

REASONABLE ACCOMMODATIONS IN SUPPORTIVE HOUSING

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Background on Fair Housing Laws in New York

- Fair Housing, or anti-discrimination, laws apply to nearly all actors in the housing market: landlords/housing providers, brokers, lenders, and others.
- The Fair Housing Act (FHA) and New York State Human Rights Law apply to nearly all multi-unit residential rental properties in the state.
- The New York City Human Rights Law also applies to nearly all residential rental properties in NYC.
- If a property receives certain types of federal funding, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act may impose additional requirements with respect to persons with disabilities.

Background on Fair Housing Laws in New York (cont'd)

- The FHA prohibits discrimination based on race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability. These are known as “protected characteristics” or “protected classes.”
- The New York State and New York City Human Rights Laws prohibit discrimination on these bases and others such as lawful source of income, military status, age, and marital status.
- “Discrimination” includes refusing to rent to or requiring different rental terms of an applicant or tenant based on a protected characteristic.
- Disability discrimination also includes the failure to make a “reasonable accommodation” for a person with a disability. The New York State and (especially) the New York City Human Rights Laws require more accommodations by landlords than the FHA.

Reasonable Accommodations

What is a “Reasonable Accommodation”?

- A "reasonable accommodation" is a **change**, **exception**, or **adjustment** to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.
- To show that a requested accommodation may be necessary, there must be an identifiable relationship, or **nexus**, between the requested accommodation and the individual's disability.

What is a “Disability”?

Definitions are slightly different depending on the law.

- (i) "Disability" means "any physical, medical, mental or psychological impairment, or a history or record of such impairment."
- (ii) "Physical, medical, mental or psychological impairment" means:
 - (a) "an impairment of any system of the body, including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system;"
 - or (b) "a mental or psychological impairment."

NYCHRL Section 8-102(16).

Reasonable Accommodation Process: *Request to Resolution*

The “REQUEST”

- The duty to accommodate is triggered when the provider knows or should know that the client needs an accommodation regardless of whether a client makes a formal request.
- A request may be a verbal request or may be in writing. There are no magic words and the client does not need to identify their concern or request as a “reasonable accommodation.”

Reasonable Accommodation Process: *Request to Resolution*

Supporting Documentation:

Where the need for the RA is not apparent, the provider *may* request medical documentation to show a nexus between the disability and the requested accommodation.

- Providers cannot require a specific type or form of documentation.
- Providers cannot require individuals to provide medical records or details of a disability beyond that which is minimally sufficient to demonstrate the existence of a disability and the relationship between the disability and the requested accommodation.
- If a covered entity has reason to believe that the provided documentation is insufficient, it should not reject the accommodation request, but should instead request additional documentation, or, upon the consent of the individual, speak with the health care provider who provided the documentation before denying the request based on insufficient documentation.

Reasonable Accommodation Process: *Request to Resolution*

Interactive Process/Cooperative Dialogue:

- A “good faith” dialogue between the provider of the accommodation and the person entitled to the accommodation
- Providers do not have to offer the exact mechanism for a reasonable accommodation that the person with disabilities requests. However, if it offers an alternative than it must meet the needs that would have been met with the original request. If the housing provider claims not to be able to meet the request, it must prove that it would be a financial burden or an essential eligibility requirement.
- Each situation is unique. There is no “one size fits all” solution. Both parties must participate and the dialogue can be written, oral, or both.
- Must notify client in writing when cooperative dialogue has concluded.

Reasonable Accommodation Process: *Request to Resolution*

Resolution:

- Provider grants Reasonable Accommodation (RA)
- After cooperative dialogue, parties identify an alternative accommodation.
- After cooperative dialogue, Provider concludes there is no RA available without an undue hardship.



Spotlight on Common Reasonable Accommodation Requests in Supportive Housing

Emotional Support Animals (ESA)

Housing providers are **required** to reasonably accommodate persons with disabilities who rely on service animals or emotional support animals by providing exceptions to “no pet” or “no dog” policies.

If a SH provider or a building owner/landlord have “no pets” policies, charge pet fees, or have breed, weight, or size restrictions on pets, they must **make exceptions** to these policies in situations in which a resident requests a service animal or ESA due to a disability, unless doing so would cause the housing provider an undue hardship.

- *A service animal* is an animal that does work or performs tasks for an individual with a disability. For example, a dog that guides an individual with a visual impairment is a service animal.
- *An emotional support animal* is an animal that provides emotional support or other assistance that ameliorates the symptoms of a disability.

