Fair Housing: Reasonable Accommodations & Modifications for the Chester County Department of Community Development

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• The Housing Equality Center of Pennsylvania is America’s oldest fair housing council. The Housing Equality Center’s service area includes the Pennsylvania counties of Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton and Philadelphia. The organization’s education and technical assistance programs support housing professionals throughout Pennsylvania.

• The Housing Equality Center provides:
  • Counseling and conduct testing investigations to help housing discrimination victims.
  • Education and training programs for housing professionals, nonprofits, housing authorities and others to promote compliance with fair housing laws and to prevent discrimination.
  • Publications and resources to educate the public and housing professionals about fair housing.
Agenda

• State and Federal Fair Housing Laws
• Definition of Disability
• Reasonable Accommodation and Modification Requests
• What is Reasonable?
• Assistance Animals
• Verifying Disability and Need
• Direct Threat
• Using Reasonable Accommodations to Overcome Obstacles to Housing
• Using Reasonable Accommodations to Prevent Evictions
Title VIII of the Civil Rights Act of 1968, as amended in 1988, known as the Fair Housing Act (FHA), makes it unlawful to discriminate against individuals in housing transactions based on:

- Race
- Color
- Religion
- National Origin
- Sex
- Disability
- Familial Status*

*Familial status means the presence of children under 18 in a household, pregnant women or anyone adopting or securing legal custody of a child.
A February 11, 2021 memo states that HUD’s Office of Fair Housing and Equal Opportunity will begin enforcing the Fair Housing Act to prohibit housing discrimination based on:

**Sexual Orientation**

and

**Gender Identity**
It is against the law, because of a protected class, to:

- Refuse to rent housing
- Refuse to negotiate for housing
- Make housing unavailable or deny housing if it is available
- Set different terms, conditions or privileges for the sale or rental of housing
- Advertise in a discriminatory way
- Threaten, coerce, or intimidate anyone exercising their fair housing rights or assisting others in exercising those rights
PA State Human Relations Act

- PA Human Relations Act adds TWO additional protected classes and makes it illegal to discriminate against
  - age (40 and over)
  - users, handlers, or trainers of assistance animals for persons with disabilities
Fair Housing Act Exemptions

- Owner occupied buildings with four or fewer rental units (two or fewer units under PA state law)
- For Sale By Owner - single family housing sold or rented without the use of a broker if the private individual owner does not own more than three such single family homes at one time. **NOTE: PA does not contain this exemption.**
- Housing operated by religious organizations and private clubs may limit occupancy to members
- Housing for Older Persons - must comply with the HOPA definition - either 80% of households with a resident age 55+ or 100% of residents age 62+
- No exemption for discriminatory statements and/or advertising
DISABILITY DEFINED

A physical or mental impairment that substantially limits one or more of a person’s major life activities.

Includes people having a history of an impairment and people being perceived as having an impairment.
A reasonable accommodation is a change in rules, policies, practices, or services that enables a person with a disability equal opportunity to use and enjoy a dwelling. Example accommodations include:

- Assistance animal with no fees, lease application in large print, permitting live-in personal care attendant, transfer to a more accessible unit/community, reserved marked handicapped parking space

A reasonable modification is a change in the physical structure of a dwelling that enables a person with a disability equal opportunity to use and enjoy that dwelling. Example modifications include:

- Widened doorways in unit, grab bars in bathroom or at entrance into unit, removal of below-counter cabinets, installation of wheelchair ramp at entrance to building/unit, installation of fence or awning, replacing door handles with levers, installation of visual and tactile alert devices
What is Reasonable?

A request for an accommodation or modification is considered reasonable if that request:

• Does not cause an undue financial and administrative burden to the housing provider
• Does not cause a basic change in the nature of the housing program available
• Will not cause harm or damage to others
• Is technologically possible
How should the request be made?

- It is the responsibility of the person with a disability to make the request.
- It is not the responsibility of a housing provider to offer or suggest an accommodation or modification to a resident or prospective resident, even if they are aware of the disability or disability related need.
- Requests can be made verbally.
- A request can be made by someone on behalf of a person with a disability.
- There must be a connection between the disability and the need for the accommodation or modification.
- A person can ask for a reasonable accommodation at any time including when applying for housing, when moving in or moving out, while living in the unit, or even during an eviction hearing at Court.
Standardized Forms

- Housing providers can create standardized forms for requesting reasonable accommodations and modifications, however, they cannot require that a person use a certain form to request a reasonable accommodation or modification.

