



## Reasonable Accommodations During Occupancy

This document, taken from CSH's publication *Between the Lines: A Question and Answer Guide on Legal Issues in Supportive Housing – National Edition* (prepared by the Law Offices of Goldfarb and Lipman and available at [www.csh.org/publications](http://www.csh.org/publications)), discusses issues related to reasonable accommodations for tenants living within a supportive housing development.

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

*Answer: A tenant's need for a reasonable accommodation can arise any time during the tenancy. The housing provider has the same obligation to consider the request for a reasonable accommodation once the tenant is already occupying the unit as the provider had during the screening process.*

The obligation to provide a reasonable accommodation to a tenant arises even if the tenant did not disclose the disability during the screening process or the tenant becomes disabled after occupying the housing and requests the accommodation after taking up residency. If a tenant requests a reasonable accommodation, the housing provider may request documentation verifying the disability, but as discussed Link to Accommodation 1: Screening here above, medical records cannot be required. A medical practitioner's or social worker's letter confirming the disability without disclosing the nature or severity of the disability is sufficient.

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

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

The first requirement of a requested accommodation is that it be necessary to the tenant's equal enjoyment of the housing. Indeed, a landlord's duty to accommodate extends only to providing an equal opportunity for persons with disabilities to enjoy housing, not to providing special advantages unrelated to a person's disability.<sup>1</sup> Such necessary accommodations may include, for example, allowing a visually or hearing impaired tenant to keep a specially trained dog in violation of a "no pets" rule,<sup>2</sup> providing a specially designated parking space in violation of a condominium

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<sup>1</sup> See Bryant Woods Inn v. Howard County, 124 F.3d 597, 605 (4th Cir. 1997).

<sup>2</sup> See Bronx v. Ineichen, 54 F.3d 425 (7th Cir. 1995) (holding that a requested hearing dog was not necessary because the tenants had lived before without the dog).

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Note: This document is included within the *Housing Operations* section of CSH's *Toolkit for Developing and Operating Supportive Housing*, which is available at [www.csh.org/toolkit2](http://www.csh.org/toolkit2).

association's deed restrictions,<sup>3</sup> or allowing a tenant to install a ramp.<sup>4</sup> The Fair Housing Act does not require the landlord to fund any physical changes, but only to allow physical changes to be made by the tenant.<sup>5</sup> However, Section 504, which applies to all federally funded developments, requires the landlord to pay for modifications unless to do so would cause financial hardship. In state and local government programs, Title II of the ADA may also require reasonable modifications at the owner's expense as necessary to accommodate a tenant with disabilities.

In addition to being necessary, an accommodation must be reasonable. This inquiry is guided by a requested accommodation's effect on third parties and financial burden on the landlord. In one case, a court held that to accommodate a tenant with multiple chemical sensitivities, it was not reasonable to evict a downstairs neighbor who had moved in before the tenant with a disability.<sup>6</sup> Such an eviction would unreasonably compromise the vested rights of third parties. In deciding what is financially reasonable, there are few fixed guidelines. However, it is clear that a housing provider must handle each reasonable accommodation request on its own merits at the time it is requested. The housing provider cannot argue that an accommodation is not reasonable because the provider needs to save money for future accommodations or wants to avoid setting a precedent for other tenants.

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

*Answer: A reasonable accommodation for a person with mental disabilities usually involves the waiver or flexible application of a rule or policy.*

Reasonable accommodation for tenants with mental disabilities is guided by the same principles as accommodations for tenants with physical disabilities: the housing provider must make changes in rules and policies to enable the tenants with disabilities equal access to housing. Sometimes a physical change may be necessary; for example, extra soundproofing may be necessary to accommodate a mentally disabled tenant who speaks very loudly in his or her unit. As with physical disabilities, the limitations on this duty arise from the cost of the accommodations and the countervailing rights of other tenants. If the project receives federal funding and is subject to Section 504, the housing provider may be obligated to pay for physical modifications if to do so would not cause a financial hardship.

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<sup>3</sup> See Gittleman v. Woodhaven Condominium Assoc., Inc., 972 F. Supp. 894 (D.N.J. 1997) (requiring a condominium association to provide a specially designated parking space as a reasonable accommodation, even though the space would violate the condominium deed restriction that common areas were designated for non-exclusive use only).

<sup>4</sup> See HUD v. Ocean Sands, Inc., P-H: Fair Housing – Fair Lending Rptr. par. 25,055, at pp. 25539-44 (HUD ALJ 1993).

<sup>5</sup> See Rodriguez v. 551 West 157th St. Owners Corp., 992 F. Supp. 385 (S.D.N.Y. 1998) (landlord not required, as a reasonable accommodation, to install wheelchair ramps and lifts).

<sup>6</sup> Temple v. Gunsalus, 1996 U.S. App. LEXIS 24994.

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

*Answer: Reasonable accommodation applies to tenants with substance-use problems in much the same way as to those with other disabilities, but it never operates to permit a tenant to use illegal drugs.*

Generally, if a tenant has a substance-use problem and requests a reasonable accommodation, the housing provider must consider the request and grant it unless the accommodation fundamentally alters the housing program or places an undue burden on the owner. However, it would not be a reasonable accommodation to allow a tenant to continue the illegal use of drugs on the premises. Current use of illegal drugs is specifically exempted from the definitions of disability, so a current user would not be entitled to a reasonable accommodation solely by virtue of drug addiction. Current use of alcohol, though, does not exempt a tenant from being considered disabled by reason of alcoholism under the definitions of disability in the Fair Housing Act. A housing provider may have to accommodate some behaviors that often accompany drinking under the reasonable accommodation requirements. It would not be a reasonable accommodation, however, if a recovering alcoholic requested that the housing provider prohibit all other tenants from using alcohol on the premises. This would infringe on other tenants' rights, and thus is not considered reasonable.

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

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

A tenant cannot be evicted simply because they need care and supervision. However, if the tenant needs care and supervision that the facility does not provide and the lack of care and supervision affects the tenant's ability to meet the terms and conditions of occupancy, the housing provider may have a basis for evicting the tenant as it would for any tenant. For example, a tenant who needs care and supervision may not meet the requirements for occupancy if the tenant is unable to maintain the apartment due to physical disabilities requiring a care attendant. Housing providers should explore whether there is a reasonable accommodation that can be offered to the tenant (such as helping the tenant obtain a care attendant) to enable the tenant to meet the occupancy requirements before instituting eviction proceedings. If a reasonable accommodation cannot be found and the apartment is not being maintained, there may be grounds for eviction on that basis, not because the tenant requires care and supervision.

HUD's Section 202 and Section 811 programs include requirements in the tenant application documents that residents be able to live independently, which has been interpreted by some to mean that a resident cannot require the services of in-home care attendants. As discussed in [Link to Accommodation 1 Screening](#), these requirements in HUD forms are probably invalid based on the [Cason](#) case, so it is not advisable that operators of these developments rely on the requirements in the application documents in order to evict residents. Several California Section 202 housing

operators have spent considerable time and money attempting to evict residents because of the residents' need for care and supervision that was not being provided. Disability rights advocates have been able to stop or stall these evictions to the point that the housing providers have withdrawn the evictions, and in one instance, obtained a federal district court order declaring an independent living requirement in a Section 202 project illegal under Section 504 of the Rehabilitation Act of 1973.<sup>7</sup>

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<sup>7</sup> Niederhauser v. Independence Square Housing Corporation, No. C96-20504 RMW (N.D. Cal. August 25, 1998) (order granting in part and denying in part plaintiffs' motion for summary judgment).