



State of Illinois
Illinois Department of Human Rights

Reasonable Accommodations and Modifications:

A Guide for Housing Professionals





The Illinois Department of Human Rights (IDHR) enforces the Illinois Human Rights Act, which prohibits discrimination in Illinois. IDHR's mission is to secure for all individuals within the State of Illinois freedom from unlawful discrimination, and to establish and promote equal opportunity and affirmative action for all its residents.

www.illinois.gov/dhr

Access Living is a change agent committed to fostering an inclusive society that enables Chicagoans with disabilities to live fully-engaged and self-directed lives. Access Living is a leading force in the disability advocacy community. Access Living challenges stereotypes, protects civil rights and champions social reform.

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This Guidebook provides general legal guidance to housing professionals on reasonable accommodations and reasonable modifications for residents with disabilities and their family members.

This guidance may not be appropriate in all situations and is not a substitute for legal advice. Further, federal and state law is subject to change, so it is recommended that housing professionals contact a housing attorney in their community for further information or legal advice.

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The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government.

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Section 1

Importance of Reasonable Accommodations and Modifications

As of 2020, approximately 62 million people in the United States live with a disability.¹ While the disabilities vary widely in nature and severity, for many people with disabilities it is extremely difficult to find and secure housing that is accessible to them and/or otherwise meets their needs.

A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service. A reasonable modification is a structural change made to the premises.² The purpose of a reasonable accommodation or modification is to provide equal access to housing for people with disabilities.

Reasonable accommodations and modifications provide increased housing options that are near transportation, jobs, and other fundamentals to economic progress by making inaccessible units or buildings accessible to people with disabilities.

Accommodations and modifications also increase the marketability of a property by appealing to a broader customer base.

This Guidebook discusses the disability laws and the processes involved in meeting requests for reasonable accommodations and modifications in residential properties

This Guidebook

The word “resident” or “residents” includes any person residing or seeking to reside (i.e. an applicant) in apartment buildings, condominium buildings, shelters, and other types of housing.

¹ Centers for Disease Control, “Disability Impacts Us All,” https://www.cdc.gov/ncbddd/disabilityandhealth/documents/disabilities_impacts_all_of_us.pdf, September 16, 2020.

² Joint Statement of HUD and DOJ, “Reasonable Modifications under the Fair Housing Act,” (March 5, 2008) (Question 9, page 6) available at https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf.

Section 2

Housing Professionals Responsible for Following Fair Housing Laws

Individuals, corporations, associations, and other entities involved in housing and residential lending are responsible for knowing and following fair housing laws and other laws that pertain to equal access to housing.³

Examples include, but are not limited to:

- Property Managers
- Owners
- Landlords
- Cooperative Associations
- Municipalities
- Public Housing Authorities
- Condominium Associations
- Shelters
- Transitional Housing
- Nursing Homes
- Supportive Housing
- Assisted Living Facilities
- College Residence Halls
- Mobile Home Communities
- Banks, Lending Institutions, and Mortgage Companies
- Appraisers, Appraisal Companies



IMPORTANT

Moreover, housing providers are responsible for acts of their agents, including people and/or companies they hire to manage or operate their property.⁴ If someone working for the owner or managing the property for the owner discriminates, the owner may be held responsible for the discrimination, as though the owner had committed the discrimination.



³ Joint Statement of HUD and DOJ, "Reasonable Accommodations under the Fair Housing Act," (May 17, 2004) (Question 2, page 3) available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf.

⁴ See *City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086 (7th Cir. 1992) and *U.S. v. Balistreri*, 981 F.2d 916 (7th Cir. 1992).

Section 3

Applicable Federal and State Laws

Federal, state, and local laws require a housing provider to grant reasonable accommodations or reasonable modifications to people with disabilities. While many laws use the term “handicap,” that term is disfavored, so this Guidebook uses the term “disability,” which has the same legal meaning.

Federal laws that apply to the housing rights of people with disabilities include the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. In Illinois, the Illinois Human Rights Act also applies.

Fair Housing Act (FHA) of 1968	Section 504 Rehabilitation Act of 1973	Americans with Disabilities Act (ADA)	Illinois Human Rights Act (IHRA)
<p>Also known as Title VIII of the Civil Rights Act of 1968, was passed to protect individuals against housing discrimination. It prohibits housing discrimination based on race, color, religion, national origin, and sex.⁵ It was amended in 1988 to prohibit discrimination based on disability and familial status.⁶ The U.S. Department of Housing and Urban Development (“HUD”) enforces the FHA.</p>	<p>Prohibits discrimination based on disability by any entity that receives federal financial assistance, such as public housing authorities, privately owned buildings that receive federal funds (e.g. project-based Section 8 units), and federally-funded housing programs.⁷</p>	<p>Prohibits discrimination against people with disabilities.⁸ The ADA generally does not cover housing, except as follows: Title II of the ADA prohibits discrimination based on disability in state and local government housing programs (e.g. state-funded housing); and Title III of the ADA covers discrimination in leasing and property management offices that are open to the public.⁹ The U.S. Department of Justice (“DOJ”) enforces the ADA.</p>	<p>Prohibits discrimination in employment, financial credit, public accommodations, and real estate transactions based on disability and other protected classes.¹⁰ The IHRA, like the Fair Housing Act, makes it unlawful to discriminate in the sale or rental of residential property. The Illinois Department of Human Rights (“IDHR”) enforces the IHRA.</p>

Local Ordinances

Municipalities or local governments may have ordinances that require reasonable accommodations and modifications for people with disabilities. For example, if the housing is in Chicago, applicable local ordinances include the Cook County Human Rights Ordinance and the Chicago Fair Housing Ordinance.

⁵ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.
⁶ See generally Fair Housing Amendments Act, Pub. L. No. 100-430, 102 Stat. 1619 (codified at 42 U.S.C. § 3604 (2006)).
⁷ The Rehabilitation Act of 1973, 29 U.S.C. 794.
⁸ The Americans with Disability Act, 42 U.S.C 12101 *et seq.*
⁹ See Department of Justice, Title III Technical Assistance Manual, § III-1.2000 (1993), available at <https://www.ada.gov/taman3.html>.
¹⁰ The Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*

Section 4

Defining Disability

In order for an individual to be eligible to receive a reasonable accommodation or modification, the individual must be a person with a disability. While disability may be defined differently by federal, state, or local fair housing law, in most cases, if a condition constitutes a disability under one fair housing law, it likely constitutes a disability under other fair housing laws.

IMPORTANT

For purposes of this Guidebook, this section will focus on the federal definition of disability. However, since housing providers are subject to federal, state, and local fair housing laws and those definitions of disability may vary, housing providers should examine and be familiar with any differences between the definition of disability in those laws.

