

Reasonable Accommodations & Modifications

PRESENTATION BY:

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Discrimination

According to 2014 data from Fair Housing Council of Oregon, 50% of complaint calls they received were disability related.

- Failure to grant reasonable accommodation/modification primary issue.

Reasonable Accommodation

A reasonable accommodation is a *change or modification to a policy, program or service* that allows a person with a disability to use and enjoy the dwelling, including public and common area spaces.

Reasonable Modification

- A reasonable modification is a *structural change or modification* to a dwelling unit or building that allows a person with a disability to use and enjoy the dwelling, including public and common area spaces.

Question:

- What can an owner ask or verify when resident asks for an accommodation or modification?

Answer

Owner/Agent does have the right to verify:

- 1) That the resident is disabled according to the Fair Housing Act and,
- 2) That the request is necessary for the disabled resident to enjoy the premises as a non-disabled resident.

Verification (continued)

- The request does not need to be in writing.
- Owner/Agent should only verify the resident IS disabled (as defined by federal law), not what the disability is.
- The owner/agent should NOT ask for verification if the disability is obvious or known to them. (IE: wheelchair user)

Request for Accommodation

- Can occur any time during the tenancy
(even at FED first appearance!)
- There is no limit as to how many requests a resident makes.
- Each request must be evaluated on it's own merits.

Disability Defined

Disability is defined as a physical or mental impairment that substantially limits one or more major life activities.

- This may include visual or hearing impairment, mobility impairment, mental retardation, history of drug addiction (not current illegal use), or mental illness.

Examples of Reasonable Accommodations

A landlord has a policy of not providing assigned parking spaces. A resident with a mobility impairment is provided an assigned parking space near the entrance to their apartment.

A housing provider has a “no pets” policy. A resident who has difficulty picking things up off the ground, is allowed an assistive animal that fetches things for her.

Examples of Reasonable Modifications

- An older resident has a stroke and requires use of a wheelchair. The landlord permits the resident to install a ramp at the entrance of her apartment.
- A resident has a mobility issue, and requires grab bars in her shower to for stability. The landlord permits the resident to have grab bars installed in her apartment.

Case Scenario

A resident with severe breathing problems moved into a community that has wall-to-wall carpet in each apartment home. The resident has asked that the carpet be replaced with vinyl or other hard surface to reduce her breathing conditions.

How should this be handled?

Scenario Discussion

Verify person is disabled, verify it's necessary.

- (Don't verify disability, just yes/no)

Work should be done by professional, match specifications, etc.

Who pays? Depends on property type.

Costs associated with modification

In most cases, the resident must pay for the modification to the structure, and all work must be done in a professional and workmanlike manner. In addition, the landlord may require the resident to return the unit to its original condition upon move out.

For landlords receiving federal assistance (HUD, RD, HOME), the housing provider is required to bear costs related to the reasonable accommodation or modification, unless it creates an undue financial and administrative burden.

Case Scenario

A resident who suffers from anxiety is moving into a community that has a no pet policy. This resident has a therapeutic Pitt Bull that helps her with her anxiety. (this dog is on the restricted breeds list at this community)

How should this be handled?

Discussion

Verify the resident is disabled.

Verify the animal (Pitt Bull) is necessary for the disabled person to enjoy premises.

More Discussion

What about aggressive breeds?

- If the animal is the person's prescribed animal, it should be accommodated.
- If the animal in question acts inappropriately, landlord can enforce policies.
- Insurance companies also must follow Fair Housing Law.

Assistance and Companion Animal

- Do not collect a pet deposit for assistive animals.
- Do not ask for verification that the animal is specially trained.
- The assistance animal can be more than just a dog; it can be a ferret, cat, iguana, snake, etc.

Assistance Animals

Guide Horse Foundation: www.guidehorse.com



Case Scenario

An applicant is declined due to criminal history from 2008. The applicant asks for a waiver of the criminal criteria because they were addicted to drugs when they committed the crime and has successfully completed a qualified program of recovery.

How should this be handled?

Discussion

This is should be discussed with senior level management.

Consider waiving criteria.

How long, risk, program of recovery?

- Persons in program of recovery are considered disabled under Fair Housing Act.

Criminal Background screening

HUD issued guidance on use of criminal records by housing providers April 4, 2016.

- Across the US, African Americans and Latino incarcerated at rates disproportionate to their share in general population.
- Criminal record is not protected, however if additional burden falls on those with histories, may be discriminatory (disparate impact).

Criminal Background continued

From HUD Guidance April 4, 2016:

“Housing providers that apply a policy or practice that excludes persons with prior convictions must still be able to prove that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. A housing provider that imposes a blanket prohibition on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden.”

Live-in Aides

Approved as reasonable accommodation.

Live-in Aide is not household member (screen for criminal only).

If resident vacates, so does the aide.

Have an live-in aide agreement.

Medical Marijuana

In November 2010, the Oregon Supreme Court ruled that the federal Controlled Substances Act preempts the Oregon Medical Marijuana Act.

Result:

- BOLI will no longer investigate employment or housing claims of discrimination pertaining to use of medical marijuana.

