

WHAT IS A REASONABLE ACCOMMODATION?

Both the Federal and Florida Fair Housing Acts protect persons with disabilities. If a person or someone associated with a person has a physical or mental disability that substantially limits one or more major life activities, has a record of such a disability, or is regarded as having such a disability, the landlord must not refuse to make reasonable accommodations in rules, policies, practices, or services if necessary for the handicapped person to use the housing.

First, a person must be a qualified individual with a disability to be entitled to a reasonable accommodation. "Qualified" is a two-part standard. The person must meet the same criteria for residency as any non-disabled person, i.e., age, credit-worthiness, etc. Second, the person must be disabled as defined by fair housing law. If the person has an obvious handicap, no additional inquiry should be made. If the disability is not obvious, documentation of the disability can be requested, i.e., a statement from a health care provider.

It is up to the disabled person to request an accommodation if one is needed. The person requesting an accommodation also bears the burden of proving the proposed accommodation is reasonable, but courts are not tolerant of those providers who do not show some effort in finding a solution.

A reasonable accommodation is one that is necessary for the disabled person to have an equal opportunity to enjoy the benefits of their housing choice by ameliorating the effects of the disability without imposing any undue burdens on the housing provider. Undue burdens are difficult to define but are usually related to extraordinary costs or infringement on other residents' rights to enjoyment of their homes. Common examples of reasonable accommodations are the waiving of no pet rules for service animals owned by blind or deaf residents, the installation of ramps for those using motorized scooters or wheel chairs, or allowing a non-qualified care-giver to reside in the community.

Each case must be addressed individually based on the factual circumstances. When asking for documentation concerning the existence of a disability, you may also inquire if the requested accommodation is necessary to ameliorate the effects of the disability to allow the person to live in their housing and/or the community. A reasonable amount of time must be provided for the person to obtain any requested documentation. Management should not, however, seek medical records.

Determining what the accommodation should be is a process of dialogue between the person requesting one and management. Management cannot unilaterally reject an accommodation without attempting to find a workable solution. If the accommodation appears reasonable, that is the end of the matter. On the other hand, alternatives may be available.

Courts will examine efforts made to accommodate someone when faced with a charge of discrimination for failure to accommodate a disabled person. For example, the

Eleventh Circuit, the federal appellate court with jurisdiction over Florida, recently found no discrimination existed when a homeowners association refused to waive a deed restriction. A blind resident sought an accommodation so she could fence her front yard to allow her to sit outside with her seeing eye dog providing an opportunity for her to feel secure and enjoy the outdoors while giving her caretakers a reprieve. Summary judgment was granted on this claim because an alternative was available that did not require a waiver of deed restrictions--fencing the rear yard.

Florida claims of discrimination are often resolved by an administrative hearing. In an unusual case, a mobile home resident filed a charge of discrimination against the community's mobile home owners association (HOA) and its president, alleging failure to accommodate her disability. The complainant alleged she is hearing impaired and requested that monthly HOA meetings be recorded so she could listen to them with headphones. Her request was denied.

Evidence at the hearing showed the HOA was involved in litigation with the community owner and the residents were divided in support of the action. The complainant opposed the litigation. The HOA justified the ban on members recording HOA meetings because they were afraid the tapes would end up in the hands of the community owner. The association secretary did, however, record meetings and members were allowed to listen to the recordings but not to copy them. The HOA offered the complainant the opportunity to listen to the tapes on her own equipment, but it had to be done in the custody of the secretary in the secretary's home or in the clubhouse.

The claim failed because it did not relate to complainant's use and enjoyment of the dwelling as required by the Fair Housing Act. The administrative law judge found the HOA was a voluntary organization without any power to interfere with the Complainant's use and enjoyment of her dwelling. Nor was the claim related to the provision of services or facilities in connection with the dwelling. (This result may be different for mandatory associations operating a development or community.)

Even if the claim met the preliminary threshold requirements, the HOA did not fail to make reasonable accommodation. The Claimant failed to demonstrate why the accommodation offered by the HOA was unreasonable. In addition, although the evidence showed the Complainant suffered from some degree of hearing loss, it was insufficient to establish she was substantially limited in her ability to perform a major life activity and, therefore, disabled under the terms of the statutes. Even if she were disabled, there was insufficient evidence to show the HOA knew of her disability, thereby failing the second prong of the "reasonableness" test.

This interesting case shows there are many standards that a disabled person must meet to qualify for the protections of fair housing laws. While management should be careful not to discriminate in any way, a requested accommodation is not automatically "reasonable". Each case must be determined on the individual circumstances and are fact specific. That means if a claim of discrimination is made and goes to trial, it will usually be tried by a jury. We recommend a provider who is in doubt as to its responsibilities in connection with a request for an accommodation consult legal counsel.