

HOUSING JUSTICE

National Housing Law Project

Newsletter May 2009

Domestic Violence and Disability

While intimate partner violence is a problem for all communities, survivors with disabilities face several unique issues. Data regarding the rates of survivors with disabilities is sparse; however, the information that does exist suggests higher rates of abuse from caregivers, and longer periods of abuse. Abusers may include partners, family members, caregivers, attendants, and others. It is vital that advocates for survivors understand the tools that are available to ensure that survivors with disabilities can access and maintain safe and affordable housing. ■

Issues Faced by Survivors with Disabilities

Survivors with disabilities may face a number of issues not faced by survivors without disabilities. Abuse may take additional forms. For example, if a person has a mobility impairment, an abuser might withhold access to transportation. In some cases, abuse may have been the cause of a person's disability, such as Post-Traumatic Stress Disorder (PTSD) or depression. Survivors with PTSD or depression may struggle to keep appointments with a housing provider. Additionally, domestic violence service providers must take a survivor's disability into account when developing a safety plan for the survivor. There are a variety of ways in which disability and domestic violence intersect; therefore, advocates must consider all of the factors in effect when assisting the survivor to maintain housing.

Maintaining Housing

Both federal and state fair housing laws prohibit discrimination based on a person's disability. Because many states have limited housing protections for domestic violence survivors, asserting rights based on the survivor's disability may provide an additional advocacy strategy for maintaining the tenant's home.

One form of discrimination under fair housing law includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a disabled] person an equal opportunity to use and enjoy a dwelling." The Fair Housing Amendments Act (FHAA), the Americans with Disabilities Act (ADA), and the Rehabilitation Act of 1973 are federal laws that require reasonable accommodation for individuals with disabilities.

In the housing context, a reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. For example, consider a situation where a housing provider has a strict no-pet policy. The tenant's abuser broke into her home, so she needs an alarm system to warn her of any entry. However, she is also hard of hearing, so a traditional alarm would not work for her. The tenant may request that the housing provider allow her to keep a service animal that would alert her to any intruders as a reasonable accommodation to the building's no-pet policy. ■

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Tools for Survivors with Disabilities

When must a reasonable accommodation be provided?

A housing provider MUST provide a reasonable accommodation if:

1. The participant has a disability.
2. The participant requests an accommodation.
3. The requested accommodation would allow the person with a disability the equal opportunity to use and enjoy the dwelling.
4. The request is “reasonable.”

Federal Definition of Disability for the Purpose of Reasonable Accommodation

Any person who:

1. has a physical or mental impairment that substantially limits one or more major life activities;
2. has a record of such impairment; or
3. is regarded as having such an impairment.

Requesting an Accommodation

A reasonable accommodation request may be oral or written.

Once a tenant tells a housing provider that she is disabled and needs a change in a rule, policy, practice, or service in order to accommodate that disability, the provider is obligated to begin the reasonable accommodation process, even if the tenant refuses or is unable to put the request in writing.

However, the best practice is to request the accommodation in writing. Written requests provide documentation of the process and minimize the risk of miscommunication. The advocate should be as specific as possible in the request and also set a time frame for the

housing provider to respond. This request should include the following:

1. **Disability:** This section only needs to demonstrate that the tenant has a disability that could be accommodated by the specific request. It does NOT need to say the name of the disability.
2. **Accommodation:** The request should state specifically what accommodation the tenant is seeking.
3. **Necessary:** The accommodation should free the tenant from a rule, policy, or practice that interferes with the person’s right to use and enjoy the dwelling, enhance the person’s quality of life by ameliorating the effects of the disability, and/or enable the tenant to satisfy the essential requirements of tenancy.

Most importantly, the requested accommodation must address the effects that the policy in question has on the disability and clearly demonstrate the nexus between those elements.

Timing of the Request

A reasonable accommodation may be requested at any time, prior to application and admission, during occupancy, after termination or eviction, and even during litigation.

Verifications

There are three different scenarios relating to verification that could exist:

1. If a person’s disability is obvious or known, and the need for the requested accommodation is known, then the housing provider should not ask for any more information.

