

LAW OFFICE  
**MAGRUDER COOK & KOUTSOUFTIKIS\***  
1889 PRESTON WHITE DRIVE, SUITE 200

ANNE M. MAGRUDER • +  
CYNTHIA R. COOK •  
LEON KOUTSOUFTIKIS •  
LINDSAY M. ANDERSON •  
ANDREW PALANZI •

RESTON, VIRGINIA 20191  
Telephone (703) 766-4400  
Telephone (571) 313-1503  
Facsimile (571) 313-8967  
Facsimile (571) 313-8968

• ALSO ADMITTED IN DC & MD  
+ ALSO ADMITTED IN PA  
▪ ALSO ADMITTED IN MD  
\*Registered trade name of  
Magruder & Associates, P.C.

**HAND REASONABLE ACCOMMODATION/MODIFICATION**  
**COURTESY MEMORANDUM**

**FROM:** Magruder, Cook & Koutsouftikis; Andrew Palanzi, Esq.

**RE:** Federal Fair Housing Laws – Disability Rights in Housing

**DATE:** November 5, 2015

---

This memorandum is a basic review of Federal Fair Housing regulations as they apply to reasonable modification and reasonable accommodation requests. The materials provided herein are for informational purposes only and not for the purpose of providing legal advice to the participant or any other individual. Use of any of the information contained herein does not create an attorney-client relationship between Magruder & Associates, P.C. d/b/a Magruder Cook & Koutsouftikis and the participant or any other individual. Any questions regarding this memorandum should be directed to Andrew Palanzi, Esq. at [apalanzi@magruderpc.com](mailto:apalanzi@magruderpc.com) or to the agencies whose contact information is provided herein.

The Fair Housing Act (the “FHA”) prohibits landlords from discriminating against housing applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability.<sup>1</sup> The FHA makes it unlawful for any person to refuse “to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises.”<sup>2</sup> The FHA also makes it unlawful for any person to refuse “to make reasonable accommodations in rules,

---

<sup>1</sup> See 42 U.S.C. § 3602(h)

“Federal laws define a person with a disability as ‘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 impairment.’

“In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.” U.S. Department of Housing and Urban Development, *Disability Rights in Housing*, HUD Program Offices: Fair Housing and Equal Opportunity (accessed January 14, 2014), ¶¶ 1-2

<sup>2</sup> 42 U.S.C. § 3604(f)(3)(A) (2013).

policies, practices, or services, when such accommodations may be necessary to afford [disabled] person(s) equal opportunity to use and enjoy a dwelling.”<sup>3</sup>

Please be advised that our office has recently encountered several issues regarding the issuance of specifically reserved parking spaces for residents with mobility issues. As discussed below, landlords must provide a resident with a mobility impairment a specifically reserved, assigned parking space as a reasonable accommodation under the FHA if the resident gives the landlord a written request for the accommodation and the resident has a disability related need for the accommodation.

### **Reasonable Modification**

A “reasonable modification” is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modification can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during a tenancy. The FHA makes it unlawful for a landlord to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises. While the FHA requires landlords to permit reasonable modifications, the resident is responsible for paying the cost of the modification and the landlord may, when it is reasonable to do so, condition the permission for a modification on the resident agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. A landlord cannot require the use of a specific contractor to perform the work; however, the landlord can require the use of licensed and bonded contractors and can require the production of valid permits and plans before giving final approval for the work to be performed.<sup>4</sup>

To show that a requested modification may be necessary, there must be an identifiable nexus between the requested modification and the individual’s disability. A landlord may not ordinarily inquire as to the nature and severity of an individual’s disability; however, in response to a reasonable modification request, a landlord may request reliable disability related information that is (1) necessary to verify that person meets the FHA’s definition of disability, (2) describes the needed modification, and (3) shows the relationship between the person’s disability and the need for the requested modification. Further, the modification must be “reasonable.” Examples of modifications that typically are considered reasonable include widening doorways to

---

<sup>3</sup> 42 U.S.C. § 3604(f)(3)(B)

<sup>4</sup> See Memorandum from DOJ and HUD, *Reasonable Modifications under the Fair Housing Act*, (published March 5, 2008) available at [http://www.justice.gov/crt/about/hce/about\\_guidance.php](http://www.justice.gov/crt/about/hce/about_guidance.php).

make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets and counters; and adding wheelchair ramps.<sup>5</sup>

The determination of whether a request meets the standards of a reasonable modification under the FHA is a factual question that is determined on a case-by-case basis. If a resident makes a request for a reasonable modification, then please contact our office for any assistance with the matter.

An applicant or resident is not entitled to receive a reasonable modification unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable modification request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable modification request does not need to mention the FHA or use the words “reasonable modification.” However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability.<sup>6</sup>

### **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. Since rules, policies, practices, and services may have different effects on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The FHA makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodation may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. Furthermore, a landlord cannot charge or require a disabled person to pay extra fees or deposits as a condition of receiving a reasonable accommodation.<sup>7</sup>

---

<sup>5</sup> *Id.*

<sup>6</sup> See Memorandum from DOJ and HUD, *Reasonable Modifications under the Fair Housing Act*, Pg. 9-10 (published March 5, 2008) available at [http://www.justice.gov/crt/about/hce/about\\_guidance.php](http://www.justice.gov/crt/about/hce/about_guidance.php).