- Housing providers cannot require that the request is made in a specific manner or at a specific time.

- Housing providers must consider the request even if the person making the request did not use their preferred form or procedure for making the request. The request cannot be denied just because the requester did not use the preferred form or procedure.

- The form cannot contain invasive questions or be burdensome.
Negotiating Reasonable Accommodations

What if a housing provider believes a request is unreasonable?

• Each reasonable accommodation/modification request is individual and must be evaluated on a case by case basis.

• If the request proposed by a tenant is unreasonable, the housing provider must engage in an interactive dialogue with the tenant to determine if there is an alternative accommodation that will meet the tenant’s needs.

• A housing provider may not stall or delay in responding to a request for reasonable accommodation.
Fees for Reasonable Accommodations

Can a housing provider charge extra fees or deposits or require conditions?

- Housing providers cannot place any financial conditions upon a reasonable accommodation or modification or require some action or condition before granting a request.

- For example, a housing provider cannot require a resident with a disability to purchase insurance to protect the landlord should someone be injured by a wheelchair ramp.

- Housing providers are not permitted to charge a fee for a reasonable accommodation and must forego collecting pet deposits or pet fees for assistance animals.
Reasonable Modifications

What rights does the landlord have?

• Can require that the work be performed in a professional manner with a certified contractor.

• Can require the tenant to restore the unit to original condition when moving out if the modification interfere with the next tenant’s use and enjoyment of the property. (Common use areas may be beneficial to future tenants and you cannot require restoration).

• Can require tenant to place money in an escrow account to pay for the restoration when they move out.

• Accessible units are highly marketable.
Reserved Parking

- General handicapped parking available to all with a handicapped parking placard vs. privately reserved parking space – case by case basis.
- Cost of installation is borne by the housing provider – including painting lines, installing signage, enforcement, etc.
Assistance animals come in many species, breeds and sizes.
• Americans with Disabilities Act of 1990 – prohibits discrimination based on disability in programs and activities provided by public entities (including housing related programs) and in goods, services, facilities, and privileges of places of public accommodation owned or operated by private entities.

• SERVICE DOGS under the ADA are individually trained to do work or perform tasks for people with disabilities.
Fair Housing Law

- Pa State Human Relations Act and the federal Fair Housing Amendments Act apply to DWELLINGS and have a broader definition of assistance animal.

- ASSISTANCE ANIMALS do NOT need to be trained or certified.

- ASSISTANCE ANIMALS serve a disability related need and allow a person with a disability equal opportunity to use and enjoy a dwelling.
Assistance Animals

A housing provider cannot:

• Refuse to allow someone with a disability the right to an assistance animal when it’s reasonable
• Deny occupancy, or evict a person with a disability because they request an assistance animal
• Charge extra fees or deposits
• Stall or delay on responding to a request
• Require training or certification for an assistance animal
PA Assistance and Service Animal Integrity Act (2018)

1. Protects landlords or associations from being held liable for injuries caused by a person’s assistance animal or service animal which the landlord has permitted on the property as a reasonable accommodation.
2. Makes it a Third Degree Misdemeanor to:
   • Misrepresent an animal as an assistance or service animal,
   • Intentionally create a document misrepresenting an animal as an assistance animal or service animal in housing
   • Provide a document to another falsely stating that an animal is an assistance animal or service animal for use in housing
   • To fit an animal with a vest or sign which indicates the animal is an assistance animal.

Third Degree Misdemeanor is a Summary Offense
Can be fined up to $1,000.
Assistance Animals

Does a provider have to accept an online “Emotional Support Animal” certificate?

• No official registration or certification for emotional support animals or assistance animals exists.

