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ReasonableAccommodations15

Reasonable Accommodations Under the Fair Housing Act:



One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.

The Fair Housing Act's protection against disability

discrimination covers not only tenants and home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities. The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because they require reasonable accommodations. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on others, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.

- Who must comply with this requirement?

The requirement to provide reasonable accommodations applies to, but is not limited to individuals, corporations, associations and others involved in the provision of housing or residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. This also applies to state and local governments, most often in the context of exclusionary zoning or other land-use decisions

- Who is a person with a disability?

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3)

individuals with a record of such an impairment.

This may include, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. See *e.g.*, Bragdon

- When is a reasonable accommodation necessary?

A requested accommodation is necessary when there is an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. Some examples of Reasonable Accommodations are:

- Assigned parking space for a person with a mobility impairment
- Assigned lower mailbox for a person who uses a wheelchair
- Permitting an assistance animal in a "no pets building for a person who is deaf, blind, has seizures, or has a mental disability

- What is an assistance animal?

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the Fair Housing Act nor Section 504 requires an assistance animal to be individually trained or certified.⁵ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

- What information may a provider seek when a reasonable accommodation is requested?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information. If the disability and/or the disability-related reason for the requested

accommodation is not known or obvious, the requesting individual, medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

- When may a housing provider refuse to provide a requested accommodation?

A housing provider 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. In addition, 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 and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the

requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. These discussions often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

- What about charging fees to cover the cost of providing an accommodation?

Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

- Where can I find information on reasonable accommodations, reasonable modifications, and assistance animals?

HUD Charges Santa FE, New Mexico, Property Owner With Discriminating Against Tenant With Disabilities, (Emotional Support Animal and live in aide May 4, 2015)

HUD Charges Brooklyn Co-Op With Discriminating Against Disabled Veteran (Emotional Support Animal January 9, 2015)

HUD Finds that Puerto Rico Condo Association Discriminated against Resident with Disabilities (Emotional Support Animal November 12, 2014)

HUD Charges Kent State University with Housing Discrimination

for Refusing to Allow Support Animal in Campus Housing
(Emotional Support Animal August 19, 2014)

HUD Settles Claims Alleging Owner of Dekalb Apartment
Complex Discriminated against Persons with Disabilities (Ground
Floor Apartment and Live in Aide November 3, 2014)

HUD charges the Owners of an Apartment Complex in San
Francisco with Discrimination (Emotional Support Animal
September 30, 2014)

HUD charges New Hampshire Owners and management
Company for Denying a Parking Space (Assigned Parking Space
September 24, 2014)



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
March 5, 2008

**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE MODIFICATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the federal Fair Housing Act¹ (the “Act”), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.⁴

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

² The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(A).

⁴ This Statement does not address the principles relating to reasonable accommodations. For further information see the Joint Statement of the Department of Housing and Urban

This Statement is not intended to provide specific guidance regarding the Act's design and construction requirements for multifamily dwellings built for first occupancy after March 13, 1991. Some of the reasonable modifications discussed in this Statement are features of accessible design that are required for covered multifamily dwellings pursuant to the Act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the Act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, the Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual. All of these are available on HUD's website at www.hud.gov/offices/fheo/disabilities/index.cfm. Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers 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. The Act 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 modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."⁵ The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions⁶,

Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, dated May 17, 2004. This Joint Statement is available at www.hud.gov/offices/fheo/disabilities/index.cfm and http://www.usdoj.gov/crt/housing/jointstatement_ra.htm. See also 42 U.S.C. § 3604(f)(3)(B).

This Statement also does not discuss in depth the obligations of housing providers who are recipients of federal financial assistance to make and pay for structural changes to units and common and public areas that are needed as a reasonable accommodation for a person's disability. See Question 31.

⁵ 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.

⁶ The Act contemplates certain limits to the receipt of reasonable accommodations or reasonable modifications. For example, a tenant may be required to deposit money into an interest bearing

placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.

