

37--How to Respond to a Request for a Fair Housing Act Accommodation?

Short Answer

The Fair Housing Act ("FHA") requires communities to permit reasonable modifications to the structure or otherwise reasonably accommodate an individual with a disability. The Board may investigate the request but only to the extent necessary to confirm the disability and identify the connection between the disability and the request. It is permissible to deny the request when it is unrelated to the disability, would impose an undue burden on the community, or alter the community's operations. You can ask if a person is disabled but not what the disability is.

Who Must Be Accommodated?

Under the FHA a disability means:

- 1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
- 2) a record of having such an impairment, or
- 3) being regarded as having such an impairment,

The protections extend not just to a disabled Owner but to an Owner who has disabled friends, family, or associates and failure to accommodate these individuals would impair the Owner's use and enjoyment of their homes.¹

An addiction to controlled substances is not a disability.² The FHA does not require accommodation of a person who creates a direct threat to the community.³ A direct threat is a significant risk to the health or safety of others which cannot be eliminated through a reasonable accommodation.⁴ This determination must be made on a case-by-case basis supported by objective evidence.⁵

CondoLaw's 2018 Handbook for Community Associations

What Is a Reasonable Accommodation?

A reasonable accommodation is a change to the community's rules or policies which allows the disabled to make equal use and enjoyment of the property.⁶

Examples include:⁷

- 1) Providing an assigned parking space in front of an Owner's Unit even though parking is handled on a first-come basis. You may not charge any additional fees for a handicapped spot.
- 2) Modifying the community's pet policy to provide for therapy and service animals. Service animals are not pets under the law and no fees may be assessed for service animals.

What Is a Reasonable Modification?

A reasonable modification is a structural change to the premises which permits a person with a disability to fully enjoy the property.⁸ The Owner must request and obtain permission before modifying an area outside of their control. The community must approve a reasonable request reasonably related to the claimed disability.

Assuming that the modification was not otherwise required by law, the community may require the Owner to pay for the requested modification.⁹ The costs of maintaining the modification depends on where the modification is located. Inside the Owner's Unit, the Owner must maintain the modification. However, in a common area, the community is responsible for its maintenance.

Examples of a reasonable modification include:

- 1) Installing a wheelchair ramp at the entrance to the building.
- 2) The replacement of handles on doors to common areas to make it easier for an Owner with arthritis to operate them.

When Can I deny a Request for an Accommodation or Modification?

The request may be denied if: 1) there is no disability; 2) the request is not related to the claimed disability; or 3) it is

CondoLaw's 2018 Handbook for Community Associations

unreasonable. An unreasonable request is one that would impose an undue financial or administrative burden, or that would fundamentally alter the nature of the community's operation. The community must determine the reasonableness of each request case-by-case and attempt to find alternative accommodations.

Examples of unreasonable requests include:

1. An Owner requests the community hire support staff to pick-up trash from her Unit because her disability makes it difficult to access her assigned trash dumpster. The cost of hiring someone may be an undue financial burden, but the community must propose an alternate solution.
2. An Owner with a mobility disability requests the community arrange for delivery of his groceries. The community does not provide this service to any other residents. This constitutes a fundamental alteration to the operations. The community should work with the Owner and offer to provide him with a more accessible parking space or facilitate access to the Owner's Unit by a third-party delivery service.

May the Community Investigate the Request?

The community may request information necessary to confirm the disability, identify the needed accommodation, and establish the relationship between the disability and accommodation. The requests should be limited and not seek any medical information beyond confirmation that the claimed disability exists. If the disability is obvious or already known to the community, even requesting medical confirmation may violate the FHA. Any written document from a healthcare professional which states a person is disabled and needs the accommodation will be enough to require an Association to accommodate if a request is not unreasonable.

¹ H.R. Rep. 100-711-24 ("The committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants

CondoLaw's 2018 Handbook for Community Associations

because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.

² 42 U.S.C. § 3602(h) (“...such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21).”)

³ 24 C.F.R. § 9.131(a) “This part does not require the agency to permit an individual to participate in, or benefit from the goods, services, facilities, privileges, advantages and accommodations of that agency when that individual poses a direct threat to the health or safety of others.”

⁴ 24 C.F.R. § 9.131(b) “Direct threat” means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.”

⁵ 24 C.F.R. § 9.131(c) “In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

⁶ 42 U.S.C. § 3604(f)(3)(B)
“...discrimination includes...a refusal to make reasonable accommodations in rules, policies, practices, or services...necessary to afford such person equal opportunity to use and enjoy a dwelling...”

⁷ See, *Joint Statement of the Dep’t of Housing and Urban Dev. and the Dep’t of Justice – Reasonable Accommodations Under FHA*. (May 17, 2004).

⁸ 42 U.S.C. § 3604(f)(3)(A)
“...discrimination includes...a refusal to permit... reasonable modifications of existing premises ...if such modifications may be necessary to afford such person full enjoyment of the premises ...”

⁹ *Joint Statement of the Dep’t of Housing and Urban Dev. and the Dep’t of Justice – Reasonable Modifications Under FHA*, p.8 (March 5, 2008).