• Housing providers can request a letter from a medical professional who is familiar with the patient or client making the request, their disability and the disability related need for the animal.
A housing provider may not ask:

• Questions about the nature or severity of a disability or about a specific diagnosis

• If an individual is able to live independently

• Questions that would require an individual to waive their rights to confidentiality regarding their medical condition or history

• To see medical records
If disability is obvious and need for accommodation or modification is clear – No additional documentation may be required

If disability is known, but need for accommodation or modification is not clear – Only information to evaluate disability-related need may be required

If disability and need are not known – Provider may request documentation that tenant has a disability and a disability-related need

If the accommodation or modification proposed is unreasonable, is there another solution?
If the accommodation or modification proposed is unreasonable, is there another solution?

Engage in an interactive dialogue.
Verifying Disability and Need

All verifications to housing providers should come from a medical or other professional who is familiar with:
- the patient or client making the request,
- their disability, and
- the disability related need for the animal.

NOTE: No official certification or registration for emotional support animals or assistance animals currently exists.
Reasonable Accommodation Evaluation “DANCE”

Assess the following to help determine the reasonableness of the request.

**Disability** – Does the tenant have a disability as defined by fair housing laws?

**Accommodation** – Is the tenant requesting a change in the landlord’s rules or practices?

**Necessary** – Is the accommodation or modification necessary for full use and enjoyment?

**Cost** – Does the accommodation or modification impose an undue financial and administrative cost on the landlord?

**Effect** – Would the accommodation or modification effect a fundamental change in the landlord’s business?

If the answer to the first three questions is YES and the answer to the last two questions is NO, then the housing provider should grant the request.
The Fair Housing Act does **not** require that housing providers rent to anyone who constitutes a “direct threat” to the health or safety of others or a risk of substantial damage to the property of others.

However, housing providers **may not** deny housing to people with disabilities based on fear, speculation, or stereotypes about a particular disability or stereotypes about disabilities in general.

Denying an individual housing or evicting an individual because of a direct threat must be based on reliable and objective evidence.
The direct threat assessment must take into account the nature and severity of the risk of injury as well as the probability that an injury will occur and whether there are any reasonable accommodations that would eliminate the direct threat.

Even in cases of tenants who do in fact present a “direct threat” due to their disabilities, these tenants are entitled to a determination whether any reasonable accommodation would mitigate any risk posed by their disability-related behaviors prior to eviction.
If an individual has a criminal record due to conduct that resulted directly from a mental health disability or addiction and can demonstrate that they have received treatment or medication that has eliminated the behavior that lead to the criminal conduct, the individual can request a reasonable accommodation to make an exception to the provider’s ordinary criteria regarding criminal background.

- A case manager can offer to be the contact person for landlord if there is any problem or issue with tenancy.

- References from previous landlords, employers, probation officers, etc. can be helpful. Show rehabilitation efforts, explain mitigating circumstances or how circumstances have changed from when the criminal behavior occurred.
Example:

Person becomes disabled and no longer able to work, then acquires a negative credit record due to late or unpaid bills. The person is granted SSDI and no longer dependent on employment for income. Loss of income due to inability to work is unlikely to reoccur.

Strategy:

• If negative credit can be shown to be directly due to a person’s disability, and the person is otherwise financially qualified to rent, a reasonable accommodation can be requested to waive the credit requirement.

• A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.

• Consider a co-signor if necessary.
Example:

Person lacks rental history due to a disability and previous long term hospitalization. The person’s health is stabilized and they are attempting to move into independent living.

Strategy:

• A reasonable accommodation can be requested to ask the housing provider to consider references from a social worker or employer in lieu of landlord references.

• Get support letters from counselors, employers, or therapists.

• A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.
Overcoming Obstacles to Housing: Negative Landlord References

Example:

Person with mental health disability stopped taking medications and became disruptive at a previous apartment. Supports are now in place, medication is being monitored, and the person is participating in behavioral therapy.

Strategy:

• If the reason for a negative reference is based on disability related behavior, the individual can request a reasonable accommodation to disregard the negative references or to at least consider mitigating circumstances.

• A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.

• Get support letters from counselors, employers, or therapists.
Example:
An individual with a disability is unable to qualify financially for housing because of their disability (poor credit record, no credit record, insufficient income), and a co-signor is willing to sign the lease but there is a no co-signors policy.

