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Housing Accommodations and Modifications for People with Disabilities

Federal law (the Fair Housing Amendments Act of 1988) and state law (Ohio Revised Code Chapter 4112) specify that landlords and other housing providers may not discriminate against a person with a disability or a handicap in the sale or rental of a dwelling, such as a house or an apartment. One type of prohibited discrimination is a refusal to provide a reasonable accommodation or a refusal to allow a reasonable modification at the tenant's expense under certain circumstances. This FAQ describes some basic aspects of this issue and offers tips on things you should consider when asking for a reasonable accommodation or modification in housing.

Question: ***Who is covered by these laws?***

Answer: These laws protect a person with a disability (the laws use the term "handicap"). A disability or handicap is a physical or mental impairment that substantially limits a major life activity (including such activities as walking, talking, thinking, eating, seeing, hearing, working, caring for oneself, or major bodily functions). The impairment must be permanent or of long-term duration. Temporary conditions such as pregnancy or a broken bone would usually not qualify. Note that the degree of limitation must be "substantial." Some conditions (such as blindness, deafness, or inability to walk) will always impair a major life activity, while many conditions (such as epilepsy) in some individuals would substantially limit a major life activity, but in other individuals do not. These situations are judged on a case-by-case basis.

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Question: ***When can I ask for an accommodation?***

Answer: You can ask your landlord or housing provider for an accommodation whenever your proposed accommodation is necessary for you to have an equal opportunity to use and enjoy that dwelling. An individual with a disability needs to establish a nexus between the requested accommodation and the individual's disability. In most cases, this means something like this: "If you don't grant me the thing I'm asking for, I won't be able reasonably to live in this apartment any more." Usually, the proposed accommodation serves to lessen or overcome in some way the effect of the disabling condition. Generally this will involve a medical necessity, either physical or psychological. The best way to support your request is with a statement from a medical professional, such as a psychiatrist or other physician, though in some cases a statement from a mental health counselor or social worker might be sufficient. Sometimes a simple prescription is good enough, but usually a note or letter is better. The doctor's statement should say that the accommodation is necessary or required. Try to avoid statements that say that something is "useful," "beneficial," "helpful," or "recommended." Those words are usually inadequate.

Question: ***What type of accommodation can I ask for?***

Answer: Lots of different things. A reasonable accommodation is a change or exception to a rule, policy or practice that is necessary for you to have full use and enjoyment of a dwelling unit. It may be something like a request to have a second refrigerator in an apartment complex that does not ordinarily allow an extra appliance, requesting an apartment on the first floor if you have a mobility impairment or requesting a designated handicapped parking spot. Another request, is to be allowed to have a service animal or support animal where a no-animals rule is in place. You can find more information on requesting permission to have a service or support animal below.

Question: ***Will I be charged an extra fee for an accommodation?***

Answer: No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation. For example, a tenant with a disability who requires an assistance animal may not be required by the housing provider to pay a fee or security deposit as a condition of allowing the assistance animal. But, the tenant would be liable for any damages caused by the assistance animal if the housing provider typically charges tenants for damages caused to the premises.

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Question: ***What is a reasonable modification?***

Answer: A reasonable modification is a structural change made to existing premises so that an individual with a disability can have full use and enjoyment of the premises. These can be structural changes to the interior or exterior of a unit, or the common and public use areas of a building. Examples of reasonable modifications include widening doorways for individuals using wheelchairs, adding a ramp to make a primary entrance usable, installing grab bars in the bathroom or lowering the cabinets in the kitchen.

Question: ***Who pays for the reasonable modification?***

Answer: Generally, under state and federal law the tenant is responsible for the cost of any modifications that he or she wishes to make to a rental property. Of course, a tenant needs to get permission from the housing provider prior to making any modifications. The housing provider cannot unreasonably withhold permission for reasonable modifications at the tenant's expense.

If the rental housing is federally funded then it is the owner's responsibility to pay for the reasonable modification. If you are using a Section 8 housing choice voucher to subsidize your housing, then most likely you are responsible for paying for any modifications to the unit.

Question: ***What should I know about requesting permission to have an animal?***

Answer: The first thing is that a request for an animal is just like any other request for an accommodation, and is judged by the same standard - necessity. There is no special regulation about animals in this context. The only reference to animals in federal fair housing regulations is in the general regulation about accommodations, where one example of a reasonable accommodation is a request by a person with a visual impairment to have a guide dog. This is generally good, because you do not want to get sidetracked by notions that some type of higher standard can be applied to requests for animals.