Disability

A disability can be physical or mental. A person has a disability if the condition substantially limits at least one major life activity, such as walking, hearing, seeing, working, or learning.¹¹

A person can also be considered disabled under civil rights laws if regarded as having disability, even if the actual condition does not qualify as a disability.¹²

In addition, a person is considered disabled under civil rights laws if there is a record of having a disability.¹³

Examples of Disability

- A person who has visible scarring may be considered disabled if treated differently because of that trait.
- Someone with a hearing aid or someone who uses a wheelchair has an apparent disability.
- People with intellectual disabilities, chronic pain or fatigue, mental health disabilities, and learning disabilities have non-apparent disabilities.

Apparent Disabilities

Apparent disabilities are ones that can be easily seen or detected by others.

Non-apparent Disabilities

Non-apparent disabilities are ones that cannot be easily seen or detected by others. They are also referred to as invisible disabilities. Housing providers must treat non-apparent disabilities in the same manner as apparent disabilities.

Abuse of controlled substances or alcohol

Individuals currently abusing a controlled substance or alcohol are not covered by fair housing laws. However, people recovering from substance or alcohol abuse are considered people with disabilities and are entitled to reasonable accommodations and modifications.¹⁴

¹¹ The Fair Housing Act, 42 U.S.C. §3602(h)(1).

¹² The Fair Housing Act, 42 U.S.C. §3602(h)(3).

¹³ The Fair Housing Act, 42 U.S.C. §3602(h)(2).

¹⁴ See the Fair Housing Act, 42 U.S.C. §3602(h).

Section 5

Reasonable Accommodations and Modifications

Reasonable accommodations are a change, exception, adaptation, or adjustment to a housing provider's rule, policy, regulation, practice, program, or service that will help the person with a disability have an equal opportunity to access and use the unit and common areas.¹⁵

Examples of Reasonable Accommodations

- Providing a reserved accessible parking space near a resident's unit for someone with a mobility or respiratory disability.
- Providing documents in alternate formats such as large print or in electronic form for a person with a vision disability.
- Allowing a resident with a disability to have an assistance animal in a "no-pets" building.
- Waiving guest fees or guest rules for a live-in aide for a resident with a disability.

Reasonable modifications are a structural change to the unit or common area so that the person can access and use the premises.¹⁶

Examples of Reasonable Modifications

- Installing grab bars in the bathroom.
- Changing doorknobs to levers for easier access.
- Installing a ramp to the front door of the building.
- Installing a doorbell with a light instead of sound.
- Widening the doorways in a unit for easier access.

A request for a reasonable accommodation or modification may occur any time during the application process, the signing of a lease, the tenancy, or even during the eviction or nonrenewal process. Moreover, the request can be made by a family member or person acting on behalf of the person with a disability.

IMPORTANT

Housing providers must:

- Engage in an interactive process with residents who request an accommodation or modification;
- Respond in an adequate and prompt manner;
- Determine if there is a need for the request; and
- Determine if the request is reasonable.

¹⁵ Joint Statement of HUD and DOJ, "Reasonable Accommodations under the Fair Housing Act," (May 17, 2004) (Question 6, page 6) available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>.

¹⁶ Joint Statement of HUD and DOJ, "Reasonable Modifications under the Fair Housing Act," (March 5, 2008) (Question 2, page 3) available at https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf.

Section 5-Reasonable Accommodations and Modifications

Policies and Procedures

Residents may request an accommodation or modification orally, in writing, or on a form. There is no particular form a resident must use to request an accommodation or modification. Further, no special language is required (i.e. the request does not need to mention specific laws or use the phrase “reasonable accommodation” or “reasonable modification”).¹⁷



IMPORTANT

Housing providers are not required to set policies or formal procedures covering reasonable accommodations or modifications. However, they can be helpful. Reasonable accommodation and modification policies provide a roadmap to the resident regarding the housing provider’s process for considering and handling a request and help ensure the housing provider handles the request appropriately.

PRO TIP

If a policy or procedure does exist, a housing provider cannot refuse a request for an accommodation or modification because a resident failed to follow the established policy or formal procedures in making a request. Housing providers should consult with an attorney who is knowledgeable about disability law when adopting these types of policies.¹⁸

¹⁷ Joint Statement of HUD and DOJ, “Reasonable Accommodations under the Fair Housing Act,” (May 17, 2004) (Questions 12 and 13, pages 10-11) available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf> and Joint Statement of HUD and DOJ, “Reasonable Modifications under the Fair Housing Act,” (March 5, 2008) (Question 15, pages 9-10) available at https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf.

¹⁸ Id.

Section 5-Reasonable Accommodations and Modifications

Responding to a Request

Once a request for an accommodation or modification has been made, the housing provider has an obligation to respond to the request regardless of when the request was made or how it was communicated.¹⁹

IMPORTANT

1. Timeliness: Housing providers must respond in a timely manner. Any undue delay may be deemed a denial of the request.²⁰
2. Estimate Timeline: Housing providers must give an anticipated response date or timeline. If housing providers are not able to respond within a timely manner, they should let the person know when to expect a response. Otherwise, the lack of response could be deemed a denial.
3. Confidentiality: Housing providers must respect an individual's privacy. All information provided to the housing provider related to the individual's disability should be kept confidential.

PRO TIP

Although not required by law, housing providers should respond in writing and retain copies of all documentation regarding the request.

Determining the Need for a Reasonable Accommodation or Modification

The housing provider must also determine if there is a need for the accommodation or modification because of the resident's disability.

¹⁹ Id.

²⁰ Joint Statement of HUD and DOJ, "Reasonable Accommodations under the Fair Housing Act," (May 17, 2004) (Question 15, page 11) available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>.

²¹ Jankowski Lee & Assocs. v. Cisneros, 91 F.3d 891, 895 (7th Cir. 1996).

²² Joint Statement of HUD and DOJ, "Reasonable Accommodations under the Fair Housing Act," (May 17, 2004) (Question 7, page 7) available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>.

Section 5-Reasonable Accommodations and Modifications

PRO TIP

If the accommodation or modification enables equal access and use of the dwelling, then it is needed.²³



Examples: Determining the Need for an Accommodation

- Hae Jung’s landlord requires tenants to pay rent in person at the rental office that is three blocks away from the apartment building. Hae Jung has a psychiatric disability that makes her afraid to leave her unit. She requests permission to mail her rent payment. Hae Jung’s disability creates a need for her to mail her rent check and, therefore, the accommodation request should be granted.
- Kwane has epilepsy. Kwane works late and asks permission from the condominium association to use the pool after hours. There is no distinguishable disability-related need for Kwane to use the pool after hours and, therefore, the accommodation request can be denied.

PRO TIP

A housing provider is not obligated to provide the exact accommodation or modification requested if an alternative accommodation or modification will be equally effective in addressing the resident’s needs.²⁴

However, the housing provider should give deference to the original accommodation or modification requested because the person with a disability is in the best position to know what is needed.

Gathering Information

Housing providers are entitled to information necessary to evaluate whether a request for a reasonable accommodation or modification is needed. The inquiries a housing provider can make depend upon whether the resident’s disability and the need for the accommodation or modification are apparent.

