Fair Housing Advocates of Northern California

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FREQUENTLY ASKED QUESTIONS: DISABILITY DISCRIMINATION & REASONABLE ACCOMMODATIONS/MODIFICATIONS

What is considered discrimination based upon disability under the Fair Housing Act?

People with disabilities are protected against discrimination on the basis of those disabilities, such as a refusal to rent, offering different terms/conditions, making discriminatory statements, or a failure to provide necessary reasonable accommodations or modifications. The Act makes it unlawful for housing providers to discriminate against applicants or residents because of their disability or the disability of anyone associated with them.

What is the definition of disability under the Fair Housing Act?

A person with a disability is 1) an individual with a physical or mental impairment that severely limits* one or more major life activities (such as breathing, walking, seeing, learning, performing manual tasks, or self-care); 2) an individual regarded as having such an impairment; or 3) an individual with a record of such an impairment. Physical and mental impairments are defined broadly, encompassing many different conditions and diseases. Impairments may include alcoholism or a history of drug addiction; however, current use of a controlled substance is not protected. *California law removes "severely" from the definition of disability.

What is a reasonable accommodation and a reasonable modification?

A reasonable accommodation is a change in a housing provider's general rules, policies, practices, or services that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. Each reasonable accommodation is highly individualized and specifically designed to ameliorate the effects of a person's unique disability. There must be a clear nexus, or connection, between the person's disability and the need for the requested accommodation. For example, a landlord may have a "no pets" policy; however, that landlord would need to make an exception for a disabled resident who requires the presence of an assistance animal in the home. A reasonable modification is a structural change made to existing premises, occupied or to be occupied with a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to the interiors and exteriors of dwellings.

Who is responsible to pay any cost associated with a reasonable accommodation or modification?

Reasonable accommodations often come at no cost, as they are policy changes; however, when there is a cost, the housing provider bears the burden of paying that cost (unless it would constitute an undue financial burden; see below). For reasonable modifications, tenants pay the cost unless the property is federally funded.

What are some examples of reasonable accommodation and modification requests?

Common examples of reasonable accommodation requests are permitting an assistance animal in a building with a "no pets" policy; allowing a tenant with a mobility impairment to transfer to a ground-floor unit or have an assigned parking space closer to their unit; and an extension of time to move for tenant with severe physical/mental disability. Common examples of reasonable modification requests include widening a doorway to allow wheelchair access; installing grab bars in bathrooms; installing ramps; and removing or lowering kitchen or bathroom cabinets for people who use wheelchairs.

What is the difference between a service animal and an emotional support/companion animal?

A service animal is defined under the Americans with Disabilities Act as a dog or miniature pony trained to perform a specific disability-related task. Emotional support/companion animals have the same protections in housing; however, their very presence helps ameliorate some of the symptoms of a disability, so there is no training requirement. There are no size or breed restrictions on emotional support/companion animals. Housing providers cannot charge a deposit or additional rent as a condition of granting a reasonable accommodation request; however, tenants are responsible for any damage caused by their assistance animal.

How do I request a reasonable accommodation?

Reasonable accommodations can be requested at any time, including during the eviction process, and in no particular manner. First, you should notify your housing provider (i.e. landlord or property manager) of the reasonable accommodation you are requesting. Second, you should explain the nexus between your requested accommodation and the effects of your disability that require the accommodation. You need not use any magic words, including "reasonable accommodation," but you must establish that you are considered disabled under fair housing law (impairment that (severely) limits a major life activity) and adequately explain why the specific accommodation requested is necessary because of a disability. If your disability and disability-related need for the requested accommodation are not already known or readily apparent, then your housing provider can request verification from a knowledgeable third-party.

What does a knowledgeable third-party need to write in their letter in order to verify my request?

Your verification letter only needs to verify that you are considered disabled under fair housing law and that your disability necessitates the reasonable accommodation you have requested. It does not need to disclose any specific diagnosis but it should provide sufficient detail to describe the impairment and limits on major life activities. The letter does not necessarily need to come from a doctor. It can come from any knowledgeable professional who is familiar with the extent of your disabilities and qualified to determine your need for the accommodation you requested, including a doctor, nurse, therapist, social worker, or peer support group.

When may a housing provider lawfully refuse to grant a reasonable accommodation?

There are scenarios that entitle a housing provider to refuse to grant your request. First, a housing provider may demonstrate that the accommodation would be an undue financial and administrative burden. The cost must be significant in order to be considered an undue financial burden, weighing the cost to the housing provider balanced against the benefit to the tenant. Second, if granting the request would present a direct threat to health, safety, or quiet enjoyment, a housing provider may deny the request. To determine whether an accommodation would pose a "direct threat" a housing provider must consider: a) the nature, duration, and severity of the risk of injury; b) the probability of reoccurrence; and c) whether any other accommodation would eliminate the threat. Third, the request can be denied if it would fundamentally alter the nature of the housing provider's business operations. Last, a housing provider may deny the request if there is no nexus between it and the individual's disability. If a housing provider denies your request, it is still obligated to engage in the interactive process and try to reach an alternate accommodation.

Who decides what is "reasonable"?

The request is reasonable if it does not pose an undue burden on the housing provider, alter the housing provider's business operations, or pose a direct threat to health, safety, and quiet enjoyment, and there is a nexus between the disability and the accommodation requested. If the accommodation request is reasonable by that definition, then the housing provider must grant the accommodation.

What are my options if my housing provider discriminates against me on the basis of my disability?

If you believe you have been discriminated against due to a disability, including a denial of a reasonable accommodation/modification, you may file an administrative complaint with the Department of Housing and Urban Development (HUD) or the California Department of Fair Employment and Housing (DFEH) within one year of the date of the last discriminatory act, or a lawsuit in federal or state court within two years of the date of the last discriminatory act.

For more information and guidance on your fair housing rights, please contact Fair Housing Advocates of Northern California: (415) 457-5025 / TDD: (800) 735-2922 / fhanc@fairhousingnorcal.org / www.fairhousingnorcal.org.