

# **Accommodating Associated Persons Who Are Disabled Under Fair Housing Laws**

Disability related requests made by non-disabled tenants based on the disability of their guests can be extremely complicated. Everyone should know that disabled applicants and tenants are entitled to reasonable accommodations. A reasonable accommodation is an exception to a rule. For example, a mobility-impaired tenant is entitled to a close up reserved parking space, or an exception to a no reserved parking policy. However, many landlords don't know of their legal duty to accommodate disabled guests and other disabled individuals associated with a non-disabled tenant. Similar to reasonable accommodation requests made by tenants, a landlord may have to grant exceptions to rules, policies, practices, and services because of the disability of a person who is associated with a non-disabled tenant. Examples of associated persons could include guests, friends, or relatives of the non-disabled tenant.

The Federal Fair Housing Act (FFHA) is a prime example that Congress often does not write clear laws. Congress' failure to clearly write the FFHA is why reasonable accommodations for tenant guests have been the subject of so much debate. However a thorough analysis of the FFHA, including Congress' intent in passing the FFHA as determined from the legislative history of the FFHA, leads to the undisputable conclusion that Congress intended to prevent discrimination against non-tenants who are disabled, and associated with existing tenants or applicants.

The specific sub-section of the FFHA that requires landlords to make reasonable accommodations for disabled tenants does not mention disabled guests of tenants. However, the FFHA must be read as a whole. The section of the FFHA that addresses disability discrimination mentions "associated persons" several times illustrating Congress' intent to prohibit housing discrimination against disabled associated persons. The legislative history of the FFHA is summarized in The Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Accommodations Under the Fair Housing Act ("Joint Statement").

The legislative history makes clear that the FFHA was intended to prohibit discrimination not only against tenants, but also against disabled individuals associated with a tenant. Specifically, “the Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities. 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 because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.” Additionally, the preamble to proposed HUD rules implementing the FFHA also support the conclusion that the FFHA was intended to prevent discrimination against disabled guests of non-disabled tenants.

Is a reasonable accommodation request based on the disability of an associated person handled the same as a request made by a disabled tenant? Yes. Reasonable accommodation or modification requests made in connection with an associated disabled person should be handled and evaluated the same as requests made by disabled tenants or applicants. The associated disabled person must be disabled; need the accommodation, and the accommodation must be reasonable. Generally, under fair housing laws, disability means a physical or mental impairment that substantially affects a major life activity. Disability related need means that there must be a relationship between the request and the disability. Courts find a disability related need when the requested accommodation lessens the impact of the disability.

Reasonableness means that a request is feasible (possible) and practical under the circumstances. Requests that result in an undue financial or administrative burden, fundamentally alter the nature of housing, or that require a landlord to provide services that the landlord normally does not provide may be considered to be unreasonable. However, landlords are strongly cautioned to seek expert advice before determining a requested accommodation is unreasonable. Remember under the FFHA, landlords are required to shoulder some financial burden in connection with reasonable accommodation requests and that different rules apply to communities receiving

federal money. Evaluating some common scenarios that might come up at your community illustrates application of the rules.

You manage a community that does not allow pets, including visiting pets. A non-disabled tenant has a friend that visits with a dog. When you inform the tenant that no pets are allowed on the property, the tenant informs you that his friend is disabled, and that because the dog is a companion animal, he is asking for an exception to the community's no pet rules. Do you have to grant this request? Maybe. If the friend is disabled, has a disability related need for the dog, and the request is reasonable, you would have to allow the friend to visit with the dog. If the friend isn't disabled (as defined by fair housing laws), or doesn't have a disability related need to have the dog come with him when visiting your tenant, then you could deny the request. You could also deny the request, if during the required interactive dialog process, you discover that the dog has vicious tendencies and has bitten several people in the past.

Other possible common scenarios involve associated persons that are mentally disabled. Almost every community requires persons eighteen years or older to apply, be screened, and sign the lease. A married couple with a mentally disabled sixteen year old lives at your community. These tenants have been exemplary and have renewed several times. Time flies, and it is now two years later, and the tenant's child is now eighteen. Similarly, the mother of the wife of a married couple moves in with the couple. The mother suffers from Alzheimer's. Can you enforce the community's application, screening, and lease signing policies in these situations?

To at least some extent, probably not. These associated persons are indisputably disabled as defined by fair housing laws. The issues are whether there is a disability related need for an exception to the community's policies, and whether under all the surrounding circumstances such an exception is reasonable. For example, if the mentally disabled persons cannot read or write, then there is a disability related need to waive the completion of the application process. Our advice in these situations would be to inform the tenants of the community's policies, but to be very attentive for possible accommodation requests, and to open up and maintain the required legal

dialog with the tenants to resolve the situation, if and when the tenants make you aware that they need an exception to policies because of the disabilities of associated persons.

If you believe a request made in connection with an associated disabled person is not legitimate, you can request documentation in appropriate cases. Remember this doesn't mean that you can request documentation in every case. Under fair housing laws, you can only request documentation regarding disability and need. Further, you can only request documentation regarding disability and need when these issues are not obvious. For example, if a wheelchair bound applicant requests a close-up reserved parking space, you cannot request any documentation because both the applicant's disability and need for the requested accommodation are obvious. A non-obvious example is when a resident or applicant requests a companion animal. In most cases, when a party requests a companion animal, the requesting party's disability and need for the companion animal are not obvious. Thus, in evaluating most companion animal accommodation requests, including if a tenant says his disabled guest needs to bring his companion animal to your no pet property, you can request documentation regarding both disability and need.

Many reasonable accommodation requests made by tenants initially sound far fetched, extreme, or unreasonable. Landlords get into fair housing hot water by immediately rejecting requests without first obtaining all of the facts and properly evaluating requests. Because most people are unaware of the duty to accommodate "associated persons", the danger of arbitrarily and wrongly rejecting such a request is even greater. To minimize the risk of disability discrimination, proper education and training of onsite teams is imperative. At a bare minimum, onsite teams need to know two critical points. First, and most importantly, onsite teams should never immediately reject a disability related request. They should be properly trained to inform the resident, even when a request is made based upon the disability of a guest, that the community is a dedicated fair housing provider and that all requests are considered. Second, your teams need to know to call us when a complicated fair housing situation arises.