2. What is a reasonable modification under the Fair Housing Act?

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 modifications 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 the tenancy. The Act makes it unlawful for a housing provider or homeowners' association 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.

To show that a requested modification may be necessary, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. Further, the modification must be "reasonable." Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area. These examples of reasonable modifications are not exhaustive.

3. Who is responsible for the expense of making a reasonable modification?

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.

4. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other

account to ensure that funds are available to restore the interior of a dwelling to its previous state. See, e.g., Question 21 below. A reasonable accommodation can be conditioned on meeting reasonable safety requirements, such as requiring persons who use motorized wheelchairs to operate them in a manner that does not pose a risk to the safety of others or cause damage to other persons' property. See Joint Statement on Reasonable Accommodations, Question 11.

than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term “substantially limits” suggests that the limitation is “significant” or “to a large degree.”

The term “major life activity” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking. This list of major life activities is not exhaustive.

5. Who is entitled to a reasonable modification under the Fair Housing Act?

Persons who meet the Fair Housing Act’s definition of “person with a disability” may be entitled to a reasonable modification under the Act. However, there must be an identifiable relationship, or nexus, between the requested modification and the individual’s disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

Example 1: A tenant, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the tenant’s disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the tenant’s expense.

Example 2: A homeowner with a mobility disability asks the condo association to permit him to change his roofing from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire. There is no evidence that the shingles permitted by the homeowner’s association provide inadequate fire protection and the person with the disability has not identified a nexus between his disability and the need for clay tiles and fiberglass shingles. The homeowner’s association is not required to permit the homeowner’s modification because the homeowner’s request is not reasonable and there is no nexus between the request and the disability.

6. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested reasonable modification?

A housing provider may not ordinarily inquire as to the nature and severity of an individual’s disability. However, in response to a request for a reasonable modification, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act’s definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed modification, and (3) shows the relationship between the person’s disability and the need for the requested modification. Depending on the individual’s circumstances, information verifying that the person meets the Act’s definition of disability can usually be provided by the individual herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security

Income or Social Security Disability Insurance benefits⁸ or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable modification is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable modification request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

7. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable modification?

A housing provider is entitled to obtain information that is necessary to evaluate whether a requested reasonable modification may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the housing provider, and if the need for the requested modification is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the modification.

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

Example 1: An applicant with an obvious mobility impairment who uses a motorized scooter to move around asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested modification.

⁸ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Income ("SSDI") benefits in most cases meet the definition of a disability under the Fair Housing Act, although the converse may not be true. See, e.g., Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Example 2: A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

8. Who must comply with the Fair Housing Act's reasonable modification requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See, e.g., City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 729 (1995); *Project Life v. Glendening*, 139 F. Supp. 2d 703, 710 (D. Md. 2001), *aff'd*, 2002 WL 2012545 (4th Cir. 2002).

9. What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?⁹

Under the Fair Housing Act, a *reasonable modification* is a structural change made to the premises whereas a *reasonable accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service. A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification. *See* Reasonable Accommodation Statement, Questions 7 and 8.

Example 1: Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.

⁹ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability, and obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. *See* Question 31.

Example 2: Because of a hearing disability, a tenant wishes to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's expense.

Example 3: Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense. See also Questions 19, 20 and 21.

Example 4: Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable accommodation, and the housing provider must grant the accommodation.

10. Are reasonable modifications restricted to the interior of a dwelling?

No. Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas such as widening entrances to fitness centers or laundry rooms, or for changes to exteriors of dwelling units such as installing a ramp at the entrance to a dwelling.

11. Is a request for a parking space because of a physical disability a *reasonable accommodation* or a *reasonable modification*?

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

12. What if the structural changes being requested by the tenant or applicant are in a building that is subject to the design and construction requirements of the Fair Housing Act and the requested structural changes are a feature of accessible design that should have already existed in the unit or common area, e.g., doorways wide enough to accommodate a wheelchair, or an accessible entryway to a unit.

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.

