accommodations

What are some other kinds of accommodations?

- Plan revisions for accessibility
- Providing materials in alternative formats
- Snow and ice removal
- What else?



Typical Accommodations in the Building Context (continued)

Besides parking, other requests for accommodations or modifications may arise in the new construction context, such as in the plan or pre-construction phase.

If a person with a disability is purchasing a unit that has not yet been constructed and wants the design plans for the unit changed to provide certain features of accessibility that the person with a disability may need, and if a builder has a policy of not making changes to design plans, the builder is required to change its policy of not allowing design changes as a reasonable accommodation to the purchaser's disability.

	Making Housing Accessible Through Accommodations and Modifications - Agenda
	• Overview of the Fair Housing Act's Requirements
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	• Meeting the Needs of People with Disabilities: Reasonable Modifications
	• Resources

Notes:

Reasonable Modifications



Reasonable Modifications

There are several key points to the reasonable modification provisions in the Fair Housing Act.

The first is that a modification is made at the expense of the person with a disability. Unlike reasonable accommodations, where costs related to the accommodation are borne by the housing provider, modifications are paid for by the person with a disability.

Second, a reasonable modification must be permitted to “existing premises.” Existing premises include both individual units and public and common use areas.

As we have already discussed, if premises do not exist, because they are merely at the design or construction phase, changes to plans or during construction are reasonable accommodations, not modifications.

Reasonable Modifications (continued)

As with accommodations, modification requests will be assessed by courts to determine whether or not they are “reasonable.” Unlike reasonable accommodations, however, reasonable modifications may not be rejected because they are an undue financial and administrative hardship or because they present a fundamental alteration of the program since the person with a disability pays the costs for the modification.

Rather, a modification that is requested may be required to be performed in a “workmanlike” fashion, and all applicable permits may be required. If these standards are met, the modification must be allowed. It is permissible to request a description of the requested modification which may be either oral or written. A landlord may require the description before approving the modification and before the changes are made.

Permission for a modification may not be conditioned on:

- Payment for liability insurance
- Compliance with aesthetic standards
- A requirement that a particular contractor be used
- A requirement that a particular style of construction be used for the modification
- A requirement that a particular accessibility standard be used

Reasonable Modifications



Reasonable Modifications (continued)

There are additional requirements for modifications to rental housing.

If a tenant is making modifications to the inside of a unit that are approved by the landlord, the landlord may condition approval on an agreement to restore the unit to its original condition by removing the modifications when the tenant leaves. Restoration may only be required when it is reasonable to do so. The request to restore the unit to its original condition only affects those modifications that could interfere with another tenant's ability to use the unit.

Reasonable Modifications (continued)

If a particular modification on the inside of a rental housing unit is to be restored, the housing provider may, but need not, condition approval for the modification on an agreement to restore the unit when it is vacated, and may require the deposit of a sum of money to cover the cost of the restoration. The restoration requirement does not cover ordinary wear and tear. In one case, the landlord sought to impose a charge on a wheelchair user for wear and tear, claiming that the wear and tear on a unit occupied by a wheelchair user was higher, because of damage to walls and rugs by the wheelchair. The charge was not permitted; usual wear and tear is related to the wear and tear that is predictable based on who is living in the apartment; charging a higher fee to a person in a wheelchair because of the wear and tear that is predictable because a person in a wheelchair is living in the unit is unlawful.

Setting up an escrow account to cover restoration is not always required. HUD's reasonable modification regulations call for housing providers to make a case-by-case assessment about whether the escrow account should be set up in advance, considering issues like the tenant's credit history, ability to repay upon departure, the length of the lease and other similar factors. A landlord may not require that all of the costs of restoration be paid up front, so a tenant may make deposits to cover the costs of restoration over time.

If the money is assessed, it goes into an escrow account that is separate from a security deposit account. Any interest on this account goes to the tenant. If the landlord decides not to have the unit restored, the funds in the account must immediately be returned to the tenant.

Restoration of the property to the original condition is not required when modifications have been made to public or common use areas. A fee may not be charged, and an escrow account may not be established for restoring these modifications.

