Reasonable Accommodations: Overcoming Barriers to Housing for People with Disabilities

Laura Jelinek
Manire Vaughn
Attorneys
Overview

• Fair Housing Basics
• Reasonable Accommodations
• Case Study
• Tips for Success
Americans with Disabilities Act (ADA)

• Enacted in 1990. Prohibits discrimination in employment, transportation, public accommodations, communications, state and local government activities.

• Limited coverage of housing – public entities that provide housing, e.g. public housing agencies and public accommodations, such as rental offices, shelters, and housing at places of public education.
Fair Housing Act Overview (FHA)

• FHA: prohibits discrimination in housing only.

• FHA and ADA overlap in some types of housing, e.g. public housing.

• FHA covers most housing, with few exemptions
Fair Housing Laws

Fair Housing Act 42 U.S.C 3604

It is illegal to:

• advertise or make any statement that indicates a limitation or preference based on a protected class.
• Falsely deny that a rental unit is unavailable
• set more restrictive standards for selecting tenants or refuse to rent to members of protected classes
• before or during the tenancy, set different terms, conditions, or privileges for the rental of a dwelling unit.
• refuse to make a reasonable accommodation for a person with a disability.
• terminate a tenancy for a discriminatory reason

Minnesota Human Rights Act MN Stat. 363A.09

Substantially similar to federal law but adds protection for additional classes not covered by fair housing act.
Reasonable Accommodation

- Landlord must make a change in policy, practice, or procedure IF:
  1) Tenant has a disability
  2) Accommodation is necessary for equal use and enjoyment
  3) Change is not unreasonable
- Definition of unreasonable is a legal one:
  - Undue administrative and financial burden
  - Fundamental alteration of business
  - Direct threat
What is a disability?

• A physical or mental impairment that substantially limits a major life activity
• More Broad than Social Security Disability definition
• Does not include
  • Current illegal drug users
  • People who pose a direct threat
What is a direct threat?

- Would threaten the health or safety of other individuals or likely cause substantial damage to property.

BUT . . .

- Must be an individualized assessment and not mere speculation or fear
- Housing provider must show *no* accommodation would minimize the risk before an eviction, meaning the tenant should be allowed to try a plan
When to Submit a Reasonable Accommodation

- During the application process
- During tenancy
- Termination notice
- Eviction filed
How it works.

• Tenant makes a request for an accommodation
• May be in writing, in person, email, text
• Provides medical documentation of a disability
• Shows the accommodation is necessary

• Owner/Manager must consider and respond to the request
• Failure or delay is a denial of accommodation
Owner or Manager.....

• May not deny RA because they are uncertain of disability or disability-related need.

• May not ask tenant to provide documentation of disability or disability-related need if both are readily apparent or known.

• May not ask tenant to provide access to medical records or providers or provide detailed information of disability.

• May not grant RA on condition of payment of fee or deposit.

• May not unreasonably delay a response.

• May not require a medical provider agree to testify in court
Examples

• Previous rental reference was bad due to untreated chemical dependency issues
• Noise complaints are related to hearing loss
• Medication Changes resulted in poor housekeeping
• Hoarding
Owner or Manager can do the following

• If disability is not readily apparent or known, may ask tenant to submit reliable documentation of disability and disability-related need for the accommodation.

• Require the disability be verified by a medical professional.
MY FACE WHEN MY LANDLORD ASKS
WHERE DID THESE CATS COME FROM?
Trudy
Dear Apartment manager:

I intend to get a companion animal to treat my depression.

Sincerely,

Jane
Dear Jane,

When you get the animal please let management know.

Sincerely,

Apartment Manager
Companion Animal Request #2

Dear Apartment manager:

I have put a deposit down on a puppy and will pick up the puppy on Mother’s Day. It is a companion animal to treat my depression.

Sincerely,

Jane
Companion Animal Response #2

Dear Jane:

We need a note from your doctor stating that you have a disability and that you need the companion animal.

Sincerely,

Apartment Manager
Companion Animal Request #3

Dear Apartment manager:

Please find enclosed letter from my doctor stating that I suffer from a depression which substantially limits a major life activity. A companion animal is necessary to treat my depression.

Sincerely,

Jane
Dear Jane:

You are approved to have one companion Cat.

Sincerely,

Apartment Manager
Dear Apartment manager:

I am allergic to cats. My companion animal is a puppy.

Sincerely,

Jane
Dear Jane:

Puppies are not allowed. Puppies cannot be companion animals.

Sincerely,

Apartment Manager

P.S. Puppies are not as cute as they think they are.
Companion Animal Request #5

Dear Apartment manager:

Please find enclosed letter from my mental health professional that my mental health treatment includes bonding with a puppy.

Sincerely,

Jane
Dear Jane:

You have an illegal puppy. This is a lease violation. You will be evicted unless you remove the puppy from your home.

Sincerely,

Apartment Manager

P.S. The letter your doctor sent was not notarized.
What happens next?

A. Jane files a fair housing complaint with HUD

B. Jane files a complaint in federal court alleging violations of the Fair Housing Act.

C. Apartment manager files an Eviction Action for an illegal puppy

D. All of the Above
Outcome
Tips for Success

• Specific Reasonable Accommodation Plan
• Earlier the better – particularly in Public Housing and Housing Choice Voucher cases
• Ask for it – even if you think it might be too late
• Know your resources – medical providers, mental health workers, social workers, legal advocates
• Be Creative
If you have a problem

• HUD and DOJ frown on barriers to requesting accommodations
  • Notarized forms
  • “under penalty of perjury”
  • Blanket medical releases
  • Intrusive medical questions
  • Agreement to testify
Resources

• Legal Services  https://www.lawhelpmn.org/providers-and-clinics
• HUD  https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint
• MDHR  https://mn.gov/mdhr/intake/
• Local Human Rights Departments
• Legal Rights:  https://www.lawhelpmn.org/self-help-library/housing/housing-discrimination