For a discussion of the design and construction requirements of the Act, and their applicability, see HUD's website at: www.hud.gov/offices/fheo/disabilities/index.cfm and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

Example 1: A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building that was built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. Under these circumstances, one federal court has held that the tenant may have a potential claim against the housing provider.

Example 2: A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.

Example 3: A tenant with a disability resides in an apartment in a building that was built in 1993 in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

13. Who is responsible for expenses associated with a reasonable modification, e.g., for upkeep or maintenance?

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by

the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

Example 1: Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.

Example 2: Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.

Example 3: A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp. However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

14. In addition to current residents, are prospective tenants and buyers of housing protected by the reasonable modification provisions of the Fair Housing Act?

Yes. A person may make a request for a reasonable modification at any time. An individual may request a reasonable modification of the dwelling at the time that the potential tenancy or purchase is discussed. Under the Act, a housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made. Such conduct would constitute discrimination. The modification does not have to be made, however, unless it is reasonable. See Questions 2, 16, 21 and 23.

15. When and how should an individual request permission to make a modification?

Under the Act, a resident or an applicant for housing makes a reasonable modification request whenever she makes clear to the housing provider that she is requesting permission to make a structural change to the premises because of her disability. She should explain that she has a disability, if not readily apparent or not known to the housing provider, the type of modification she is requesting, and the relationship between the requested modification and her disability.

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 Act 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.

Although a reasonable modification request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable modification requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

16. Does a person with a disability have to have the housing provider's approval before making a reasonable modification to the dwelling?

Yes. A person with a disability must have the housing provider's approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

17. What if the housing provider fails to act promptly on a reasonable modification request?

A provider has an obligation to provide prompt responses to a reasonable modification request. An undue delay in responding to a reasonable modification request may be deemed a failure to permit a reasonable modification.

18. What if the housing provider proposes that the tenant move to a different unit in lieu of making a proposed modification?

The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability.

Example: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, as his request to modify his unit is reasonable and must be approved.

19. What if the housing provider wants an alternative modification or alternative design for the proposed modification that does not cost more but that the housing provider considers more aesthetically pleasing?

In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design. However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design. See Question 24 for a discussion of the restoration requirements.

Example 1: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, as his request to modify his unit is reasonable and must be approved.

Example 2: As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

20. What if the housing provider wants a more costly design for the requested modification?

If the housing provider wishes a modification to be made with more costly materials, in order to satisfy the landlord's aesthetic standards, the tenant must agree only if the housing provider pays those additional costs. Further, as discussed in Questions 21 and 23 below, housing providers may require that the tenant obtain all necessary building permits and may require that the work be performed in a workmanlike manner. If the housing provider requires more costly materials be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well. In such a case, however, the housing provider's design must still meet the tenant's needs.

21. What types of documents and assurances may a housing provider require regarding the modification before granting the reasonable modification?

A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification. A description of the modification to be made may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification. A housing provider may also require that the tenant obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. For example, a housing provider cannot require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. However, the Preamble to the Final Regulations also indicates that there are some conditions that can be placed on a tenant requesting a reasonable modification. For example, in certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, ordinary wear and tear excepted. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

22. May a housing provider or homeowner's association condition approval of the requested modification on the requester obtaining special liability insurance?

No. Imposition of such a requirement would constitute a violation of the Fair Housing Act.

Example: Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider's potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

23. Once the housing provider has agreed to a reasonable modification, may she insist that a particular contractor be used to perform the work?

No. The housing provider cannot insist that a particular contractor do the work. The housing provider may only require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary building permits.

24. If a person with a disability has made reasonable modifications to the interior of the dwelling, must she restore *all* of them when she moves out?

The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where "it is reasonable to do so" and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable

wear and tear. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy. See also Question 28.

Example 1: Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.

Example 2: Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.

Example 3: Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

25. Of the reasonable modifications made to the interior of a dwelling that must be restored, must the person with a disability pay to make those restorations when she moves out?