Reasonable Modifications in Review

Reasonable modifications:

- Are made to existing premises whether for sale or rental
- Must be permitted if they are:
 - Done in a workmanlike manner
 - All necessary permits are sought
- For the interior of rental units, restoration may be required, but wear and tear is excepted
- For the interior of rental units, if restoration is required, the reasonable costs of restoration may also be required and may be escrowed
- Restoration and costs of restoration may NOT be required for public and common use area modifications

Notes:

Modification Examples

Congress provided some examples of reasonable modifications:

- Flashing light attached to doorbell
- Replacement of door knobs with lever hardware
- Installation of fold-back hinges on a door
- Installation of reinforcements in a bathroom wall, if the design and construction provisions did not already require them
- Construction of a ramp
- Installing a lower “peephole” in a door



Notes:

Resources About Modifications



Resources About Modifications

There is no one resource for use in determining the design of modifications. Modifications cover many different areas of construction, from a variety of adjustments on the interior of individual units, to modifications in playgrounds, golf courses, boating areas and—in fact—to all of the kinds of things any resident of a property might use in the course of occupancy.

It's worth remembering that reasonable modifications are those adjustments that may be necessary for individuals to use and enjoy their home. Modifications need not meet any particular code or standard; as we have already discussed, they merely need to be constructed in a workmanlike fashion, with all necessary building permits acquired. Modifications that meet the needs of individuals may vary widely. For this reason, no single standard can be recommended for any modification because the first priority must be to meet the individual's disability-based needs. Therefore, the technical requirements that are suggested in this training are provided to help builders and others understand some of the reasonable technical standards that may be considered in making changes. Using these standards is not mandated.

Typical Modifications

- Accessible entrance at a unit entrance
 - Key issues include:
 - Accessible path
 - Landing
 - Step and threshold at doorway
 - Width of door entrance
- Accessible route to the entrance



Typical Modification Issues

One of the most frequent requests for modifications relates to making an entrance to a unit accessible. This issue would, of course, arise only about entrances that are not covered by the Fair Housing Act's design and construction requirements, since those requirements already cover the primary entrance of covered dwelling units.

Entrances where modifications may be needed include entrances to multifamily housing built before the Act's design and construction requirements went into effect, entrances to single family houses, secondary entrances to covered units, and entrances to multistory townhouses.

Key issues about making an entrance accessible include:

- Providing an accessible path to the entrance
- Providing an accessible landing outside the entrance door
- Correcting step and threshold heights at a doorway
- Providing a door that is wide enough

Typical Modification Issues (continued)

Key issues that should be addressed on an accessible path to the entrance of a unit include the slope of the path, its width, and its overall design.

- An accessible path should have a slope that does not exceed 1:20 (for every one inch of rise, there must be at least 20 inches of run, or length). So a rise of 4 inches requires 80 inches of run, or a path at least 6 2/3 feet long. Paths in areas with heavy snow or ice need to be more gradual.
- An accessible route should be stable, firm, and slip resistant. Dirt, gravel, mulch or grass should not be used on an accessible route.
- If the slope exceeds 1:20, walks must be designed as ramps. Ramps may not have slopes that are steeper than 1:12. Standards for ramps require railings on both sides and edge protection to prevent someone from falling off the edge of the ramp. Ramps have some form of protection at their edges, and they have flat landings at the top and bottom of the ramp, as well as every 30 feet if the ramp is a long one. Ramp design may include switchbacks or other innovative designs to fit into landscaping and building design.
- An accessible path should be at least 36" wide; cross slopes should not exceed 1:50. That means that for every 1/4 inch of rise, there must be at least 12 inches of run.
- Permanent ramps may be made of wood or masonry. Temporary ramps may be made of metal and come in many styles that make them portable and easy to install. Personal needs of individuals with disabilities will often dictate the choice of ramp style and design. A housing provider may not dictate use of a portable ramp instead of a more permanent one, or vice versa.
- An accessible path should not have overhead objects that protrude into the path of travel.

Unit Entrance

- Entrance landing
- Threshold/step at door
- Width of door
- Door hardware



Typical Modification Issues (continued)

When an accessible path reaches a doorway, there should be a flat landing or stoop outside the door which permits enough maneuvering space for someone with a disability to get to the door and open it without backing down a ramp or walk, to move around the door and enter it safely, and to close the door from the inside and the outside. The amount of space required will differ based on the way the door opens and closes and whether the door is approached from the front or from the side. See, for example, the ADAAG standards, figure 25. See also the Fair Housing Act Design Manual, page 3.4.