If the disability is apparent or otherwise known, the housing provider may not ask for additional information. The housing provider may only request information necessary to evaluate the need, if the need is not known or apparent.²⁵

²³ Joint Statement of HUD and DOJ, “Reasonable Accommodations under the Fair Housing Act,” (May 17, 2004) (Question 6, page 6) available <https://www.hud.gov/sites/dfiles/FHEO/documents/hud DOJstatement.pdf> and Joint Statement of HUD and DOJ, “Reasonable Modifications under the Fair Housing Act,” (March 5, 2008) (Question 2, page 3) available at https://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

²⁴ Joint Statement of HUD and DOJ, “Reasonable Accommodations under the Fair Housing Act,” (May 17, 2004) (Question 7, page 7) available at <https://www.hud.gov/sites/dfiles/FHEO/documents/hud DOJstatement.pdf>.

²⁵ Id. (Questions 17 and 18, pages 12-14)

Section 5-Reasonable Accommodations and Modifications

If the disability is not apparent or known, the housing provider may request information to verify the disability, such as a letter from a medical professional, social service provider, the Social Security Administration, or other reliable third-party.

Examples: Requests for Information

- Leah uses a walker. She asks her housing provider to assign her a parking space near the entrance to the building. Because Leah's disability and need for the requested accommodation are both obvious, the housing provider may not ask for additional information.
- Jose uses a wheelchair. He asks his housing provider if he can keep an emotional support dog in his unit even though the provider has a "no-pets" policy. Jose's physical disability is apparent but the need for an emotional support animal is not. The housing provider may ask Jose to provide information about the need for the dog.

IMPORTANT

The housing provider may not ask a resident to disclose a specific diagnosis or provide his or her entire medical history.²⁶



²⁶ Id. (Questions 17 and 18, pages 12-14)

Section 5-Reasonable Accommodations and Modifications

Determining if a Request for an Accommodation or Modification is Reasonable

If the request for an accommodation or modification is necessary, the housing provider then evaluates whether the request is reasonable.

IMPORTANT

A request for an *accommodation* is not reasonable if it:

imposes an undue financial and administrative burden on the housing provider; or fundamentally alters the basic operation or nature of a housing provider's services or programs by significantly modifying, eliminating, or adding to the services it provides.²⁷

A request for a *modification* is not reasonable if:

the resident fails or refuses to provide the proper assurances the housing provider has requested regarding the workmanship, permits, and restoration of the property, as more fully explained in *Section 6-Associated Costs* and *Section 7-Complex Issues*.



²⁷ Id. (Question 7, pages 7-8)

Section 5-Reasonable Accommodations and Modifications

To determine whether a request for an accommodation imposes an undue burden, a housing provider should consider:

- the administrative and financial costs of the request,
- the costs of the housing provider's regular operations,
- the overall financial resources available to the housing provider,
- the benefit the request would have on the requestor, and
- whether there are any alternatives which could be granted.²⁸



Example of a Fundamental Alteration

Asking a landlord to pick up groceries for a tenant with a disability would be a fundamental alteration of the landlord's business of providing rental housing. This request is unreasonable.

²⁸ Id. (Question 7, pages 7-8)

Section 6 Associated Costs



Reasonable Accommodation Costs:

Because a reasonable accommodation is a change or an exception to a rule, policy, practice, or service, it often involves no costs. However, if there is a cost, a housing provider is typically responsible. Also, a housing provider cannot require a fee or deposit for an accommodation.²⁹

IMPORTANT

Because assistance animals are not pets, a housing provider cannot assess pet fees, special security deposits, or related pet costs for assistance animals. If an assistance animal causes damage to a unit or common areas beyond regular wear and tear, the housing provider may seek to recover costs associated with the damage from the resident in the same manner it would for damage caused by any other resident.³⁰

A housing provider must not require a person with a disability to obtain liability insurance as a condition for approval of an assistance animal. If a housing provider's insurance carrier refuses to cover the property, substantially increases the cost of coverage, or adversely changes the terms of the housing provider's policy because the housing provider permits a certain breed of animal as an accommodation, the housing provider should work with the resident to request a reasonable accommodation to the insurance policy from the carrier.

²⁹ Id. (Question 9, pages 8-9)

³⁰ HUD FHEO Notice FHEO-2013-01 on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs (April 25, 2013).

Section 6-Associated Costs

Reasonable Modification Costs and Maintenance:

A reasonable modification is a structural change to the unit or common area so that the person can enjoy full access and use the premises. Modifications can be made to the common areas and interior of the unit.³¹ The general rule is the resident pays for the modification.³²

However, if the housing provider receives federal financial assistance, the housing provider must pay for the modification under Section 504 of the Rehabilitation Act, unless doing so would impose an undue burden.³³ If a resident has a tenant-based Housing Choice Voucher (formerly called “Section 8” voucher), Section 504 does not apply and the resident has to pay for the modification.

IMPORTANT

A housing provider may not refuse to grant a modification because it speculates that the modification may affect the aesthetics or property value of the building.

A housing provider may require a more aesthetically pleasing design if it does not impose any additional costs and meets the resident’s needs.³⁴

If the housing provider requires a higher aesthetic standard, which in turn requires more costly materials, the housing provider must pay for those additional costs and the proposed design must meet the resident’s needs.³⁵

Housing providers cannot require the resident to obtain special liability insurance for the requested modification.³⁶

³¹ Joint Statement of HUD and DOJ, “Reasonable Modifications under the Fair Housing Act,” (March 5, 2008) (Question 10, page 7) *available at* https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf.

³² Id. (Question 3, page 3)

³³ Id. (Question 31, pages 16-17). See also, 29 U.S.C. 794.

³⁴ Joint Statement of HUD and DOJ, “Reasonable Modifications under the Fair Housing Act,” (March 5, 2008) (Question 19, page 11) *available at* https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf.

³⁵ Id. (Question 20, page 11)

³⁶ Id. (Question 22, page 12)

Section 6-Associated Costs



Generally, the resident is responsible for upkeep of a modification in the unit, such as upkeep for a chair lift.

If the housing provider normally maintains the common area, then the housing provider is responsible for maintaining the modification to a common area, such as upkeep for a ramp to the front entrance of the building.

If residents are normally responsible for upkeep of the common area, then the resident is responsible for maintaining the modification.³⁷

Example of Reasonable Modification Costs

Carlos rents a single family home and his lease requires him to clear the sidewalk and driveway of snow. Carlos installs a ramp at the front door of the home. Carlos is responsible for maintaining the ramp.

