# Reasonable Accommodations During Occupancy

This document, taken from CSH's publication *Between the Lines: A Question and Answer Guide on Legal Issues in Supportive Housing – National Edition* (prepared by the Law Offices of Goldfarb and Lipman and available at www.csh.org), discusses issues related to reasonable accommodations for tenants after they have moved into housing.

*Question 1:* *How does reasonable accommodation or reasonable modification apply after the tenant has moved in?*

*A tenant's need for a reasonable accommodation or modification can arise any time during tenancy. The housing provider has the same obligation to consider a request for a reasonable accommodation or modification during both occupancy and tenant selection.*

The obligation to provide a reasonable accommodation or a reasonable modification to a tenant arises even if the tenant did not disclose a disability during the screening process. It also arises if a tenant becomes disabled or a tenant's disability status changes after occupying the housing and then requests the accommodation. If a tenant requests a reasonable accommodation or modification, the housing provider may request documentation verifying the disability and the need for the accommodation or modification. A housing provider cannot require the tenant to submit medical records to prove a disability. A medical practitioner's or social worker's letter confirming the disability without disclosing the nature or severity of the disability is sufficient. Housing providers should respond promptly to all requests for reasonable accommodations or modifications because a delay in response may be deemed a failure to provide a reasonable accommodation or modification and result in a discrimination claim.[1]

*Question 2:* *What is a reasonable accommodation or modification for a person with a physical disability?*

*A reasonable accommodation or modification for a person with a physical disability will depend upon the disability and what is necessary to allow the person to occupy the dwelling.*

The first requirement to satisfy a requested accommodation or reasonable modification is that fulfilling the request be necessary to allow the tenant's equal enjoyment of the housing. Indeed, a landlord's duty to accommodate or modify extends only to providing an equal opportunity for persons with disabilities to enjoy housing. It does not extend to providing special advantages unrelated to a person's disability.[2] Such necessary accommodations may include, for example, allowing a visually or hearing impaired tenant to keep an assistive animal despite a "no pets" rule or providing a specially designated parking space despite a condominium association's deed

[1] Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "Reasonable Accommodations sunder the Fair Housing Act", May 17, 2004; Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "Reasonable Modifications sunder the Fair Housing Act", May 5, 2008.

[2] Bryant Woods Inn v. Howard County, 124 F.3d 597 (4th Cir. 1997); Bronk v. Ineichen, 54 F.3d 425 (7th Cir. 1995); Auburn Woods I Homeowners Assn. v. Fair Employment & Housing, 121 Cal. App. 4th 1578 (2004); Gittleman v. Woodhaven Condominium Assoc., Inc., 972 F. Supp. 894 (D.N.J. 1997); HUD v. Ocean Sands, Inc., P-H: Fair Housing – Fair Lending Rptr. par. 25,055, at pp. 25539-44 (HUD ALJ 1993).

restrictions. A reasonable modification may include allowing a tenant to install a ramp to gain access to their unit and/or community space (e.g., laundry room).

The Fair Housing Act does not require the landlord to fund physical changes. Landlords are only obligated to allow tenants to make reasonable modifications or allow accommodations that do not cause the landlord an undue financial burden.[3] However, Section 504, which applies to all federally funded developments, requires the landlord to pay for modifications unless to do so would cause financial hardship.

In addition to being necessary, an accommodation must be reasonable. A requested accommodation's effect on third parties and the financial burden imposed upon the landlord determines whether a requested accommodation is reasonable. In one case, a court held that, to accommodate a tenant with multiple chemical sensitivities, a landlord could not reasonably be expected to evict a downstairs neighbor whose cleaning products irritated the upstairs neighbor's condition and who lived in the building before the disabled tenant moved in. Such an eviction would unreasonably compromise the vested rights of third parties. HUD and the Department of Justice have attempted to provide some guidance as to what is financially reasonable.

