

Rental Housing Rights for Disabled Tenants

Under federal law, disabled tenants and prospective tenants with a disability have the right to apply for and live in a rental unit regardless of their impairment. When a landlord rejects disabled tenants based on the use of a discriminatory housing practice, they have violated the law.

Who Qualifies as Disabled under the Fair Housing Acts?

The federal Fair Housing Act and the Fair Housing Amendments Act (42 U.S. Code §§ [3601-3619](#), [3631](#)) forbid discrimination of tenants or prospective tenants because of a disability or the disability of a person associated with them. The law protects the following people:

- A person with a mental or physical disability that substantially limits a person's ability to perform one or more major life activities; or
- A person that has a record of the disability; or
- A person that is considered by others as having the disability

Types of protected disabilities include mobile, visual, and hearing impairments, mental retardation, alcoholism (if being treated in a recovery program), drug addiction (not caused by the use of an illegal controlled substance), mental illness, HIV, AIDS, and AIDS-Related Complex.

A Landlord May Not Ask Discriminatory Questions

When a tenant or a prospective tenant has not asked for accommodation, the Fair Housing Acts prohibit the landlord from asking whether the applicant or a person intending to live in the rental has a disability or about the severity of the impairment. Landlords also cannot ask to read medical records. A landlord must treat disabled applicants and tenants in the same way as those without a disability. Consequently, guiding a tenant to a specific rental unit is inappropriate.

However, a landlord may ask all prospective tenants, including disabled applicants, about whether:

- The applicant can meet tenancy requirements;

- The applicant abuses or is addicted to an illegal controlled substance;
- The applicant qualifies for a rental unit available only to people with a disability or a certain type of disability; or
- The applicant qualifies for a rental unit that is offered on a priority basis to people with a disability or with a certain type of disability.

Mental Illness and the Possibility of Direct Threats

A landlord may not exclude an applicant or tenant because of fear or speculation that the mentally ill person poses a danger. The landlord can assess, however, whether the individual is a direct threat by relying on trustworthy and objective information regarding current conduct or specific acts, such as threats or an assault on another tenant. The landlord must consider several factors, including the nature and severity of the risk of injury, the likelihood of injury, and whether a reasonable accommodation can eliminate the direct threat. The landlord must also consider whether the individual's receipt of treatment or medication has eliminated the direct threat. If after evaluating reliable and objective evidence the landlord can ascertain that the individual poses a direct threat, then the landlord may reject the individual.

The Right to an Accommodation

Disabled tenants may request the landlord make reasonable accommodations to rules, policies, practices, or services when it will afford the person equal opportunity to use and enjoy the rental unit and the common and public areas. There must be a relationship between the modification and the disability. Reasonable requests include the permission to use a service animal, permission to mail a rent payment rather than personally delivering it to the rental office, or a request to have a parking space large enough for wheelchair access.

A landlord does not have to make accommodations for a reasonable request that is unrelated to a tenant's disability or for a request that is not reasonable because it will cause an undue financial and administrative burden on the landlord. However, when a request is unreasonable, HUD requires the landlord and the tenant to proceed in an "interactive process" to reach a reasonable compromise.

The Right to Make a Modification

If reasonable, disabled tenants may modify a rental unit to make it safe and comfortable to live in. If the modification will create an inappropriate living condition for the next tenant, the landlord may agree to the modification upon the condition that the tenant restore the unit to its original condition prior to leaving. In this circumstance, the landlord may require the tenant to put money in an interest-bearing escrow account.

All modifications are subject to approval with the landlord. The landlord may ask for a description of the proposed modification and any necessary building permits. Common modifications include wheelchair ramps, lowered countertops, and special door handles.

Offering Proof of a Disability and the Need for Accommodation or Modification

In some cases, a disabled tenant will need to provide proof of their disability or proof of the relationship between the disability and the requested accommodation or modification. If the disability is obvious and the need for the requested accommodation or modification is apparent, then the landlord may not ask for further verification. If the disability is obvious but the need for the accommodation or modification is not, the landlord may only ask for necessary disability-related information.

When a disability is less apparent, a landlord may request information that verifies the disability, describes the requested accommodation, and establishes the connection between the disability and the accommodation or modification. Disabled tenants may offer verification of their impairment by:

- Giving a credible statement;
- Offering proof of receiving Supplemental Security Income or Social Security Disability Insurance when the individual is under age 65;
- Requesting a doctor, a medical provider, a peer support group, a nonmedical service agency, or a reliable third party provide information about their disability.

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