³⁷ Id. (Question 13, pages 8-9)

Section 6-Associated Costs

Available Modification Funds

Below are resources for funding home modifications (installing grab bars, wheelchair lifts, or ramps, etc.):

Children with disabilities under 21:

UIC Division of Specialized Care for Children

312-996-6380

www.dsccl.uic.edu

Under 60:

Chicago Mayor's Office for People with Disabilities

312-744-7050

www.cityofchicago.org/disabilities

Illinois Department of Human Services

Division of Vocational Rehabilitation:

Various locations and phone numbers

www.dhs.state.il.us

Over 60:

The City of Chicago's Small Accessible Repairs for Seniors (SARFS)

and

Resources for Senior Help with Home Modifications

312-744-0841

www.cityofchicago.org

Eldercare Locator

1-800-677-1116

www.eldercare.gov

Other resources:

Funding sources for modifications compiled by a private modification company:

<https://www.lifewaymobility.com/resources/national-funding-sources/>

Funding sources for modifications compiled by

Family Resource Center on Disabilities:

www.frcd.org/accessibility

Section 7

Complex Issues

Direct Threat

A housing provider may not need to accommodate a person if he or she constitutes a direct threat to other people or the property of others. Behavior that is bizarre, annoying, or unusual, but not threatening or violent in nature, is generally not sufficient to constitute a direct threat.

Determining whether a person imposes a direct threat cannot be based upon the housing provider's fear, speculation or stereotypes. It must be based upon an individualized assessment of reliable objective evidence, such as the person's current conduct or recent history of overt acts, including:

- (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.

IMPORTANT

In assessing whether a person would be a direct threat, the housing provider must take into consideration whether the person has received intervening treatment or medication that has minimized or eliminated the risk of the direct threat.³⁸

Even if a housing provider believes a resident poses a direct threat, a housing provider must determine whether a reasonable accommodation would alleviate the threat prior to taking an action against the resident. If the accommodation would alleviate the direct threat, and not cause an undue burden, the accommodation must be granted.³⁹

Example of Direct Threat

Maria has a psychiatric disability and takes medication that makes her sleepy. Due to the medication, Maria fell asleep while baking, causing a small fire. She woke up in time to call the fire department and the fire was put out. Maria explained to the apartment manager that her medication made her fall asleep. Nevertheless, the apartment manager intends to evict her.

Prior to filing an action to evict, the manager must determine whether an accommodation will alleviate the risk of the direct threat caused by Maria's disability.⁴⁰ For example, Maria could: (1) remove the oven or add a device that turns off the oven after a certain time, (2) hire an aide to cook for her, or (3) replace the medication that makes her sleepy. If no accommodations alleviate the risk, the manager can file to evict.⁴¹

³⁸ Joint Statement of HUD and DOJ, "Reasonable Accommodations under the Fair Housing Act," (May 17, 2004) (Questions 4 and 5, Pages 4-6) available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>.

³⁹ Id.

⁴⁰ The Fair Housing Act, 42 U.S.C. § 3604(f)(9); 24 C.F.R. § 100.202(d); *Chevron U.S.A. v. Echazabel*, 536 U.S. 73, 86 (2002) (citing 29 C.F.R. § 1630.2(r)); *Cromwell & Taylor LLP v. Moore*, 2000 Minn. App. LEXIS 1317 (Dec. 22, 2000); *Roe v. Sugar River Mills Assocs.*, 820 F.Supp. 636, 640 (D.N.H. 1993); *Roe v. Hous. Auth.*, 909 F.Supp. 814, 822-23 (D. Colo. 1995).

⁴¹ *Habitat Co. v. McClure*, 301 Ill.App.3d 425, 441 (1st Dist. 1998).

Section 7-Complex Issues

IMPORTANT

Denying an Accommodation

Housing providers must have valid reasons for denying an accommodation. The following are invalid reasons:

- The accommodation would violate rules or policies: An accommodation is an exception to the housing provider's rules. Sheer reluctance to allow an exception to the rules is not a valid reason to deny an accommodation.
- The resident already received an accommodation: More than one accommodation may be needed if a resident's needs have increased, the previous accommodation request proves to be insufficient, or if the new accommodation addresses a different need.
- Allowing the accommodation will open the floodgates: An accommodation cannot be denied because of fear that others will want something similar. If an accommodation is granted to a resident with a disability, a similar arrangement is not required for a person without a disability or need for the accommodation.
- Impair aesthetics and property values: A housing provider may not deny an accommodation because of speculation that it may affect the aesthetics or property value of the building.⁴²
- Dislike of the resident: A housing provider's opinion of a resident's character or behavior, or a bad relationship with the resident, is generally not relevant as to whether the accommodation is needed.
- Housing provider's perception of what is best: A housing provider may not deny a person with a disability an accommodation because the housing provider believes the housing is unsafe, the person needs more care, or the person should live in a different environment, such as a nursing home.
- Requests made during evictions: A person may request an accommodation at any time during the application process and throughout the tenancy, even after the housing provider files for an eviction.⁴³

⁴² Keys Youth Services, Inc. v. City of Olathe, Kan., 75 F.Supp.2d 1235, 1244 (D. Kan 1999).

⁴³ Sinisgallo v. Town of Islip Housing Authority, 865 F.Supp.2d 307, 340-341 (E.D. N.Y. 2012).

Section 7-Complex Issues



PRO TIP

The person with a disability is in the best position to determine where to live and what assistance or accommodations are needed.

Examples of Improper Denials

- Sasha has a personal attendant assisting her daily with chores, such as cooking and cleaning. As a reasonable accommodation, Sasha requests that her personal attendant be allowed to use the laundry facility. The accommodation is denied because the housing provider believes the resident should live in a nursing facility. This would be improper.
- Rita's landlord filed an eviction action because of clutter in her apartment. The clutter results from Rita's psychiatric disability. As a reasonable accommodation, she requests that her landlord give her more time to clean. It would be improper for the landlord to continue with the eviction without considering her request for a reasonable accommodation.
- Donald's landlord gives him a notice that his lease will not be renewed. Donald's son lives with him and he uses a wheelchair. Donald looks for a new accessible unit but is unable to find one and overstays his tenancy. His landlord files an eviction action. As a reasonable accommodation, Donald requests additional time to find a new accessible place for him and his son. It would be improper for the landlord to continue with the eviction without considering Donald's request for a reasonable accommodation.

Section 7-Complex Issues

Communication

If a resident has a disability that impairs his or her ability to communicate with the housing provider, the resident may request that the housing provider alter its standard mode of communication as a reasonable accommodation.

Examples of alternative modes of communication are: providing printed material in an alternative format, such as Braille or large print; arranging for sign language interpretation or captioning; using a telephone or video relay system for an individual who is Deaf or has a speech disability; or communicating by e-mail.



PRO TIP

Communication tips for housing providers:

- Do not assume a person with a speech disability has difficulty hearing or understanding.
- Ask the person to identify the preferred method of communication, such as e-mail or online chat.
- Be patient. A conversation with someone with a communication disability may take longer and the housing provider should not end the communication (e.g. hang up the phone).
- If necessary, ask the person to repeat or clarify statements. Generally, a person with a communication disability will not be offended.
- Speak directly to the person with a disability and not to an interpreter assisting the person (e.g. state "I want to talk to you about..." rather than "Tell her [the person with a disability] that...").

Section 7-Complex Issues

Assistance Animals

The term “assistance animal” refers to any animal that performs tasks or provides emotional support to lessen the effect of a disability.