Yes. Reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling must be paid for by the tenant unless the next occupant of the dwelling wants to retain the reasonable modifications and where it is reasonable to do so, the next occupant is willing to establish a new interest bearing escrow account. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider. See also Question 24.

26. If a person with a disability has made a reasonable modification to the exterior of the dwelling, or a common area, must she restore it to its original condition when she moves out?

No. The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored.

27. May a housing provider increase or require a person with a disability to pay a security deposit if she requests a reasonable modification?

No. The housing provider may not require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy. See Questions 21 and 28.

28. May a housing provider take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy?

Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and the terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

Simply because an individual has a disability does not mean that she is less creditworthy than an individual without a disability. The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought. In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established, and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant.

Example 1: Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.

Example 2: Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest bearing escrow account to ensure that funds are available for restoration.

Example 3: A housing provider requires all tenants with disabilities to pay a set sum into an interest bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

29. What if a person with a disability moves into a rental unit and wants the carpet taken up because her wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification?

Depending on the circumstances, removal of carpeting may be either a reasonable accommodation or a reasonable modification.

Example 1: If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.

Example 2: If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy. See Questions 24 and 25.

Example 3: If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

30. Who is responsible for paying for the costs of structural changes to a dwelling unit that has not yet been constructed if a purchaser with a disability needs different or additional features to make the unit meet her disability-related needs?

If the dwelling unit is not subject to the design and construction requirements (*i.e.*, a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to

be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

Example 1: A buyer with a mobility disability is purchasing a single family dwelling under construction and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. If the cabinet costs more than the standard vanity cabinet provided by the builder, the buyer is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by the buyer costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to the buyer.

Example 2: A buyer with a mobility disability is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. The buyer requests that the builder grade the entrance to eliminate the need for the step. If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to the purchaser.

Example 3: A buyer with a mobility disability is purchasing a unit that is subject to the design and construction requirements of the Fair Housing Act. The buyer wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the design and construction provisions of the Act. The buyer is responsible for the costs of installing and paying for the grab bars.

31. Are the rules the same if a person with a disability lives in housing that receives federal financial assistance and the needed structural changes to the unit or common area are the result of the tenant having a disability?

Housing that receives federal financial assistance is covered by both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other means. Housing that receives federal financial assistance and that is provided by state or local entities may also be covered by Title II of the Americans with Disabilities Act.

Example 1: A tenant who uses a wheelchair and who lives in privately owned housing needs a roll-in shower in order to bathe independently. Under the Fair Housing Act the tenant would be responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

Example 2: A tenant who uses a wheelchair and who lives in housing that receives federal financial assistance needs a roll-in shower in order to bathe independently. Under Section 504 of the Rehabilitation Act of 1973, the housing provider would be obligated to pay for and install the roll-in shower as a reasonable accommodation to the tenant unless doing so was an undue financial and administrative burden or unless the housing provider could meet the tenant's disability-related needs by transferring the tenant to another appropriate unit that contains a roll-in shower.

HUD has provided more detailed information about Section 504's requirements. See www.hud.gov/offices/fheo/disabilities/sect504.cfm.

32. If a person believes that she has been unlawfully denied a reasonable modification, what should that person do if she wants to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for a reasonable modification, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application

and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors
of Public and Indian Housing (PIH); Housing;
Community Planning and Development (CPD), Fair
Housing and Equal Opportunity; and Regional Counsel;
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**
Issued: April 25, 2013
Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations¹ for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHAct, Section 504, and/or the ADA².

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

² Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

- 3. Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities³ with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals⁴ in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.⁵ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

³ Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

⁴ Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

⁵ For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).

- (1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

If the answer to question (1) **or** (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.⁶

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

⁶ A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant’s dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider’s practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.⁷

Section II: The ADA Definition of "Service Animal"

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."⁸ Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses⁹), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

⁷ Ibid.

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

⁹ 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁰ A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.¹¹

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."¹²

¹⁰ 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).

¹¹ For more information on ADA requirements relating to service animals, visit DOJ's website at www.ada.gov.