A threshold and a step at an entrance door may present a barrier. Sloped thresholds are practical for vertical drops of 2 inches or less. Where small steps occur at entrance doors, threshold extensions may be added to the existing thresholds. These extensions slope down to the existing landing. Extensions that are installed where the rise is more than 1/2" total should be sloped 1:12 or less. If the step is too high—for example if it exceeds 1"- 2" in height—consideration should be given, for safety reasons, to raising the level of the entrance landing to a height that could accommodate a safe and gentle sloped transition into the unit.

Typical Modification Issues (continued)

Entrance doors may provide a clear opening of 32 inches or more to permit access, measured with the door open at 90 degrees and measured from the face of the door to the door jam.

Door handles may be mounted at different heights and include latches that are operable without grasping or twisting; lever hardware is commonly used.

Modifications in Exterior Common Use Areas

- Gates and latches
- Swimming pool access
- Paths to beaches and recreational areas
- Playgrounds



Typical Modification Issues (continued)

Often gates to common use areas are not usable by people with disabilities, so they can't get to swimming pools, tennis courts, enclosed dumpsters, playgrounds and other gated areas.

Common standards for gate latches include placing them so that their operable parts are no higher than 48 inches above the ground level, although some standards allow the higher height of 54 inches above the ground level at gates to swimming pools. Latches should be operable with one hand and not require grasping, pinching or twisting to operate. Clear floor space should adjoin the gate area to permit the gate to be opened and the person with the disability to get to the gate, open it, enter the gate, and pull it closed.

Access to swimming pools includes the ability to enter and use the pool deck area and the ability to enter and use the pool. Access to the pool deck should be via an accessible path and an accessible gate. Pool entrance equipment includes ramps, permanent and portable lifts, and platforms. New ADAAG standards for swimming pool access are found at <http://www.access-board.gov/recreation/guides/pools.htm>.

Typical Modification Issues (continued)

Beach and boating areas, parks, and other recreational areas may require modifications to provide access. New ADAAG standards address accessible routes in challenging settings, such as beach and dock access, at boat slips and at boarding piers. They are found at <http://www.access-board.gov/recreation/final.htm>.

Proposed standards for golf courses and miniature golf courses have also been published at <http://www.access-board.gov/recreation/guides/golf.htm> and <http://www.access-board.gov/recreation/guides/min-golf.htm>. The new ABA/ADA Accessibility Guidelines also include specifications for these facilities. The Guidelines can be found at <http://www.access-board.gov/ada-aba/summary.htm>.

Final standards for accessible playgrounds have been published by the Access Board, and there is a guide as well as regulations that establish standards for play areas at <http://www.access-board.gov/play/status.htm>.

Modifications in Interior Common Use Areas

- Rental or sales office access
- Elevators



Typical Modification Issues

Rental and sales offices, as we discussed earlier, are areas that serve the general public. Changes at offices where sales or rental operations and the public is served will be covered not by the Fair Housing Act's reasonable modification requirements, but by the Americans with Disabilities Act, Title III. If changes that affect public access need to be made, under Title III, they must be made by the housing provider if they are readily achievable.

The Department of Justice technical assistance manual for Title III states that measures taken to remove barriers in existing properties should follow the standards found in the ADAAG (Americans with Disabilities Act Accessibility Guidelines).

Modifications Inside Unit

- Grab bar installation
- Roll-in showers



Typical Modification Issues (continued)

The most often cited example of a reasonable modification is the installation of grab bars at toilet, tub, or shower. Because the Act's design and construction requirements only address the installation of reinforcements in walls for later installation of grab bars, the addition of grab bars is a modification that may be requested both in recently constructed housing and in older housing.

In older housing, a starting point for adding reinforcements inside the wall for grab bar installation is Chapter 6 of the Fair Housing Act Design Manual. This contains dimensions for installation of the reinforcements as well as recommendations for other strategies relating to grab bar installation. These dimensions are minimums, and larger reinforcements would also be appropriate. Reinforcements should be designed to bear a minimum weight of 250 pounds. There are standards in ANSI and the ADAAG that address grab bar specifics. The Resources section at the end of this manual contains valuable resources to consider in planning grab bar installation.

Typical Modifications (continued)

In many cases, especially when grab bars are added as a modification, adding wall reinforcements may not be necessary because floor-mounted commercially-available grab bars may be installed.