*Question 3:* *What is a reasonable accommodation for a person with a mental disability?*

*A reasonable accommodation for a person with mental disabilities might involve the waiver or flexible application of a rule or policy but could also include modifications.*

The same principles applicable to accommodations and modifications for tenants with physical disabilities guide reasonable accommodations and modifications for people with mental disabilities. A housing provider must make changes in rules and policies or allow physical modifications to provide the tenants with disabilities equal access to housing. A physical modification may sometimes be necessary. For example, extra soundproofing may be necessary to accommodate a mentally disabled tenant who speaks very loudly in his or her unit. As with physical disabilities, the limitations on the duty to accommodate arise from the cost of the accommodations or modifications and the countervailing rights of other tenants. If the project receives federal funding and is subject to Section 504, the housing provider may be obligated to pay for physical modifications if to do so would not cause a financial hardship.

*Question 4:* *How does reasonable accommodation apply to tenants with substance-use problems, including alcohol?*

*Reasonable accommodation applies to tenants with substance use problems in much the same way as to those with other disabilities, but never requires permitting a tenant to use illegal drugs.*

[3] Rodriguez v. 551 West 157th St. Owners Corp., 992 F. Supp. 385 (S.D.N.Y. 1998), (landlord not required, as a reasonable accommodation, to install wheelchair ramps and lifts).

Generally, if a tenant has a substance use disability and requests a reasonable accommodation, the housing provider must consider the request and grant it unless the accommodation fundamentally alters the housing program or places an undue burden on the owner. Allowing a tenant to continue the illegal use of drugs on the premises would not be a reasonable accommodation. Current use of illegal drugs is specifically exempted from definitions of disability. A current drug user would not be entitled to a reasonable accommodation solely by virtue of drug addiction. An alcoholic, though, who is currently using could be considered disabled under the definitions of disability in the Fair Housing Act (See Chapter Three, Section B, Question Nine and Chapter Four, Section A, Question Thirteen, regarding the treatment of alcoholism in the Fair Housing Act). A housing provider may have to accommodate some behaviors that often accompany drinking under the reasonable accommodation requirements. A recovering alcoholic's request however, that the housing provider prohibit all other tenants from using alcohol on the premises would not be reasonable, as it would infringe on other tenants' rights.

Certain federal programs, including Section 811, do not consider a person to be disabled solely based on alcohol or drug dependency when determining eligibility for units or programs targeted to people with disabilities. These federal program requirements do not mean, however, that a housing provider would be relieved of its obligation to provide a reasonable accommodation for alcoholics or former drug users who reside in their units.

*Question 5:* *May someone be evicted because he or she needs care and supervision that the facility doesn't provide?*

*No, unless the tenant cannot meet the terms and conditions of occupancy.*

A tenant cannot be evicted simply because he or she needs care and supervision. However, if the tenant needs care and supervision that the facility does not provide and the lack of care and supervision affects the tenant's ability to meet the terms of occupancy, the housing provider may have a basis for evicting the tenant. For example, a tenant who needs care and supervision due to a disability may be unable to maintain the apartment, requiring a care attendant. Before instituting eviction proceedings, housing providers should explore whether the housing provider could offer a reasonable accommodation to the tenant to help the tenant meet occupancy requirements. For example, a housing provider may refer a tenant to care attendants to help the tenant meet the maintenance obligations under the lease. If the landlord and tenant cannot find a reasonable accommodation and the tenant is not maintaining the apartment, the housing provider may have grounds for eviction due to the tenant's failure to maintain the apartment, not because the tenant requires care and supervision.

Providers should be careful not to assume all tenants with disabilities need care and supervision in order to meet the terms of tenancy. Rather, upon occupancy, providers should look to a tenant's previous rental history to determine the tenant's ability to meet the tenancy terms.

HUD's Section 202 and Section 811 programs all promote independent living. Some have interpreted this policy as disqualifying tenants who require the services of in-home care attendants. As discussed in Chapter Four, Section B, Question Six, a housing provider probably

could not institute such an "independent living requirement" based on the *Cason* case. Several Section 202 housing operators have spent considerable time and money attempting to evict residents who needed, but were not receiving, care and supervision. Disability rights advocates have been able to stop or stall these evictions to the point that the housing providers have withdrawn the evictions. In one instance, disability rights advocates obtained a federal district court order declaring an independent living requirement in a Section 202 project illegal under Section 504 of the Rehabilitation Act of 1973.[4]

[4] Niederhauser v. Independence Square Housing Corporation, No. C 96-20504 RMW (N.D. Cal. 1998), (order granting in part and denying in part plaintiffs' motion for summary judgment).