<sup>7</sup> See Memorandum from DOJ and HUD, *Reasonable Accommodations under the Fair Housing Act*, (published May 14, 2004) available at [http://www.justice.gov/crt/about/hce/about\\_guidance.php](http://www.justice.gov/crt/about/hce/about_guidance.php); and See Memorandum from DOJ and HUD, *Reasonable Accommodations under the Fair Housing Act*, (published May 17, 2004) available at [http://www.justice.gov/crt/about/hce/about\\_guidance.php](http://www.justice.gov/crt/about/hce/about_guidance.php).

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.

**EXAMPLE 1:** A landlord has a policy of providing unassigned parking to residents on a first come, first served basis. A resident with a mobility impairment requests an assignable accessible parking space close to the entrance of her unit that is specifically reserved for her use as a reasonable accommodation. The landlord must make an exception to its policy of not providing assigned parking spaces to accommodate this resident, and must provide the resident with a specifically reserved parking space.

**EXAMPLE 2:** A landlord has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant with a mental disability that makes her afraid to leave her apartment requests as a reasonable accommodation that she be allowed to have her friend deliver her payment. The landlord must make an exception to its payment policy to accommodate this tenant.<sup>8</sup>

A landlord can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. Additionally, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – i.e. if it would impose an undue financial or administrative burden on the landlord. The determination of undue financial and administrative burden is made by a case-by-case basis, and we strongly recommend that you to contact our office for further assistance to avoid possibly violating the FHA.<sup>9</sup>

### **Reasonable Accommodations, Assistance Animals & Service Animals**

As a reasonable accommodation under the FHA, landlords are required to allow residents to have “assistance animals” in their residence. While some animals that assist disabled individuals are licensed by local and state agencies as service or assistance animals and residents may have such documentation, the FHA does not require that an assistance animal be licensed. Because the term assistance animal is

---

<sup>8</sup> See Memorandum from DOJ and HUD, *Reasonable Accommodations under the Fair Housing Act*, Pg. 3 (published May 14, 2004) available at [http://www.justice.gov/crt/about/hce/about\\_guidance.php](http://www.justice.gov/crt/about/hce/about_guidance.php).

<sup>9</sup> Memorandum from DOJ and HUD, *Reasonable Accommodations under the Fair Housing Act*, Pg. 9 (published May 17, 2004) available at [http://www.justice.gov/crt/about/hce/about\\_guidance.php](http://www.justice.gov/crt/about/hce/about_guidance.php).

not well defined in the FHA, some courts have determined that even animals that provide “emotional support” must be allowed as a reasonable accommodation.<sup>10</sup>

Generally, courts follow a three step test in determining whether a reasonable accommodation under the FHA must be made for an assistance animal. First, the resident must have a disability as defined above. Second, the animal must serve a function directly related to the person’s disability. Third, the request to have the assistance animal must be reasonable.

Any animal that qualifies as an assistance animal under the FHA is not considered a pet, and no charges or extra fees may be imparted on an individual with an assistance animal. Therefore a landlord with a “no pets” policy may be required to grant an exception to this rule to allow a disabled individual to keep an assistance animal in their apartment and to allow the individual and his/her assistance animal full access to any common areas. Any damages cause by the assistance animal, however, may be charged to the resident, so long as any other resident would be charged for creating the same damages. If you have any questions about whether a disabled individual’s specific animal qualifies as an assistance animal under the FHA, please contact our office for further advice.<sup>11</sup>

In addition to the requirements of the FHA, the Americans with Disability Act (the “ADA”) requires landlords to allow all residents, guests and visitors to enter and remain in the common areas of the building (including the rental office) with any service animal. In contrast, the ADA more narrowly defines a “service animal” as **any dog**<sup>12</sup> individually trained to provide assistance to an individual with a disability, regardless of whether that animal has been licensed or certified by a state or local government. Under the ADA, service animals must be harnessed, leashed, or otherwise controlled at all times during their use. You cannot ask an individual to leave an otherwise open area because of the use of a service animal unless the dog is out of control, the dog’s behavior poses a direct health or safety threat to others, or the dog is not housebroken. You cannot ask an individual with a service animal to leave or otherwise isolate them due to allergy concerns, fear of dogs, or other concerns.<sup>13</sup>

---

<sup>10</sup> Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt., 778 F. Supp. 2d 1028, 1035 (D.N.D. 2011).

<sup>11</sup> Notice from the Office of Fair Housing and Equal Opportunity, *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, (FHEO-2013-01, issued April 25, 2013).

<sup>12</sup> Federal regulation has expanded the definition of service animal to include miniature horses. See 28 C.F.R. §35.136(i) and 28 C.F.R. §36.302(c)(9)

<sup>13</sup> Notice from the Office of Fair Housing and Equal Opportunity, *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, (FHEO-2013-01, issued April 25, 2013).

When approaching an individual as to whether a dog is a service animal you may only ask two questions under the ADA. First, is the dog a service animal required because of a disability? Second, what work or task has the dog been trained to perform? You cannot ask about the person's disability, require medical documentation, require special identification cards or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task. Any damages caused by a service animal are the responsibility of the owner.<sup>14</sup>

### **Additional Contact Information**

#### **Fair Housing Act**

Questions about the Fair Housing Act can be answered at the following:

- Online at [www.fairhousingfirst.org](http://www.fairhousingfirst.org)
- By telephone at 888-341-7781

#### **ADA**

Questions about the Americans with Disabilities Act can be answered at the following:

- Online at [www.ADA.gov](http://www.ADA.gov)
- By telephone at 800-514-0301

---

<sup>14</sup> *Id.*