For instance, the landlord may try to argue that some type of training or certification is necessary for the animal to qualify as an accommodation. This contention is based upon other laws such as state laws or the Americans with Disabilities Act. Those laws and regulations do not apply to requests for housing accommodations. Nothing in fair housing law distinguishes between service animals and support animals. Nothing in fair housing law requires that any animal meet training or certification requirements. An emotional support animal, for example, could seldom meet such requirements. It can, however, meet the standard of being determined by a physician to be psychologically necessary to enable a person to reside in a

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particular dwelling. That should be the end of the inquiry.

Question: ***Does every request for an accommodation have to be granted?***

Answer: No. First, a landlord can contend that you are not covered by fair housing laws because your impairment is not sufficient to constitute a disability. If the landlord prevails on this point, he or she does not have to consider granting your request

Second, the landlord can dispute the issue of necessity. This issue will usually be decided by the strength of the statement from your medical professional. That statement should say that the accommodation is necessary or required to lessen or overcome in some way the effect of the disabling condition, and allow you to have an equal opportunity to use and enjoy a dwelling. Third, the landlord can argue that your request need not be granted because it is not "reasonable." A request that requires the landlord to fundamentally alter the housing operation is not reasonable. A request that creates an undue financial or administrative burden is not reasonable. A request that entails a direct threat to other individuals or which would result in substantial physical damage to the property of others is not reasonable.

Fourth, your preferred type of accommodation need not be granted if the landlord can substitute another (probably cheaper) form of accommodation that would accomplish the same purpose. It would be up to you, with the help of your medical professional, to establish that the landlord's proposal would be inadequate or ineffective.

Finally, a landlord should respond promptly to a request for a reasonable accommodation. An undue delay could be construed as a failure to provide the reasonable accommodation.

Question: ***What should I know if I encounter inaccessible housing due to the design and construction of the building or unit?***

Answer: Generally, under both federal and state law, newly designed multifamily dwellings must be designed and constructed so as to be readily accessible and usable by persons with disabilities.

The date on which the construction of the inaccessible housing was completed is important as there are differences in federal and state law regarding the statute of limitations to bring a claim for inaccessible housing due to the design and construction of the building.

There is a continuing violation of federal law as long as the building or unit is inaccessible due to the design and construction of the building or unit. Therefore, there is no time limit barring you from bringing a complaint under federal law. Under state law, you only have one year from the completion of the building to bring a complaint. So if you discover that the building is inaccessible, but more than one year has passed since the completion of that building, you would be barred from bringing a complaint or lawsuit under state law.

There are further differences between federal and state law as to whether compliance with state building codes constitutes accessible housing. Under federal law, there is no presumption that a building is accessible or that the building is in compliance with the federal law's design and construction requirements even if the building plans comply with state building codes. Under state law, once the building's plans for multi-family units are approved by local building officials, there is a rebuttable presumption that the plans comply with accessibility standards for the disabled.

Therefore, because federal law is interpreted more broadly than state law regarding design and construction concerns, when you discover a building is inaccessible due to the design and construction you should either file a complaint with HUD or file a lawsuit under federal law.

Question: ***What should I know about tenant-on-tenant harassment?***

Answer: Both federal and state law impose liability on landlords and agents for their own acts of harassment in violation of Ohio law. Ohio law does not expressly recognize a cause of action against a landlord who fails to take corrective action in response to the creation of a hostile housing environment by one of his or her tenants.

A housing provider can be liable under federal law for failing to take corrective action against a tenant who harasses another tenant when the housing provider knows that the harassment creates a hostile living environment. To seek relief in this situation, you should file a complaint with HUD or bring a lawsuit under federal

law.

Question: ***How would I file a complaint?***

Answer: You can file a charge of discrimination in housing on the basis of disability with the Ohio Civil Rights Commission (OCRC) at the regional office serving your county. The regional offices of OCRC can be reached at the following numbers:

Akron 330-643-3100

Cleveland 216-787-3150

Columbus 614-466-5928

Dayton 937-285-6500

Toledo 419-245-2900

You can also file a complaint with the U.S. Department of Housing and Urban Development (HUD) through its Chicago regional office. That office can be reached toll-free at 800-765-9372.

There are certain types of cases that must be filed with HUD and not OCRC. Those cases are design and construction cases and tenant-on-tenant harassment cases.

In any case, the complaint or charge must be filed no later than one year after the date of the denial of the accommodation request. Further, the statute of limitations for filing a Fair Housing Act (federal law) court complaint is two years. 42 U.S.C. 3613. The statute of limitations for filing a court complaint under state law, 4112.02(H), is one year. O.R.C. 4112.051.

Question: ***Where can I get more information?***

Answer: Fair housing information can be found on the U.S. Department of Urban Development website: www.hud.gov

For individual consultation about accommodation requests, you may contact Disability Rights Ohio at 800-282-9181 or on the web at disabilityrightsohio.org