Replacement of bathtubs or shower stalls with shower rooms or roll-in showers is sometimes requested. A roll-in shower must be designed carefully to be sure that it is large enough to accommodate a person and a shower chair or shower seat. Sometimes the existing bathroom is simply not large enough to accommodate a reasonably sized roll-in shower.

Commercial modular showers in fiberglass or acrylic construction may be feasible alternatives where space for an adequately sized roll-in shower is lacking or a more expensive remodeling job is not feasible. Construction details must be handled carefully to be sure that no water leakage or damage results from the modification. A slight slope to the floor drain area is necessary, especially when a curbless shower is being designed, to avoid water infiltration into the bathroom.

“Gray Areas”

- Accessible smoke detectors and fire alarms
- Carpet
- Auxiliary aides, like lifts



Overlap Between Accommodations and Modifications

Use of technology to provide higher levels of accessibility, such as lifts, are not referenced in the Fair Housing Act. Installation of platform lifts and other equipment generally should be considered to be a modification because the equipment is physically installed on the property and represents a change to the existing premises. The cost of those aids is borne by the person with a disability. New standards for platform lifts and stairway chairlifts have been published by the American Society of Mechanical Engineers, A18.1-2003 Safety Standard for Platform Lifts and Stairway Chairlifts. Information about these standards can be found at <http://www.asme.org/codes>.

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	• Resources

Notes:

Fair Housing Accessibility **FIRST** — Resources

Fair Housing Accessibility **FIRST**
Information Line
1-888-341-7781 V/TTY



Fair Housing Accessibility **FIRST**
Website
www.FairHousingFIRST.org



Notes:

Resources

Accessible housing resources, National Association of Homebuilders Resource Center, <http://www.nahb.org/page.aspx/category/sectionID=225>

Accessible Design, Universal Design, Barrier Free House Plans
http://www.b4ubuild.com/plans/accessible_design.shtml

Smart Ideas Checklists for features that benefit elderly clients
<http://www.toolbase.org/secondaryT.asp?TrackID=&CategoryID=1908>

National Resource Guide on Supportive Housing and Home Modification
Safety Checklist and Assessment Instrument, Library, and other information
www.homemods.org

Residential Design Guides
<http://www.toolbase.org/secondaryT.asp?TrackID=&CategoryID=1907>

AARP's Guide to Home Design
<http://www.aarp.org/life/homedesign/>

Virtual Tour of a House Designed with Universal Design Principles
http://www.aarp.org/life/homedesign/Articles/a2004-03-18-int_home_tours.html

The Center for Universal Design: Home Modifications
http://design.ncsu.edu/cud/built_env/housing/home_mod.htm

Wood Ramp Design: How to Add a Ramp that Looks Good and Works Too
http://www.design.ncsu.edu/cud/pubs/wood_ramp.htm

Curbless Showers: An Installation Guide
<http://www.design.ncsu.edu/cud/pubs/shower%20announce.htm>

Center for Universal Design Publications List
<http://www.design.ncsu.edu/cud/pubs/center/publist.htm>

Resources (continued)

How to Design, Plan and Build An Access Ramp

<http://www.handi-ramp.com/ramp-plan.htm>

Usable Kitchens

<http://www.abilitycenter.org/webtools/links/adaresources/usablekitchen.pdf>

The Wheelchair Ramp Project

<http://www.wheelchairramp.org/>

Charles Schwab, Universal Designed “Smart” Kitchens

<http://www.universaldesignonline.com/pages/764813/index.htm>

How to Design, Plan and Build An Access Ramp

<http://www.handi-ramp.com/ramp-plan.htm>

A Consumer’s Guide to Home Adaptation, a book

<http://www.adaptenv.org/index.php?option=Resource&articleid=219&topicid=1>

Mace, Ron, Universal Design in Housing

<http://www.adaptenv.org/index.php?option=Resource&articleid=152&topicid=1>

Home Modifications Solutions

http://www.design.ncsu.edu/cud/pubs/center/newsline/winter_98.html#solutions

Construction Guidelines for VISIBLE Homes

<http://www.concretechange.org/construc.htm>

The Accessible Kitchen

<http://www.asktooltalk.com/home/articles/construction/accessibility/kitchens.htm>

The Accessible Kitchen, appliance accessibility

<http://www.cs.wright.edu/bie/rehabengr/kitchens/fintro.htm>

Resources (continued)