¹² 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, “an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a ‘reasonable accommodation’ that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat.”¹³ In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may “nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct.”¹⁴ While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for “service animal,” the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁵

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider’s responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion


The definition of “service animal” contained in ADA regulations does not limit housing providers’ obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

¹³ 75 Fed. Reg. at 56194, 56268.

¹⁴ 75 Fed. Reg. at 56166, 56240.

¹⁵ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.



John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity



1 of 8 DOCUMENTS

PACIFIC SHORES PROPERTIES, LLC, a California limited liability company; ALICE CONNER; SEAN WISEMAN; TERRI BRIDGEMAN, Plaintiffs-Appellants, ANDREW BLAIR, Plaintiff, v. CITY OF NEWPORT BEACH, a California municipal corporation, Defendant-Appellee. NEWPORT COAST RECOVERY LLC, a California Limited Liability Company; YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC., Plaintiffs-Appellants, v. CITY OF NEWPORT BEACH, a California municipal corporation, Defendant-Appellee.

No. 11-55460, No. 11-55461

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

730 F.3d 1142; 2013 U.S. App. LEXIS 19386; 28 Am. Disabilities Cas. (BNA) 1344

November 6, 2012, Argued and Submitted, Pasadena, California
September 20, 2013, Filed

SUBSEQUENT HISTORY: Rehearing, en banc, denied by *Pac. Shores Props., LLC v. City of Newport Beach*, 746 F.3d 936, 2014 U.S. App. LEXIS 4071 (9th Cir., 2014)

US Supreme Court certiorari denied by *City of Newport Beach v. Pac. Shores Props., LLC*, 2014 U.S. LEXIS 7366 (U.S., Nov. 3, 2014)

PRIOR HISTORY: [**1]

Appeal from the United States District Court for the Central District of California. D.C. No. 8:08-cv-00457-JVS-RNB. D.C. No. 8:09-cv-00701-JVS-RNB. James V. Selna, District Judge, Presiding.

DISPOSITION: REVERSED AND REMANDED.**CASE SUMMARY:**

OVERVIEW: **HOLDINGS:** [1]-Group homes for recovering alcoholics and drug users did not have to identify a similarly situated entity that was treated more favorably in order to establish a prima facie case that a city ordinance violated the ADA, the Fair Housing Act,

and the California Fair Employment and Housing Act; [2]-There was a triable issue of fact as to whether the ordinance was motivated by a desire to discriminate against the disabled; a jury could have found that the primary purpose of the ordinance was to shut down group homes and prevent new ones from opening; [3]-There was a fact issue as to whether the city's actions materially contributed to the group homes' business losses; [4]-A resident who claimed to have sought treatment for anxiety over a home's potential closure could pursue an emotional distress claim, but another resident who expressed only mild annoyance could not.

OUTCOME: Judgment affirmed as to one claim and otherwise reversed and remanded.

COUNSEL: Elizabeth Brancart (argued) and Christopher Brancart, Brancart & Brancart, Pescadero, California; and Steven G. Polin, Law Offices of Steven G. Polin, Washington, D.C.; for Plaintiffs-Appellants.

T. Peter Pierce (argued), Saskia T. Asamura, and Toussaint S. Bailey, Richards Watson & Gershon, P.C., Los Angeles, California; and Aaron Harp, City Attorney

of Newport Beach, Newport Beach, California; for Defendant-Appellee.

Thomas E. Perez, Assistant Attorney General, Dennis J. Dimsey, Teresa Kwong (argued), United States Department of Justice, Civil Rights Division, Appellate Section, Washington, D.C., for Amicus Curiae United States.

Chris M. Amantea and Alexandra H. Young, Hunton & Williams LLP, Los Angeles, California; and Paula D. Pearlman, Shawna L. Parks, and Umbreen Bhatti, Disability Rights Legal Center, Los Angeles, California, for Amici Curiae Disability Rights Legal Center, Disability Rights California, Western Center on Law and Poverty, and Disability Rights Education [**2] & Defense Fund.