Real-Life Example of SH Pet Policy

5. **NO PETS** - Dogs, cats or animals of any kind shall not be kept or harbored in the apartment unless permitted by Landlord. In LANDLORD leased and/or owned buildings, LANDLORD will not permit the harboring of any animal unless it meets the New York State criteria for an emotional assistance pet. The need for such a pet will be evaluated on a case by case basis, and Tenant is required to be psychiatrically evaluated by a LANDLORD employed psychiatrist regarding the need for the pet. If the pet is approved by LANDLORD, the animal must be spayed or neutered prior to living in the residence. Because of health hazards and possible disturbance to other Tenants which arise from the uncontrolled presence of animals, especially dogs in the building, the strict adherence to the provisions of this rule by each Tenant is a material requirement of the Lease. Tenant's failure to obey this rule shall be considered a serious violation and may elect to end this Lease based upon this violation.

... engage in any violent or threatening behavior, including any ... property

Physical Modifications/Use of Technology

A reasonable accommodation may involve making the housing accommodation more accessible for individuals with disabilities, either through alterations to the existing physical space and structures, or through the installation and/or use of technology, **at the housing provider's expense.**

Examples:

- Replacing a bathtub or shower stall with a roll-in shower
- Noise mitigation through carpeting / insulation

Relocation as a Reasonable Accommodation

- Elevator building / ground floor unit

Example:

If an elevator is not functioning, and will not be repaired for a long period of time, and it prevents a resident who uses a wheelchair from being able to enter and exit their apartment, the housing provider must consider whether temporarily relocating the resident to a unit on a lower floor or in another building is possible.

- Single occupancy unit (SRO, studio, 1-bedroom)

Example:

A tenant residing in a 2-bedroom apartment with a roommate informs the housing provider that she has PTSD, was assaulted by a prior roommate in a previous apartment share, and can no longer co-reside with roommates due to the adverse impact on her mental health. She provides a letter from her mental health treatment provider recommending that she be relocated to a single occupancy apartment as a reasonable accommodation. The provider must explore relocation options unless relocation poses an undue hardship.

Exceptions to Policies/Practices

- Electronic rent payment option
- Permitting a live-in personal care attendant
- Exceptions to package delivery protocol
- Changing the method by which a housing provider communicates with a resident with a disability or provides information
- Arranging for de-cluttering/cleaning
- Providing additional time for residents to come into compliance with program rules
- Assisting with obtaining public benefits, including “one-shot deals”
- Others.....?

Eviction Prevention Interventions...

Sample Eviction Prevention Reasonable Accommodation Policy Overview

- Adopted by a supportive housing provider.
- Applies to reasonable accommodation requests related to circumstances that may give rise to an eviction proceeding, such as lease violations or nonpayment of rent.
- A reasonable accommodation request can be made at any time before an eviction takes place. However, the policy recognizes that ideally, the parties will explore the reasonable accommodation process before an eviction proceeding is filed and avoid the eviction process altogether.

Sample Eviction Prevention Reasonable Accommodation Policy Overview (cont'd)

- Recognizes that “eviction is a last resort to be employed only after other reasonable options have been explored and attempted” and that the provider has an affirmative duty to make accommodations for persons with disabilities.
- Allows residents, staff, and advocates to understand the process for making and evaluating a reasonable accommodation request.
- Incorporates the required “interactive process” and dialogue that a housing provider must engage in after a reasonable accommodation request is made.

Purpose of the Policy

- Establishes the minimum procedures that must be followed before commencing an eviction proceeding.
- Sets the “floor” for procedures and does not limit the types of accommodations that can be made or assistance that can be given.

General Statement of Policy

- Goal is to keep tenants housed.
- When the provider believes that a tenant is failing to comply with tenancy obligations, staff must consider whether the problem can be resolved with other strategies, such as a reasonable accommodation, before moving toward eviction.
- The provider should affirmatively explore accommodations with the tenant rather than wait for a formal accommodation request.

Pre-eviction Procedures

- Where the tenant does not pose an immediate danger to others, staff must formulate a service plan with the tenant to remedy the underlying problem.
- Service plan may include the provision of additional services, outside referrals, or modification of program rules as an accommodation for the tenant's disability.
- Staff will assist with financial management planning or applying for rent arrears, if feasible.

Procedural Safeguards

- If provider does move forward with eviction and serve a termination notice, it must incorporate other legally required content. In many programs, this would include the tenant's right to present objections to the termination notice within ten days.
- Any notices must be in a form that will be an effective means of providing adequate notice to the tenant, including those with low literacy or vision, hearing, or speech disabilities.
- Eviction petition must notify the housing court that the case involves supportive housing and that the tenant may need a guardian appointed and must identify the regulations applicable to the program.
- The provider will not seek a default judgment against the tenant (if the tenant does not show up for court or otherwise respond to the case) without informing the housing court that the proceeding is against a tenant with a disability.

Other Requirements

- If determination is made that the tenant requires a higher level of care than that offered by the program/building, then staff will assist the tenant in applying for a transfer.
- If resolution is still possible, the provider must continue to engage in the reasonable accommodation process and explore possible alternatives to eviction throughout the duration of the eviction proceeding.
- If the problem is resolved or appears to be resolved, the provider will end the eviction proceeding or enter into a reasonable settlement agreement with a probationary period.

Questions?

Thank you for attending.