Bob Vila, Accessible Solutions: Kitchens

<http://www.bobvila.com/ArticleLibrary/Subject/Storage/AccessibleKitchen.html>

Design Linc: Design Tips

<http://www.designlinc.com/destips.htm>

Home Modifications, Administration on Aging, Checklists and Payment Options

<http://www.homemods.org/linked-frameset.htm>

Restriping Parking Lots

<http://www.ada.gov/business.htm#Anchor-ADA-47857>

A18.1 - 2003 Safety Standard for Platform Lifts and Stairway Chairlifts

<http://members.asme.org/catalog/ItemView.cfm?ItemNumber=A14503>

Homes for Everyone: Universal Design Principles in Practice

<http://www.huduser.org/publications/destech/unidesig.html>

Residential Remodeling and Universal Design: Making Homes More Comfortable and Accessible

<http://www.huduser.org/publications/pdf/remodel.pdf>

Strategies for Providing Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership

<http://www.huduser.org/Publications/pdf/strategies.pdf>

Resources (continued)

ACCESSIBLE PRODUCTS

Adaptive Access, accessibility products

<http://www.adaptiveaccess.com>

Accessible Design and Construction

<http://www.accessibleconstruction.com/services/bathrooms/index.html>

Directory of Accessible Building Products

<http://www.toolbase.org/secondaryT.asp?TrackID=&CategoryID=308>

All Abilities

<http://www.allabilities.com/house.html>

Approach for the Sink

http://www.ad-as.com/kb/approach_sink.htm

The Design Linc: Accessibility Design and Resources

<http://www.designlinc.com/products.htm>

The Boulevard

<http://www.blvd.com/>

Wheelchair.net

http://www.wheelchairnet.org/WCN_ProdServ/Products/access.html#anchor808936

Outdoor Fun Store playground equipment

<http://www.outdoorfunstore.com/commercial-accessible.asp>



Comprehensive Training Curriculum

Course Title	Time (hours)
Fair Housing Act Accessibility Requirements Overview	1 (Short) or 4 (Long)
Design and Construction Requirements of the Fair Housing Act: Technical Overview	3
Disability Rights Laws	1.5
Fair Housing Act Enforcement	1.5
Strategies for Compliant Kitchens	1.5
Strategies for Compliant Bathrooms	1.5
Accessible Routes	1.5
Accessible Public and Common Use Areas	1.5
Common Design and Construction Violations and Solutions	1.5
Making Housing Accessible Through Accommodations and Modifications	1.5

www.FairHousingFIRST.org
(888) 341-7781

Fair Housing Act and Related Standards

Standard	Where to Obtain
Fair Housing Act as Amended (Title VIII of the Civil Rights Act)	www.FairHousingFIRST.org (888) 341-7781 (V/TTY)
Fair Housing Act Guidelines*	www.FairHousingFIRST.org (888) 341-7781 (V/TTY)
Fair Housing Act Design Manual*	Disseminated at training www.huduser.org (800) 245-2691 TDD: (800) 483-2209
International Building Code*	www.intlcode.org (703) 931-4533
ANSI A117.1 (1986)*	www.intlcode.org (703) 931-4533
CABO/ANSI A117.1 (1992)*	www.bocai.org (800) 214-4321
ICC/ANSI A117.1 (1998)*	www.intlcode.org (703) 931-4533
Code Requirements for Housing Accessibility 2000 (CRHA)*	www.bocai.org (800) 214-4321
Section 504 of the Rehabilitation Act	www.hudclips.org (301) 519-5395
Uniform Federal Accessibility Standards	www.access-board.gov (800) 872-2253, TTY: (800) 872-2253
Architectural Barriers Act of 1968	www.access-board.gov (800) 872-2253, TTY: (800) 872-2253
Americans with Disabilities Act of 1991, Title II and Title III	www.access-board.gov (800) 872-2253, TTY: (800) 872-2253
ADA Accessibility Guidelines	www.access-board.gov (800) 872-2253, TTY: (800) 872-2253

**Denotes HUD Safe Harbor*

Publications

Listed in alphabetical order with the following designations based on topic.