Kira L. Klatchko and Jeffrey V. Dunn, Best Best & Krieger LLP, Indian Wells, California, for Amicus Curiae League of California Cities.

JUDGES: Before: Alex Kozinski, Chief Judge, Stephen Reinhardt, and Sidney R. Thomas, Circuit Judges. Opinion by Judge Reinhardt.

OPINION BY: Stephen Reinhardt

OPINION

SUMMARY*

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Housing Discrimination

The panel reversed the district court's orders granting summary judgment in favor of the City of Newport on claims that a City ordinance violated the Fair Housing Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, and the *Equal Protection Clause* by having the practical effect of prohibiting new group homes for recovering alcoholics and drug users from opening in most residential zones.

The panel held that the district court erred in disregarding the evidence that the City's sole objective in enacting and enforcing its ordinance was to discriminate against persons deemed to be disabled under state and

federal housing discrimination laws. The panel held that the plaintiffs were not required to identify similarly [**3] situated individuals who were treated better than themselves in order to survive summary judgment. It held that where there is direct or circumstantial evidence that the defendant has acted with a discriminatory purpose and has caused harm to members of a protected class, such evidence is sufficient to permit the protected individuals to proceed to trial under a disparate treatment theory.

The panel also held that the district court erred in concluding that the plaintiffs failed to create a triable issue of fact as to whether the losses that their businesses suffered were caused by the enactment and enforcement of the ordinance when the plaintiffs presented evidence that they experienced a significant decline in business after the ordinance's enactment, that the publicity surrounding the ordinance greatly reduced referrals, and that current and prospective residents expressed concern about whether the group-home plaintiffs would close. In addition, the panel held that the costs borne by the plaintiffs to present their permit applications and the costs spent assuring the public that they were still operating despite the City's efforts to close them were compensable. Finally, the panel [**4] held that the district court erred in dismissing one plaintiff's claim for emotional distress, but correctly dismissed another plaintiff's similar claim.

[*1147] OPINION

REINHARDT, Circuit Judge:

Prior to 2008, "group homes"—i.e., homes in which recovering alcoholics and drug users live communally and mutually support each other's recovery—were generally permitted to locate in residential zones in the City of Newport Beach ("the City") and they did so freely.¹ By 2008, a number of residents of the City launched a campaign to restrict or eliminate group homes in their neighborhoods. After enacting several moratoria, the City enacted an Ordinance ("the Ordinance") which had the practical effect of prohibiting new group homes from opening in most residential zones. Even in the few areas where they were permitted to open, new group homes were required to submit to a permit process. Existing group homes also had to undergo the same permit process in order to continue their operations. Among the factors to be considered when granting or denying a permit to any group home was the number of other such facilities in the neighborhood.

1 We follow the parties' convention in referring to addiction recovery [**5] facilities as "group homes." The term "group homes" is not defined in the Ordinance or in any relevant statute, however. As used by the parties and in this opinion, the term refers only to addiction recovery facilities and not to any other sort of communal living arrangement.

On its face, the Ordinance did not single out group homes; persons recovering from addiction are protected from housing discrimination under state and federal anti-discrimination laws. Instead, the Ordinance facially imposed restrictions on some other types of group living arrangements as well. At the same time, the City did not impose similar regulations on properties rented by homeowners to vacationing tourists, despite the fact that such rental properties may cause similar social problems as group homes. On advice of counsel, the City had initially planned to regulate such rental properties in order to avoid the appearance of discriminating against group homes, but it backed down from doing so in the face of opposition from a number of City residents.

Taken in the light most favorable to the non-moving party, Plaintiffs' evidence shows that the City's purpose in enacting the Ordinance was to exclude group homes [**6] from most residential districts and to bring about the closure of existing group homes in those areas. The evidence also shows that the Ordinance regulated other types of group residential arrangements primarily for the purpose of maintaining a veneer of neutrality. Several existing group homes, which, as a result of the Ordinance, were required to apply for a use permit in order to continue operating in residential areas, sued the City, alleging that the Ordinance discriminated against them as facilities that provide housing opportunities for disabled individuals recovering from addiction. The district court acknowledged the evidence that the City acted with a discriminatory motive but found that evidence "irrelevant" because, it stated, the City had not treated group homes any worse than certain other group living arrangements.