Bureau of Labor and Industries
CIVIL RIGHTS OPERATIONS MANUAL



MANUAL: <input type="checkbox"/> Procedure <input checked="" type="checkbox"/> Policy	ORS:
SUBJECT: MEDICAL MARIJUANA	OAR:
SOURCE: Administration	EFFECTIVE DATE: 3/24/99 REVISED: 11/4/2010
NUMBER: CRDPOL-M-3	PAGE: 1 of 1

BACKGROUND:

The Oregon Medical Marijuana Act (OMMA, ORS 475.300-ORS 475.346), passed in 1998, contains provisions authorizing the use of medical marijuana, and exempting such use from criminal liability under state law.

Disputes may arise when a disabled person requests that an employer or housing provider accommodate their use of medical marijuana to alleviate disabling conditions.

The Oregon Supreme Court has ruled that the federal Controlled Substances Act preempts the Oregon Medical Marijuana Act's authorization of the use of medical marijuana, and that the protections of ORS 659A.112 do not apply to the use of medical marijuana. *Emerald Steel Fabricators, Inc., v. Bureau of Labor and Industries, Or. (2010)*. ORS 659A.112 applies exclusively to employment practices. But, because the use of medical marijuana under ORS 475.306(1) is preempted by the federal law, and neither the state nor the federal law exclusively relates to employment practices, the preemption is equally applicable to housing discrimination claims under ORS 659A.145.

POLICY:

Civil Rights Division will not investigate employment or housing claims of discrimination pertaining to the use of medical marijuana.

PROCEDURE:

Upon receipt of information indicating a claimant's wish to file a complaint involving the use of medical marijuana, the claimant should be advised that the Civil Rights Division will not investigate their complaint. Such persons should be advised of their right to consult with an attorney.

More about Marijuana

On December 29, 2014, Deputy Assistant Secretary Ben Metcalf issued a memo:

- Owners of federally assisted housing must deny admission to assisted housing for illegally using controlled substance (including marijuana).
- Further, owners must not affirmatively permit occupancy by any member who uses marijuana.
- However, it goes on to say it “affords owners discretion to evict or not evict current tenants for use of marijuana”.

Case Scenario

- Hoarding.
- How to handle?



Discussion

Hoarding Disorder as a disability, and it is now classified as such in the DSM. As such, Hoarding is protected under the Fair Housing Act.

Resident cannot create hazard for others, code violations, sanitation issue, damage to structure.

Important to engage in interactive dialogue, seek services and reasonable achievable goal.

Fair Housing Act Design Requirements

Fair Housing Act, 42 USC 3604 (f) (3) (C):

- Applies to all buildings with four or more dwelling units that were designed and constructed for first occupancy after March 13, 1991.

FHA Construction & Design Requirements

Seven basic design requirements:

Accessible entrance to building on accessible route

Accessible common areas.

Usable doors (by person in wheelchair).

Accessible route through dwelling unit.

Light switches, electrical outlets, thermostats in accessible locations.

Reinforced walls in bathrooms for potential later installation of grab bars

Useable kitchens and bathrooms

Case Scenario

A resident in a wheelchair moved into a community where his only access to his unit was through his back patio door. (while it was a ground floor unit, the only access to the front door was by a set of 2 stairs). The only access to the patio was across a sloped lawn area. This property was constructed for occupancy after March 1991. The resident has made a request that a ramp be made for him to access his unit.

How should this be handled?

Discussion

The landlord should do the work necessary to make the unit accessible. Costs for the work should be paid for out of project funds.

Ignoring Fair Housing requirements can be costly!

In May 2013 the Justice Department settled with the developer of a 275-unit community in Salem, alleging the design had barriers that made it inaccessible to persons with disabilities.

- Doorways too narrow for wheelchair
- Configuration of kitchen and bathrooms not accessible

Settlement

Defendant paid \$48K to fair housing organization.

Developer agreed to:

- Remove steps from sidewalks
- Widen interior doorways
- Reduce threshold heights
- Replace sloped areas of sidewalk, install property curb cuts/ramping.

More Costly Claims:

In January 2015, owner of housing community paid \$475,000 to settle allegations that it failed to provide reasonable accommodation to a disabled resident who requested a parking space closer to his apartment.

- The request was ultimately granted, but was delayed.

When reviewing requests for reasonable accommodations consider the following:

Keep in mind the reason for the request; to allow a disabled person equal access to services.

It is ok to suggest alternative solutions if the specific request the resident is making is not possible.

Create an internal process for reviewing reasonable accommodation requests, and discuss requests with your supervisor.

Communicate with the resident! No response or delayed response can be discriminatory!

If in doubt, consult an attorney. A violation of Fair Housing can have serious implications!

Helpful Links

HUD office of Fair Housing

http://portal.hud.gov/hudportal/HUD?src=/program_of_fices/fair_housing_equal_opp

United States Department of Justice Fair Housing Act

<http://www.justice.gov/crt/about/hce/title8.php>

Fair Housing Accessibility FIRST

<http://www.fairhousingfirst.org/>

Questions?