C – Code; D – Design; L – Legal; DA – Disability Advocacy

Type	Resource Name	Description	Where to Obtain
D	Accessible Cabinetry	Describes state-of-the-art cabinetry designed to facilitate use by people with disabilities.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	Accessible Environments: Toward Universal Design	Overview of the concept of universal design in everyday environments. Contains design illustrations and history of the disability rights movement.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	Accessible Plumbing	Describes state-of-the-art in accessible plumbing fixtures and accessories.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	Accessible Stock House Plans Catalog	Contains floor plans and perspectives for six accessible homes.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	A Consumer's Guide to Home Adaptation	Includes worksheets for evaluating needs in the home, illustrated construction plans for grab bars, ramps, and other accessible elements, and resource listings for products.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
C	HUD Review of Model Building Codes Final Report		www.hud.gov/offices/fheo/disabilities/modelcodes/
DA	New Mobility Magazine		www.newmobility.com
L	The New Fair Multifamily Housing: A Design Primer to Assist in Understanding the Accessibility Guidelines of the FHAct	Provides a basic understanding of the accessibility requirements of the FHAct. Also includes illustrated solutions and examples from existing projects.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
L	Rights and Responsibilities of Tenants and Landlords under the Fair Housing Amendments Act	Outlines the rights and responsibilities of tenants with disabilities and landlords under the FHAct.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	Tenant's Guide to Apartment Modifications: An Idea Source Pamphlet to Simple, Low-cost Modifications to Increase Accessibility in Apartments	Presents illustrated ideas for low-cost modification that are commonly made to rental dwellings.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)

Websites and Organizations

Listed in alphabetical order with the following designations based on topic.

C – Code; D – Design; DA – Disability Advocacy; G – Government; L – Legal; T – Trade ; O – Other

Type	Organization	URL
O	American Association of Retired Persons	www.aarp.org
DA	American Association of People with Disabilities	www.aapd.org
G	Access Board	www.access-board.gov
C	Adaptive Environments	www.adaptenv.org
DA	American Association of People with Disabilities	www.aapd-dc.org
T	American Bankers Association	www.aba.com
T	American Bar Association	www.abanet.org
DA	American Disabled for Attendant Programs Today	www.adapt.org
T	American Institute of Architects	www.aia.org
DA	American Seniors Housing Association	www.seniorshousing.org
T	American Society of Civil Engineers	www.asce.org
T	American Society of Interior Designers	www.asid.org
L	Bazelon Center for Mental Health Law	www.bazelon.org
D	Bob Vila	www.bobvila.com - special features
D	Center for Inclusive Design and Environmental Access	www.ap.buffalo.edu
D	Center for Universal Design	www.design.ncsu.edu/cud/index.html
G	Centers for Medicare and Medicaid Services	www.cms.gov
DA	Consortium for Citizens with Disabilities	www.c-c-d.org
D,L	Cornucopia of Disability Information (CODI)	www.codi.buffalo.edu
G	Department of Agriculture	www.usda.gov
G	Department of Justice	www.usdoj.gov
G	Department of Treasury	www.treasury.gov
DA	Disability Rights Action Coalition for Housing	www.libertyresources.org/housing/nac.html
DA	Eastern Paralyzed Veterans Association	www.epva.org
T	Institute for Real Estate Management	www.irem.org
C	International Code Council	www.intlcode.org
L	The John Marshall Law School Fair Housing Legal Support Center	http://law170.jmls.edu/
D	NAHB Research Center	www.nahbrc.org
T	National Affordable Housing Mgmt. Assoc.	www.nahma.org
T	National Apartment Association	www.naahq.org
T	National Association of Home Builders	www.nahb.org
T	National Association of Realtors	www.nar.realtor.com
T, D	National Association of the Remodeling Industries	www.nari.org
G	National Council on Disability	www.ncd.gov
C	National Conference of States on Building Codes and Standards (NCSBCS)	www.ncsbc.org
DA, L	National Fair Housing Advocate Online	www.fairhousing.com
DA	National Fair Housing Alliance	www.nationalfairhousing.org
D	National Kitchen and Bath Association	www.nkba.org
T	National Low Income Housing Coalition	www.nlihc.org
T	National Multi Housing Council	www.nmhc.org
DA	National Organization on Disability	www.nod.org
D, DA	National Resource Center on Supportive Housing and Home Modification	www.homemods.org
DA	Paralyzed Veterans of America	www.pva.org
D	Technical Assistance Collaborative	www.toolbase.org
DA	Wemedia	www.wemedia.com
DA	World Institute on Disability	www.wid.org



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.
May 17, 2004

**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 staffperson 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.