We reverse and hold that the district court erred in disregarding the evidence that the City's sole objective in enacting and enforcing its Ordinance was to discriminate against persons deemed to be disabled under state and federal housing discrimination laws. Although plaintiffs in an anti-discrimination lawsuit may survive [*1148]

summary judgment by identifying [**7] similarly situated individuals who were treated better than themselves, this is not the only way to demonstrate that intentional discrimination has occurred. Where, as here, there is direct or circumstantial evidence that the defendant has acted with a discriminatory purpose and has caused harm to members of a protected class, such evidence is sufficient to permit the protected individuals to proceed to trial under a disparate treatment theory. This is no less true where, as here, the defendant is willing to harm certain similarly-situated individuals who are not members of the disfavored group in order to accomplish a discriminatory objective, while preserving the appearance of neutrality.

We also hold that the district court erred in concluding that the Plaintiffs failed to create a triable issue of fact as to whether the losses that their businesses suffered were caused by the enactment and enforcement of the Ordinance. The Plaintiffs presented evidence that they experienced a significant decline in business after the Ordinance's enactment, that the publicity surrounding the Ordinance greatly reduced referrals, and that current and prospective residents expressed concern about whether [**8] the group home Plaintiffs would close. By requiring the Plaintiffs to prove more, the district court failed to draw all reasonable inferences in their favor, as it was required to do at summary judgment. In addition, we hold that the costs borne by the Plaintiffs to present their permit applications and the costs spent assuring the public that they were still operating despite the City's efforts to close them are compensable. Finally, we hold that the district court erred in dismissing Plaintiff Wiseman's claim for emotional distress, but correctly dismissed Plaintiff Bridgeman's similar claim.

FACTUAL BACKGROUND

I

Newport Beach ("the City") is a Southern California beachfront community with about 80,000 residents and is one of the wealthiest cities in the United States.² In the late 1990s "group homes" began opening in increasing numbers in the City, particularly in the beachfront neighborhoods of West Newport and Balboa Park. Group homes are residential facilities in which individuals recovering from drug and alcohol addiction temporarily reside. They provide a communal living environment in which residents help each other to recover from their addictions. In order to preserve a substance-free [**9]

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CLERK OF THE COURT

Attorney for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
LIMITED JURISDICTION

Plaintiff,
v.
Defendant.

STIPULATION FOR
ENTRY OF JUDGMENT

Plaintiff and
through the and defendant in propria
persona, do hereby agree and stipulate as follows:

1. Plaintiff shall recover from defendant the restitution and possession of those certain premises located at in the City of San Francisco, County of San Francisco, State of California (hereinafter "premises").

Stipulation for Entry of Judgment or For Dismissal of Action with Prejudice - stp

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2. * Execution of judgment for possession of said premises shall be stayed, as long as:

(a). Defendant _____ (obeys all house rules, acts without hostility, derision, and refrains from engaging in behavior within the property which would constitute a nuisance under state or local law. This prohibition includes defendant's creation of a substantial interference with the comfort, safety, and quiet enjoyment of tenants, guests, and management at the property and prohibits defendant from yelling, screaming, acting rude, profane, belligerent, argumentative, disrespectful, discourteous, confrontational, assaultive, threatening, making statements which are hurtful, racist, embarrassing and humiliating, unreasonably disturbing residents and management, consuming alcoholic beverages in the building's common areas, loitering about the property in an intoxicated, incoherent state, disregarding building security and visitor policies and behaving in a manner which unreasonably interferes with the peace, comfort, safety and quiet enjoyment of residents and management;