Strategy:
• Tenant can request a reasonable accommodation for the landlord to accept the application even if the landlord has a “no co-signor” policy.

Remember: Must show a nexus between the disability and the need for the accommodation.
In Pennsylvania, source of income is not a protected class, meaning that a landlord can refuse to rent to individuals who hold a Housing Choice Voucher from the Housing Authority, however....

several municipalities within Pennsylvania, such as the City of Philadelphia, have added source of income as a protected class.

**Strategy:** Contact your local government or municipality to find out if source of income is a protected class in your area and what recourse your community offers if someone has been denied housing based on their source of income.

Tenant may be able to request a reasonable accommodation to the policy of not accepting housing vouchers due to a disability. Keep in mind that the landlord may argue that it is an undue administrative burden.

**Testing** can be performed to see if this policy is being equally enforced with all people without regard to protected class. Contact the Housing Equality Center if you suspect discrimination is occurring.
Refusing to approve an application because a prospective tenant is not employed could be unlawful discrimination if the prospective tenant has other verifiable income such as social security, disability, or child support that would financially qualify them to rent. These are verifiable sources of income which are directly related to being a member of a protected class (age over 40, disability, and/or familial status).

**Strategy:**
Housing providers who require paystubs as proof of income must make reasonable accommodations to their policy for individuals with disabilities who are unable to work due to their disabilities but still have sufficient income to rent. Request a reasonable accommodation to the employment income policy and show alternative verifiable income.
Example:
A nursing home resident transitioning to private housing might require ambulance transport and not be able to apply in person.

Strategy:
A requirement for a housing application to be made in person should be waived for individuals with disabilities to whom it would impose a great hardship or who are unable because of their disability to come in person to apply.

Request a reasonable accommodation to the in-person application requirement. Ask for video or phone conferencing. Signatures required on documents can be mailed or scanned and forwarded to the housing provider.
Strategy:
• If a person has a disability which makes it difficult to fill out an application form, a reasonable accommodation request would be to ask for assistance from the housing provider in completing the form.

• A case manager can also assist in completing required forms.

• If a disability makes reading an application or lease difficult, a reasonable accommodation request would be to ask for the documents in large print or in an alternative format.
Most leases state that rent is due on the first of the month. The tenant has an obligation to make sure that the rent is paid by the due date specified in the lease. Even if the landlord says it is okay if the rent is a few days late, the tenant is still bound by the terms of the lease regarding late fees and other penalties.

**Strategy:**

- A tenant who receives SSDI may request a reasonable accommodation to be exempt from the late fee when the date they receive their SSDI payments make paying rent on time difficult or impossible. Receiving SSDI should be sufficient proof that a person has a disability. If they can show that they don’t receive their payments until after the due date or grace period, that is sufficient proof that there is a disability related need for the accommodation.

- Individuals who requested later rental payment due dates and were previously denied, may be able to claim reimbursement for late fees paid if they can show proof that the request was previously made and denied.
Example:
An individual has a cognitive disability or poor memory, which makes it difficult for them to remember when the rent is due.

Strategy:
The tenant can make a request accommodation request that that the housing provider call or provide a reminder note monthly to remind them to make a rental payment before the rental due date.
Example:
A landlord entering the apartment is exacerbating a client’s disability, such as tenant with PTSD who experiences extreme stress when maintenance enters the apartment for service calls or inspections.

Strategy:
• Tenant can request a reasonable accommodation if landlord is entering without notice or with little notice and it is exacerbating a person’s disability or disability related symptoms
• A reasonable accommodation would be to request 24 hour advance notice in a non-emergency, providing the tenant with a window of time to expect the visit.
• Tenant can also request that maintenance personnel do not simply knock and enter but that they knock and wait several minutes for the tenant to open the door.
Reasonable accommodations may be requested at any time, including during the eviction process!
A compulsive hoarder meets the definition of a person with a disability under the Fair Housing Act and has a right to request a reasonable accommodation in an effort to preserve housing.