Assistance animals are not pets and not subject to a housing provider’s “no-pet” policies or pet rules, including pet fees, special security deposits, or related pet costs.⁴⁴



There is no limit to the number of assistance animals a person with a disability can have, provided there is a disability-related need for that number of animals. If a person requests more than one assistance animal, the housing provider must evaluate whether the number of animals requested is needed and reasonable.

While a dog is the most common assistance animal, there is no requirement that the animal be a dog.

⁴⁴ HUD FHEO Notice FHEO-2013-01 on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs (April 25, 2013).

Section 7-Complex Issues

Examples of Assistance Animals

- Seeing-eye dogs
- Hearing dogs who alert their owners to sounds
- Dogs that pull a person in a wheelchair or pick up items for a person with a disability
- Animals that provide emotional and/or psychological support to individuals with mental disabilities

A housing provider may not apply size and weight limitations to assistance animals. Also, a housing provider may not restrict particular breeds, such as Pitbulls, because of speculation about their behavior. A housing provider may deny the accommodation if a particular animal poses a direct threat based on objective evidence about the animal's actual conduct.⁴⁵

Before denying an assistance animal based on another resident's allergy or fear of the assistance animal, the housing provider must show that the assistance animal posed a direct threat of harm to the other resident which could only be addressed by prohibiting the assistance animal. All determinations of direct threat of harm to the other residents must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct, and not on mere speculation or fear about harm or damages an animal may cause.⁴⁶

The resident is responsible for supervising the assistance animal and must always maintain full control of the assistance animal by use of a leash, a carrier, or voice. A housing provider must not require an assistance animal to wear a special collar or harness that identifies the animal as an assistance animal.

Assistance animals do not need any special certification or training.⁴⁷ A housing provider can ask for proof that the assistance animal was vaccinated and require that it be housebroken.

PRO TIP

The housing provider can address any problems with the animal's behavior in the same manner it would address similar problems.



⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

Section 7-Complex Issues

ADA vs. FHA

The Americans with Disabilities Act (ADA), which applies to businesses, employers, and government entities, limits the definition of “service animal” to dogs and miniature horses trained to perform a disability-related task.

The ADA does not cover a person’s need for an emotional support animal, unless the animal is trained to perform a disability-related task.

Housing providers must not confuse the definition of service animal under the ADA with the definition of assistance animal under the Fair Housing Act (FHA).

A housing provider must allow an assistance animal to accompany the person with a disability to all areas of the building where the public or residents are allowed.

IHRA Section 3-104.1

Under the Illinois Human Rights Act (IHRA), it is illegal for a housing provider to:

- (A) refuse to sell or rent property to a person with a disability because of a guide, hearing, or support dog;
- (B) discriminate against a person with a disability in contracting, selling, or renting property, or in any services or facilities related to the contract, sale, or rental because of a guide, hearing, or support dog;
- (C) charge an extra fee for the guide, hearing, or support dog, other than for actual damage done by the dog.⁴⁸

The following is a list of best practices when interacting with assistance animals:

- Do not pet the animal because this distracts the animal.
- Do not feed the animal as the animal should be cared for and fed by its owner.
- Do not startle or distract the animal.
- Do not stand between the animal and its owner.
- Do not assume a person with a disability wants to discuss the animal, the need for the animal, or assistance animals in general. Many people with disabilities do not care to share details regarding their disability or their assistance animal.

⁴⁸ The Illinois Human Rights Act, 775 ILCS 5/3-104.1.

Section 7-Complex Issues

Parking

If a housing provider offers parking for residents, the housing provider must reasonably accommodate a person with a disability by making an exception to its parking policies.



This obligation exists whether the parking spaces are available to residents on a first-come and first-serve basis or reserved.

Some residents with disabilities may need a formal accessible parking space (a space with an access aisle specifically designed, painted, and marked as an accessible parking space).

Others may simply need a reserved parking space close to an entrance. Thus, it is important to talk to the resident about what kind of parking space is needed and explore what options are available.

PRO TIP

Proof that the resident has a disabled parking placard issued by the Illinois Secretary of State usually is sufficient to demonstrate the resident's need for a reserved accessible parking space.

If a housing provider provides parking on a first-come and first-serve basis, the housing provider may need to reserve a space for a resident with a disability. Maintaining a certain number of accessible parking spaces may not be sufficient because those spaces may not be available when needed. Even if parking spaces are reserved, leased, or deeded, a housing provider must reasonably accommodate a resident.

Examples of Solutions for Reserved Parking

- Ask the user/owner of the leased or deeded space to voluntarily exchange the space
- Modify the terms of the lease to allow the housing provider to exchange spaces
- Reserve the space specifically for the resident with a disability once the current lease expires
- If spaces cannot be exchanged, create new space from unused space in the parking lot, such as where the garbage bins or maintenance equipment is kept.

Section 7-Complex Issues

Early termination of lease or transfer to a different unit

Residents with disabilities who reside in a unit that is not accessible may request as an accommodation to:

- (a) leave a unit early;
- (b) transfer to a unit within the same building or development; or
- (c) transfer to a unit in another building managed by the same housing provider.

Housing providers should consider these requests as they would any other reasonable accommodation requests. They may be required to waive any associated fees unless the waiver creates an undue burden for the housing provider.⁴⁹

Extra time to move

A person with a disability may need more time than someone without a disability to find and move into alternative housing because affordable and accessible housing is in short supply. A housing provider who gives a resident with a disability a notice to vacate by a certain date may need to provide extra time to move as a reasonable accommodation based on a disability.

Smoke-free and allergy/chemical-free environment



A housing provider may need to accommodate a resident with severe asthma, allergies, chemical sensitivities, or other respiratory conditions by:

- Restricting the use of certain chemicals and/or smoking in the common or public areas of the building.
- Offering the resident the opportunity to move to a vacant unit away from the chemicals or drifting smoke.

⁴⁹ Bentley v. Peace and Quiet Realty 2 LLC, 367 F.Supp.2d 341, 345-6 (E.D. N.Y. 2005); Samuelson v. Mid-Atlantic Realty Co., Inc., 947 F.Supp. 756, 759-762 (D.Del 1996).

Section 7-Complex Issues

- Adopting smoke-free policies for an entire building or certain buildings in a multiple unit housing complex.
- Repairing walls, windows, doorways, etc. and replacing carpeting to reduce or eliminate secondhand smoke seepage.
- Changing heating or ventilation systems to eliminate secondhand smoke dispersal among apartment units.

Aides

Live-in aides are workers who reside with residents with disabilities and provide essential care and/or assistance to the resident. Live-in aides may be professionals or relatives. If a housing provider has rules that limit who may occupy a unit with the resident, the housing provider may be obligated to make exceptions to those rules to allow a live-in aide as a reasonable accommodation.

Similarly, persons with a disability may need the assistance of a supportive health care worker, personal attendant, or a homemaker to visit the unit and provide services to the person with a disability.

PRO TIP

If a housing provider has rules that limit who may visit, the housing provider may have to make exceptions to those rules to allow access to the building.