(b). Upon execution of stipulation, defendant _____ ^{shall answer in} _____ * pay to plaintiff the sum of _____ DOLLARS to reflect defendant's partial payment of rents and per diem damages due on the premises through July 31, 2014;

(c). Defendant _____ pays to plaintiff _____ the sum of _____ DOLLARS to reflect defendant's final payment of rents and per diem damages due on the premises through July 31, 2014; and, in addition, the sum of _____ DOLLARS to reflect defendant's payment of plaintiff's reasonably incurred fees and costs, for a total sum of _____ DOLLARS. These monies shall be paid to plaintiff in _____ monthly installments of _____ DOLLARS and shall be paid by defendant _____ an or

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before ~~the first of each month, beginning August 1, 2014, and concluding on~~

(d). Beginning on August 1, 2014, and continuing for twelve continuous months, defendant _____ pays his rent of _____ per month, plus any properly noticed rent adjustment. All payments of rent by defendant _____ paid pursuant to this subparagraph, shall be tendered to plaintiff _____ on or before the first (1st) day of each and every month.

3. If defendant _____ engages in behavior within the property which would constitute a nuisance under state of local law, fails to pay the rents, per damages and fees specified above, or violates any of the material conditions of settlement as enumerated in ~~after 1 written warning, and for a nuisance witnessed by 2 witnesses, one of whom may be a video,~~ paragraph two, above, then defendants' failure shall be deemed a material breach of stipulation and plaintiff _____ upon Ex-Parte Application and declaration to the court herein, evidencing said breach, and after noticing defendant by telephone _____ so as to give defendant at least three (3) court day's notice of plaintiff's Ex-Parte Application, move the Court to set aside and vacate the dismissal of this action without prejudice, if any, obtain a release from the stay otherwise imposed by paragraph (2) two, above, judgment for the immediate restitution and possession of the premises, judgment for all rents and per diem damages due pursuant to paragraph two, above, and fees and costs of _____ which sum shall be incurred by plaintiff if enforcement of this agreement is required by defendant's breach of stipulation. The probationary period under the terms of this stipulation shall exist for twelve, continuous months.

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4. Defendant [redacted] warrants he alone is fully capable of surrendering possession of the premises to plain

[redacted], and no other person is capable of asserting a valid claim of right to possession of the premises. Defendant [redacted] waives and agrees to forbear from the exercise of the right to any stay of eviction, to move for a new trial, and to appeal on any ground from any judgment entered herein.

5. Should defendant [redacted] be evicted, then any personal property of any kind remaining on the premises after the defendant surrenders possession shall become the personal property of plaintiff

Defendant [redacted] waives further notice of the disposition of such property and waives all rights arising under California Civil Code §1983.

6. Plaintiff [redacted] and defendant [redacted] agree that, for the specific purpose of enforcing or effecting the terms of this Stipulation, the parties voluntarily, knowingly, and intelligently waive their civil due process rights to trial and jury trial.

7. Plaintiff [redacted] and defendant [redacted] mutually release, waive, and forever discharge the other, their agents, their assigns and all other persons from any and all claims, damages, rights, and causes of action arising from the tenancy of the defendants and between the parties, save and except, those rights and causes of action which arise from a material breach of this stipulation by defendant [redacted]

8. This stipulation constitutes the entire agreement and understanding between the parties concerning the subject matter herein, and supersedes and replaces all prior negotiations,

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proposed agreements, written and oral, relating thereto. Each of the undersigned parties acknowledges that no other party nor any agent or attorney of any other party has made any promise or representation, or warranty whatever, expressed or implied, not contained herein concerning the subject matter hereof to induce them to execute this Stipulation not contained herein.

2. It is further understood and agreed by the parties that all other rights are waived including those provided under California Civil Code Section 1542:

Claims not affected by General Release:
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known to him, must have materially affected his settlement with the debtor.

DATED:

Defendant

DATED:

By: _____
Attorney for Defendant

DATED:

By: _____
Property Manager for Plaintiff

DATED:

By: _____
Attorney for Plaintiff