

# Reasonable Accommodations in Federally Assisted Housing

Presented to: New Orleans Legal Assistance

October 27, 2008

**National Housing Law Project**

Navneet Grewal

Staff Attorney

[ngrewal@nhlp.org](mailto:ngrewal@nhlp.org)

510.251.9400 ext. 102



# What is a Reasonable Accommodation?

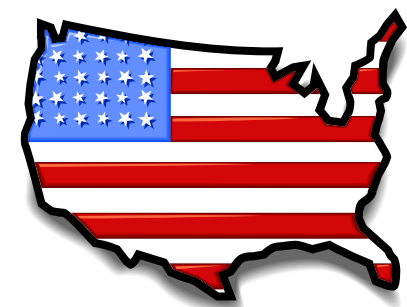
- A reasonable accommodation is a **change** in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

# Why is the Right to a Reasonable Accommodation Important?

- 41% of families living in federally assisted housing have at least one family member who is disabled.
- 29% of families living in federally assisted housing in the state of Louisiana have at least one family member who is disabled.
- An estimated 18.7% of people, ages 5 and older, in the state of Louisiana are living with a disability.

# Laws Providing for Reasonable Accommodation

- The right to reasonable accommodation arises out of fair housing law.
- FHA: 42 U.S.C. § § 3604, et seq
- Section 504 of Rehabilitation Act: 29 U.S.C. § 794
- ADA 42 U.S.C. §§ 12131 *et seq*



# When Must a Housing Provider Grant a Request for Reasonable Accommodation?

When a qualified person with a disability makes a request that is:

**NECESSARY + REASONABLE = MUST GRANT ACCOMMODATION**

# Federal Definition of Disability for the Purpose of Reasonable Accommodation

- Any person who:
  - has a physical or mental impairment that substantially limits one or more major life activities;
  - has a record of such impairment; or
  - is regarded as having such an impairment

# Direct Threat

- An accommodation may be denied if the tenant poses a direct threat to the health and safety of others. This must be **objective**, not subjective.
- Must look at nature, duration, severity of risk of injury, probability injury will occur, any accommodations that could eliminate the direct threat.

# Drug Use

- A **current** illegal user of a controlled substance is not disabled for the purposes of reasonable accommodation. However, an individual with a disability can include someone who has successfully completed a drug rehabilitation program, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use.



# Necessary

- The change enhances the tenant's use and enjoyment of the unit by ameliorating the effects of the disability.

# Reasonable

- No **undue financial or administrative burden**
- Can not **fundamentally alter** the nature of the program.
- Considerations for undue financial burden: benefit to tenant, costs, financial resources, and availability of less expensive accommodation.
- Will often cause at least *some* financial burden.
- Fundamental Alteration: the request would require the provider to change the nature of the services it provides

# How a Request is Made

- Requests may be **oral** or **written**.
- The reasonable accommodation process begins once a tenant tells a housing provider that they are disabled and need something changed in order to accommodate that disability.
- Written requests may be preferable

# How to Make a Request

- **Disability**: State that the tenant has a disability. It does NOT need to say the name of the disability and provider can not ask for medical records.
- **Accommodation**: The request should state what accommodation the tenant is looking for.
- **Necessary**: The request should state how the accommodation is related to the person's disability and how it will help them access, utilize, or remain in the housing program.

# Verification

- 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.
- 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 should ask for verification of both the disability and the need for the accommodation.

# Interactive Process

- If the housing provider finds that the requested accommodation is not reasonable, it's obligation does not end.
- The provider must engage in an **interactive process** and try to determine with the tenant if another accommodation is feasible.
- If no alternative accommodation is agreed to, treated as a **denial** of the original reasonable accommodation request.
- For federally assisted housing – right to request a Section 504 hearing, which often substitutes as the interactive process.

# Common Requests Generally

- Service/Companion Animals
- Alternative dates/methods of paying rent
- Caregiver requests
- Parking Spaces
- Unit Transfers
- Extending time to vacate a unit
- Allowing time to reduce clutter

# Section 504

- Entities that receive federal assistance are covered: *i.e.* PHA's, HUD Multifamily properties.
- Requires affirmative steps to make federally assisted housing accessible to people with disabilities





# Section 504



- Self-evaluation
- Needs assessment of the need for wheelchair accessible units
- Designated Section 504 Coordinator
- Adopt grievance procedures
- Notify participants of non-discrimination

# Admissions

- Affirmative outreach to Landlords
- Marketing to people with disabilities
- Rescheduling Meetings/Holding them in the applicant's home or accessible location
- Alternative forms of communication
- Other reasonable accommodations
- “Economic Accommodations”



# Locating a Unit

- Provide current listing of accessible units
- Extending voucher search time
- Increasing payment standard
- Renting from a relative
- Porting a voucher
- Transfers



# Occupancy

- Unit Size
- Must allow live-in aide
- Must allow service/companion animals
- Increase in utility allowance
- Pay for reasonable modifications



# Eviction/Termination

- Can request reasonable accommodation at any time, including after eviction/termination has begun
- Must consider whether or not a reasonable accommodation would allow a person with a disability to remain in the unit.
- Can reinstate voucher/tenancy.

# Enforcement

- HUD
- Federal Court
- State Court
- Writ of Mandamus