Criminal history



A housing provider may have a policy to disqualify applicants with a criminal history. However, it may be discriminatory to exclude applicants with a criminal history, regardless of disability, without evaluating the candidate on a case-by-case basis and taking into consideration mitigating factors, such as the nature of the crime and length of time since the arrest or conviction.⁵⁰

⁵⁰ HUD, "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions," (April 4, 2016) available at https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

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Moreover, depending on fact-specific circumstances, a housing provider may need to reasonably accommodate an applicant with a disability if there is a connection between the criminal history and disability, although at least one court has concluded otherwise.

Example of Fact-Specific Circumstance of Criminal History and Disability

Bernie, due to a psychiatric situation, was convicted of disorderly conduct twenty years ago. Since then he has received psychiatric treatment and has no other criminal incidents. He applies for an apartment with a landlord who has a policy that prohibits tenants with previous convictions. Bernie can ask for an accommodation to the policy because his conviction is related to his disability and he does not present a threat of harm.

Credit history

A housing provider may have a policy to disqualify applicants based on poor credit history. However, in some circumstances, a housing provider may need to reasonably accommodate an applicant with a disability if there is a direct connection between the insufficient or poor credit and disability, and the person is otherwise qualified to rent (e.g. has sufficient income to pay the rent).⁵¹

Examples of Fact-Specific Circumstances of Credit History and Disability

- Vladimir was hospitalized for an extended period due to his disability, and was unable to pay bills. As a result, he accumulated a significant amount of credit debt. He has since worked out a payment plan for his debt and has sufficient income to continue renting an apartment, but now he has a poor credit score. He applies for a new apartment, but is rejected due to his credit score. Vladimir can ask for an accommodation because his poor credit is directly related to his disability.
- Henry, who has a physical disability, has a large credit card debt and poor credit score due to overspending. He applies for an apartment but is rejected due to his poor credit score. Because his poor credit score is unrelated to his disability, the housing provider does not need to make an exception to its policy.

⁵¹ Giebeler v. M&B Associates, 343 F.3d 1143 (9th Cir. 2003)

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Hoarding

If a person's practice of hoarding constitutes a disability or results from a disability, the person may request a reasonable accommodation from the housing provider, such as extra time to clean up the unit and/or assistance in removing the clutter.⁵²

Denying a Modification

Housing providers must have a valid reason to deny a modification.

IMPORTANT

- Speculation that the modification violates a fire or building code is not sufficient. The housing provider must identify an actual violation of the fire or building code.

Example of Improper Denial

A resident requests to install a chair lift in the common area stairway. There is sufficient space to install the chair lift under the fire and building codes. The housing provider cannot deny the request based on its fear that other residents are at risk in the event of a fire.



⁵² *Rutland Court Owners, Inc. v. Taylor*, 997 A.2d 706 (D.C. 2010) (after cooperative board attempted to evict resident for failing to adequately clean and exterminate his apartment following bedbug infestation, court concluded request for more time to clean was sufficient to notify the board of need for accommodation); *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109 (D.C. 2005) (reversing trial court decision barring tenant's reasonable accommodation defense when landlord refused to stay eviction action for unsanitary condition of apartment after Adult Protective Services agreed to assist tenant with cleaning the unit while action was pending); *Schuett Inv. Co. v. Anderson*, 386 N.W.2d 249 (Minn. Ct. App. 1986) (refusing eviction of tenant for maintaining conditions approaching fire hazard without first making reasonable accommodation to help alleviate them); *Lebanon Cnty. Hous. Auth. v. Landeck*, 967 A.2d 1009 (Pa. Super. Ct. 2009) (holding trial court should have considered evidence related to tenant's reasonable accommodation request to PHA seeking stay of eviction process for poor housekeeping).

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Assurances

IMPORTANT

Before granting permission for a reasonable modification, the housing provider can require:

- A description of the modification, which may be verbal or written depending on the nature of the proposed modification.⁵³
- Reasonable assurances that the modification will be done in a professional manner.
- The work be done in compliance with all relevant building and architectural codes, and performed by a licensed contractor. *Note:* The housing provider *may not* insist the resident use a specific contractor.⁵⁴
- The resident obtain necessary permits.⁵⁵

A housing provider may deny a request as unreasonable if the housing provider asks for this information and it is not provided.⁵⁶

Restoration

Housing providers can require that a resident remove a modification to a unit and restore the unit to its original condition at the end of the residency, if the housing provider requests it and it is reasonable to do so.

Generally, a housing provider should only require restoration if the modification affects a future resident's enjoyment of the unit.⁵⁷ A housing provider cannot require that a modification to a common area (e.g. a ramp to the front door) be restored to its original condition.⁵⁸

Examples of Individual Unit Restoration

- Because Pam uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink. It is reasonable for the housing provider to require Pam, when she vacates, to reinstall the cabinets and raise the sink back to its original height.
- Because of a mobility disability, Rich obtained approval from the housing provider to widen doorways in his unit to allow him to maneuver through them in his wheelchair. It is not reasonable for the housing provider to require him to restore the doorways to their prior width because a slightly wider door does not interfere with the use of the apartment.

⁵³ Joint Statement of HUD and DOJ, "Reasonable Modifications under the Fair Housing Act," (March 5, 2008) (Question 21, pages 11-12) available at https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf.

⁵⁴ Id. (Question 23, page 12)

⁵⁵ Id. (Question 23, page 12)

⁵⁶ Id. (Question 21, pages 11-12)

⁵⁷ Id. (Questions 24-25, pages 12-13)

⁵⁸ Id. (Question 26, page 13)

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PRO TIP

In limited circumstances, if the housing provider requests restoration and is uncertain the resident will be able to pay for restoration, the housing provider can require a deposit into an interest-bearing account to cover restoration costs. The interest generated from the account will count towards the restoration costs.⁵⁹

Retaliation

Retaliation occurs when a housing provider attempts to discourage a resident from, or punishes a resident for, requesting a reasonable accommodation or modification by taking an adverse action against the resident.

IMPORTANT

A housing provider cannot retaliate against a resident because the resident requested an accommodation or modification.⁶⁰

Adverse actions which could be retaliatory if in response to a request for an accommodation or modification:

- Non-renewal of lease
- Increase in rent
- Eviction
- Harassment



⁵⁹ Id. (Questions 27-28, pages 13-15).

⁶⁰ The Fair Housing Act, 42 U.S.C. §818; the Illinois Human Rights Act, 775 ILCS 5/6-101(A).

Section 8

Issues Unique to Certain Housing Providers

Municipalities

Municipalities have a duty to accommodate their residents by making exceptions to their ordinances and zoning restrictions.⁶¹

Examples of Zoning Exemption

A not-for-profit organization attempts to purchase a five-bedroom home in a residential area to use as a group home for people with autism. The municipality's zoning ordinance restricts occupancy to a single family. The organization requests a zoning variance so that the home can be occupied by five individuals with autism. The municipality should treat the organization's request for a variance as a request for a reasonable accommodation.