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2. If the disability is known or obvious, but the need is not, then the housing provider should ask only for information necessary to verify the need for the accommodation.

3. If neither the disability nor the need for the accommodation is readily apparent, the housing provider may ask for verification of both the disability and the need for the accommodation.

If a participant receives SSI/SSDI and is under 62 yrs. of age, she may use proof of the receipt of those benefits to self-verify the disability.

If third party verification is necessary, the participant should ideally obtain a doctor's letter. However, other knowledgeable parties may verify the disability (i.e. social worker or caregiver).

Reasonable

A requested accommodation is unreasonable if it causes the housing provider an undue burden or fundamentally alters the nature of the program.

Undue Burden

A reasonable accommodation creates an undue burden when the financial or administrative costs are too high.

A housing provider may consider its financial resources, benefit to tenant, costs, and the availability of a less expensive accommodation when considering the financial burden of the request. However, courts have established that there will often be costs involved in providing a reasonable accommodation.

Fundamentally Alter

A requested accommodation is unreasonable if it fundamentally alters the nature of the program. A housing provider does not have to grant a reasonable accommodation request if it includes services or policies that would change the very nature of what the housing provider does.

Denial of a Request

Interactive Process

If a housing provider rejects a reasonable accommodation request, then it must engage in an interactive process with the tenant to discuss alternative accommodations. If no agreement is made, it is treated as a denial of the original accommodation request.

Section 504 Grievance Procedure

Under Section 504 of the Rehabilitation Act, federally assisted housing providers are required to create grievance procedures designed to address claims of discrimination against people with disabilities. In practice, the grievance procedure is often used as the vehicle for interactive process.

Enforcement

There are five primary methods by which the duty to provide reasonable accommodation may be enforced:

Department of Housing & Urban Development (HUD) Complaint

An individual that has been a victim of discrimination on the basis of her disability can file a complaint with the Department of Housing and Urban Development (HUD). A person may file a complaint with HUD within one year after the date of the discriminatory incident.

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Several cases have discussed continuing discrimination. HUD must decide whether or not to file a complaint within 100 days. HUD has a duty to conciliate, and if that fails, it may either proceed through an administrative law judge (ALJ) or through the Justice Department in federal court. Remedies before an ALJ include compensatory damages, injunctive or equitable relief, and civil penalties between \$11,000 to \$55,000.

Private Civil Suit

An individual may opt to individually bring a case against the housing provider in either state or federal court, with punitive damages available. The filing deadline is two years from the date of the act of discrimination. This can be filed concurrently with a HUD complaint and will be stayed while such a complaint is being investigated.

Affirmative Defense to Unlawful Detainer or Eviction Action

Reasonable accommodation may be raised as a defense to an unlawful detainer action against a tenant, even if no prior request was made.

Examples of Reasonable Accommodations for Survivors

The following are examples of reasonable accommodations that may be particularly relevant to attorneys serving survivors:

- A survivor who lives on the third floor of a walk-up apartment complex and has become disabled as a result of acts of violence committed against her may request relocation to a ground-floor apartment.
- A survivor who is suffering PTSD as a result of a sexual assault that occurred in the parking lot of her apartment complex and is experiencing flashbacks and nightmares due to the incident may request a transfer to another apartment complex.
- A survivor who has been hospitalized for an extended period of time as a result of a physical or psychological condition may request an additional amount of time to

- pay the rent, or may request that an eviction for nonpayment of rent be withdrawn.
- A survivor who wants to apply for federally subsidized housing but is unable to go to the housing authority in person as a result of mobility impairment or psychological condition may request that the housing authority allow her to apply by mail.
- A survivor who failed to attend a meeting with the housing authority to certify her income as a result of severe depression may request that the housing authority cease any efforts to terminate her subsidy for failure to attend the meeting. ■

Statistic of the Month

Women with disabilities report significantly longer durations of physical or sexual abuse compared to women without disabilities (3.9 years versus 2.5 years).

Source: Nosek, M. & Howland, C. (1998, February). *Abuse and Women with Disabilities.. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Retrieved 5/18/2009, from: <http://www.vawnet.org>*

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