**Strategy:**
- A reasonable accommodation can be requested to ask for more time to clean up the rental unit and to delay the eviction process to allow time to clean up and dispose of excess clutter.
- The tenant can request an extension within reasonable limits to bring the unit into a safe, satisfactory condition.
- Services may need to be put into place to assist the client who is a hoarder.
Preventing Eviction: Damages to the Rental Unit

Strategy:

• If a person’s disability caused them to damage an apartment unit violating the lease, a reasonable accommodation can be requested asking the housing provider to postpone eviction proceedings while the tenant undergoes treatment and counseling.

• As with any reasonable accommodation request, each case is decided on a case by case basis and would have to take into account:
  • the extent of the damages caused,
  • if any other tenants were disrupted by the behavior, and
  • if steps will be taken to repair any damages caused by the tenant
Example: A tenant with a psychiatric disability stops taking their mediation and threatens another resident. Management has a policy of evicting residents who engage in violent or disruptive behavior.

Strategy:
• The tenant can request a reasonable accommodation to this policy if the tenant is able to show that treatment and medication monitoring will eliminate the direct threat.

• If the tenant is not willing to undergo medication monitoring and treatment or continues to pose a direct threat to the health and safety of other residents, than management can proceed with an eviction.
Strategy:

• If a non-renewal of lease, notice to quit, or eviction is issued because of a tenant’s behavior, which was directly related to a disability, the tenant can request a reasonable accommodation to rescind a notice to quit or eviction notice or to reconsider a decision to not renew a lease and to consider mitigating circumstances.

• It is helpful if a case manager or other support services professional can write a letter explaining mitigating circumstances as well as steps that will be taken to ensure that the behavior does not recur (medication, therapy, counseling, supervision, etc.).

• A case manager can offer to be contact person for landlord if there is any problem or issue with tenancy.
Example: At times a person’s disability may cause noise violations. An example would be the presence of a child with autism who occasionally screams or makes loud noises. This can lead to complaints from neighbors about noise or even an eviction notice.

Strategy:
• Attempts should be made to mitigate any noise which is disruptive.
• If an eviction notice has been issued, a reasonable accommodation request can be made asking for a second chance to mitigate any noise disturbances.
• Sound proofing could be installed by the tenant (a reasonable modification request), behavioral therapy can be commenced or increased, and any number of intervening tactics could be employed to help mitigate any ongoing noise disruptions.
• If the noise disturbances continue unabated, the accommodation may no longer be reasonable.
Common Accommodation and Modification Mistakes

- Requiring forms ALWAYS
- Being rigid with rules, policies and procedures
- Not responding timely to requests
- Not engaging in an interactive process
- Not training all employees who deal with tenants/prospective tenants
- Not being sensitive
HUD Guidance on Assistance Animals

Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act

This notice explains certain obligations of housing providers under the Fair Housing Act (FHA) with respect to animals that individuals with disabilities may request as reasonable accommodations.

DOJ and HUD have provided joint statements on Reasonable Accommodations Under the Fair Housing Act and Reasonable Modifications Under the Fair Housing Act

- Clear Q&A format providing technical guidance on rights and obligations of persons with disabilities and housing providers under the Fair Housing Act

- Available at:
  
  
Know Your Rights as a Renter in Pennsylvania

The Housing Equality Center of PA offers a comprehensive guide to reasonable accommodations and modifications for consumers with disabilities.

What To Do If You Have Experienced Housing Discrimination

If you live in Philadelphia or in Bucks, Chester, Delaware, Lehigh, Montgomery, or Northampton Counties in Pennsylvania, call the Housing Equality Center of Pennsylvania for counseling, investigation, and options for enforcement based on the circumstances of the case.

Call us at 267-419-8918 or email info@equalhousing.org or visit equalhousing.org
What To Do If You Have Experienced Housing Discrimination

To file a complaint with the U.S. Department of Housing and Urban Development, call HUD’s Housing Discrimination Hotline at 1-800-669-9777 or visit www.hud.gov. Complaint must be filed within one year from the date of the incident.

To file a complaint with the Pennsylvania Human Relations Commission, call 215-560-2496 or visit www.phrc.pa.gov. Complaints must be filed within 180 days from the date of the incident.

A lawsuit can be filed in federal court up to two years from the date of the incident.

To file a complaint with the Philadelphia Commission on Human Relations, call 215-686-4670 within 300 days unless you have valid legal justification for not filing within that time period.

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