Condominium and Cooperative Associations

Both condominium and cooperative associations are covered by fair housing laws and are required to grant reasonable accommodations or modifications to people with disabilities.

IMPORTANT

- Associations must comply with fair housing laws: Section 18.4(q) of the Illinois Condominium Act specifically gives condominium association board members the authority to “reasonably accommodate the needs of a unit owner who is a person with a disability as required by the federal Civil Rights Act of 1968, the Illinois Human Rights Act, and applicable local ordinances with respect to the use of common elements or approval of modifications in a unit.”⁶²
- Associations must consider requests from both owners and renters: Associations are required to engage in the interactive process. The association may need to make an exception for tenants requesting an accommodation or modification if the association ordinarily only allows unit owners to communicate directly with the board or appear at board meetings.
- Association board members must remain unbiased in assessing requests: Although board members may be attorneys, doctors, or other professionals, their role is only to determine whether a resident has provided sufficient information for the accommodation or modification. The board may only request additional information if the resident does not submit reasonably reliable information.

⁶¹ Joint Statement of HUD and DOJ, “Reasonable Accommodations under the Fair Housing Act,” (May 17, 2004) (Question 2, page 3) available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>.

⁶² The Illinois Condominium Act, 765 ILCS 605/18.4(q).

Section 8-Issues Unique to Certain Housing Providers

IMPORTANT

- **Associations must respond timely:** It may take a condominium association longer to respond to requests for accommodations or modification due to the need to consider the request at the next board meeting. However, if the association takes too long to make its decision, the delay could be considered a denial. An association should consider expediting its meeting date or temporarily granting the accommodation until the board considers the request.

Examples of Request to a Condominium Board

Chin is a person with a disability who has an emotional support animal. She rents a condo in a building that has a “no pets” policy. When she moves in, she alerts the association of her disability and need for the animal. She provides supporting documentation. The association informs Chin that it will evaluate her request at the next meeting, two months later. The association should either move up the board meeting or allow Chin to have her emotional support animal until it can evaluate her request.

Public Housing Authorities and Other Federally Funded Housing Providers

Since public housing authorities and other subsidized housing providers receive federal financial assistance, they are covered by the Fair Housing Act, the Illinois Human Rights Act, and Section 504 of the Rehabilitation Act.⁶³

The application and waitlist process for a provider of subsidized housing must be accessible to people with disabilities. Further, the housing provider must provide a reasonable accommodation to an applicant on a waitlist when needed.⁶⁴

IMPORTANT

- Under Section 504, an applicant on the waitlist who needs an accessible unit is entitled to the next available accessible unit, even if there are people without disabilities on the waitlist ahead of the applicant.
- As with waitlists, a resident who needs to transfer to an accessible unit is entitled to the next available accessible unit over new applicants without disabilities.⁶⁵
- Similarly, a resident who needs a particular accessibility feature, such as a first-floor apartment, is entitled to the next available unit with that feature.

⁶³ The Rehabilitation Act of 1973, 29 U.S.C. 794. See also Joint Statement of HUD and DOJ, “Reasonable Modifications under the Fair Housing Act,” (March 5, 2008) (Question 31, pages 16-17) available at https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf.

⁶⁴ National Housing Law Project, “Reasonable Accommodation in Federally Assisted Housing,” (citing 24 C.F.R. § 982.204(c)(2) (2012); HUD PUBLIC HOUSING GUIDEBOOK, supra note 58, at 39–40 (providing a detailed list of possible reasonable accommodation to waiting list procedures), 58–59; HUD HANDBOOK 4350.3, supra note 14; HUD VOUCHER GUIDEBOOK, supra note 81, at 4-6).

⁶⁵ National Housing Law Project, “Reasonable Accommodation in Federally Assisted Housing,” (citing HUD, PHOG, supra note 14, at 106–07; HUD HANDBOOK 4350.3, supra note 14, at 7-28; see also *Distler v. El-Ad Reserve at Lake Pointe, L.L.C.*, 2011 WL 3715091 (M.D. Fla. Aug. 24, 2011) (denying landlord’s motion for summary judgment on failure to accommodate claim when landlord refused tenant’s request to move from second floor to ground floor unit); NHP, Historic Settlement Reach Regarding Unit Transfers for People with Disabilities, 30 © 2012 National Housing Law Project 41 HOUS. L. BULL. 37, 55 (Mar. 2011)).

Section 8-Issues Unique to Certain Housing Providers

A housing provider can attempt to accommodate a resident requesting a reasonable modification by other means. A subsidized housing provider may offer to transfer a resident to a fully accessible unit within the same building or a different building.⁶⁶

PRO TIP

A housing provider may move a resident without a disability who lives in an accessible unit to an inaccessible unit if the lease provides for it.⁶⁷

A transfer may not be appropriate if the resident has lived in the unit a long time, the modification is minor, or the disability would make it difficult to adjust to a new unit.

Example of a Transfer

Kanwar has a vision disability and lived in a subsidized unit for over 20 years. Recently, due to a back condition, Kanwar started to use a walker. He requests that his housing provider install grab bars in the bathroom. Rather than install grab bars, the housing provider offers to move Kanwar to a fully accessible unit in a different building on the other side of town. The housing provider's offer to transfer Kanwar to a fully accessible unit may not be appropriate given the time Kanwar has lived in the building and the ease of the modification.



⁶⁶ Joint Statement of HUD and DOJ, "Reasonable Modifications under the Fair Housing Act," (March 5, 2008) (Question 31, pages 16-17) available at https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf.

⁶⁷ 24 CFR §9.154(b).

Section 8-Issues Unique to Certain Housing Providers

A person may request a subsidized housing provider to add a family member with a disability to the resident's household as a reasonable accommodation.

Example of Adding a Family Member

Suzie has had a housing choice voucher for many years. Her adult son, Greg, was in a car accident and acquired a severe brain injury. Suzie requests that the public housing authority add Greg to her voucher so she can provide care for him. The public housing authority should treat this as a request for a reasonable accommodation.

If a resident needs a live-in aide as a reasonable accommodation, the subsidized housing provider must include a live-in aide in determining the family size and may require an additional bedroom for the live-in aide.⁶⁸ The subsidized housing provider cannot count the live-in aide's income in determining the household income.⁶⁹



Example of Adding a Family Member

Regina has a Section 8 housing choice voucher for a one-bedroom unit for herself and her seven-year old son. Regina's disability requires the care of a live-in aide. Regina requests an accommodation to have her aide reside with her. Since a live-in aide is counted in determining family size, and federal regulations require one bedroom for every two people, Regina would be entitled to a Section 8 housing choice voucher for a two-bedroom unit. Further, the live-in aide's income would not count towards Regina's household income.

⁶⁸ 24 C.F.R. §982.402(b)(6).

⁶⁹ 24 C.F.R. §5.609(c)(5).

Section 9

Legal Remedies

A person wishing to file a discrimination complaint with the U.S Department of Housing and Urban Development (HUD) or with the Illinois Department of Human Rights (IDHR) can do so within one year of the violation. A person wishing to file a discrimination complaint in federal or state court can do so within two years of the violation.⁷⁰



In a fair housing complaint, there are several types of relief available to a resident.⁷¹

- **Actual damages** are money awarded to the resident to compensate the resident for actual loss suffered because of the housing provider's discrimination, such as compensation for lost housing opportunities, rent differentials, out of pocket expenses, emotional suffering, moving expenses, and other costs.
- **Injunctive and equitable relief** requires a housing provider to do or not do a specified act. Its purpose is to correct the effects of the fair housing violation and prevent future violations. It may require a housing provider to: attend a fair housing training, grant the accommodation or modification, and/or create a reasonable accommodation or modification policy.
- Under the fair housing laws, a resident who successfully brings an action against the housing provider can recover the costs of an attorney to handle the case.⁷²
- For actions brought by HUD, the U.S. Department of Justice, or IDHR, housing providers can be required to pay civil penalties or fines for violating the fair housing laws, to vindicate the public interest. In assessing what that fine should be, courts will consider the following factors: (1) the egregious nature of the violation; (2) the culpability of the housing provider; (3) the financial circumstances of the housing provider; and (4) the need to deter the housing provider from committing future violations.⁷³
- **Punitive damages** are money damages awarded to the resident to punish the housing provider for particularly bad acts and to deter others from similar misconduct.
- HUD can require housing providers that receive federal funds to return those funds for violating federal fair housing laws. Projects receiving Low Income Housing Tax Credits can also have their credits recaptured by the Internal Revenue Service.

⁷⁰ Joint Statement of HUD and DOJ, "Reasonable Accommodations under the Fair Housing Act," (May 17, 2004) (Question 19, pages 14-15) available at <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>. (citing *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)).

⁷¹ The Fair Housing Act, 42 U.S.C. §3613(c); the Illinois Human Rights Act, 775 ILCS 5/8B-104.

⁷² 24 CFR §180.705(b); the Illinois Human Rights Act, 775 ILCS 5/8B-104(D).

⁷³ *Krueger v. Cuomo*, 115 F.3d 487, 493 (7th Cir. 1997).

Section 10 Legal Remedies

Legal Guidance⁷⁴

1. **Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Accommodation under the Fair Housing Act**
https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library#Guidance
2. **Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Modifications under the Fair Housing Act**
https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library#Guidance
3. **Department of Housing and Urban Development Guidance on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs**
https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library#Guidance
4. **U.S. Department of Housing and Urban Development, Office of General Counsel Guidance on Application of the Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Transactions**
https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF
5. **U.S. Department of Housing and Urban Development Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968; and the Fair Housing Act of 1988**
<https://www.hud.gov/sites/documents/PIH2003-31.PDF>
6. **Joint Statement of the Department of Justice and the Department of Housing and Urban Development on Group Homes, Local Land Use, and the Fair Housing Act**
https://www.hud.gov/program_offices/fair_housing_equal_opp/library

Statutes

- a) The Fair Housing Act (42 U.S.C. 3601)
<https://www.justice.gov/crt/fair-housing-act-2>
- b) Americans With Disabilities Act of 1990 (42 U.S.C § 12102)
<https://www.ada.gov/pubs/adastatute08.htm>
- c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794)
https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504
- d) The Illinois Human Rights Act (775 ILCS 5)
<http://www.ilga.gov/legislation/ilcs/ilcs2.asp?ChapterID=64>

Municipal Ordinances

Units of local governments, such as municipalities and counties, may also have their own civil rights ordinances. Housing providers should check with their units of local governments to learn whether they have an ordinance that may apply.

Regulations

HUD's Regulations on discrimination related to disability under the Fair Housing Act
<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=24:1.2.1.1.1>

⁷⁴ If you have trouble accessing this document from this link, all of HUD's policy and guidance can be found at HUD's FHEO Library on their website at https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library. You may also contact HUD at:
<https://www.hud.gov>
451 7th Street S.W., Washington, DC 20410
Telephone: (202) 708-1112
TTY: (202) 708-1455

Section 10-Appendices

Housing Provider Referral Information

Government resources

U. S. Department of Housing and Urban Development (HUD)

Chicago FHEO Center
77 W. Jackson Blvd., Suite 2101
Chicago, Illinois 60604
(Tel) (800) 765-9372
(Fax) (312) 886-2837

U. S. Department of Justice (DOJ) Civil Rights Division

950 Pennsylvania Ave., NW
Washington, DC 20530-0001
(Tel) (202) 514-4609
(TTY) (202) 514-0716

Illinois Department of Human Rights (IDHR) Fair Housing Division

555 West Monroe Street, 7th Floor
Chicago, Illinois 60661
(Tel) (312) 814-6229
(TTY) (866) 740-3953
(Fax) (312) 814-6251

Office of the Illinois Attorney General Disability Rights Bureau

James R. Thompson Center
100 West Randolph St., 11th Floor
Chicago, Illinois 60601
(Tel) (312) 814-5684
(TTY) (800) 864-3013
(Fax) (312) 814-3212

Nonprofit resources

Access Living (For Housing Provider Training)

115 West Chicago Ave.
Chicago, Illinois 60654
(Tel) (312) 640-2100
(Tel) (800) 613-8549 (toll free)
(TTY) (312) 640-2102
(TTY) (888) 253-7003 (toll free)
(Fax) (312) 640-2101

Great Lakes ADA Center

1640 West Roosevelt Road Room 405
Chicago, Illinois 60608
(V/TTY) (312) 413-1407
(V/TTY) (800) 949-4232
(Video Phone) (312) 767-0377
(Fax) (312) 413-1856

Other sources

Fair Housing for Tenants with Disabilities:

Understanding Reasonable Accommodations and Modifications published by the North Carolina Department of Health and Human Services, North Carolina Housing Finance Agency, and the School of Government at the University of North Carolina at Chapel Hill (2008).

Fair Housing Handbook: Reasonable Accommodations and Modifications, published by Disability Rights Oregon (2008).

Guide for Reasonable Accommodations and Modifications, Housing Opportunities Made Equal of Virginia, Inc.

A Consumer's Guide to Fair Housing, published by: Iowa's Governor's Developmental Disability Council, Iowa Civil Rights Commission, Iowa Division of Person with Disabilities, Iowa Legal Aid, Iowa Program for Assistive Technology, and the University of Iowa School of Law.

NOTES

ILLINOIS DEPARTMENT OF
 **Human Rights**

Chicago:

555 West Monroe Street, 7th Floor
Chicago, Illinois 60661
(312) 814-6200 or (800) 662-3942 (Voice)
(866) 740-3953 (TTY)

Springfield:

535 West Jefferson Street, 1st Floor
Springfield, Illinois 62702
(217) 785-5100 (Voice)
(866) 740-3953 (TTY)

Marion:

2309 West Main Street
Marion, Illinois 62959
(618) 993-7463 (Voice)
(866) 740-3953 (TTY)

Website: www.illinois.gov/dhr

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