



REASONABLE ACCOMMODATION INFORMATION

This document is intended for informational purposes only and is not intended as legal advice

The statutory basis for Reasonable Accommodation: A reasonable accommodation is a change in a rule, policy, practice or service that may be necessary to afford a person with a disability equal opportunity to use and enjoy their housing.

- Federal: Fair Housing Amendments Act: 42 U.S.C. § 3604(f)(3)(B)
- California: Fair Employment & Housing Act: Cal. Govt. Code § 12927(c)(1)

To make out a claim for discrimination based on failure to accommodate, you must establish that: (1) there is a disability; (2) Plaintiffs knew or should have known about the disability; (3) the accommodation of the disability may be necessary to afford the plaintiff equal opportunity to use and enjoy the dwelling; and (4) Plaintiffs refused to make the accommodation. Giebeler v. M&B Assocs., 343 F. 3d 1143, 1380 (9th Cir. 2003)

An accommodation is *unreasonable* only if the housing provider can prove that it will cause an undue financial or administrative burden or mandate fundamental changes in its program. Giebeler at 1157.

Interactive process required! There is an obligation for a landlord to open a dialogue with a party requesting a reasonable accommodation; this is part of an interactive process in which each party seeks and shares information. Auburn Woods I Homeowners' Assn. v. Fair Empl. & Housing Comm., 121 Cal. App. 4th 1578, 1598. If a landlord is skeptical of a tenant's alleged disability or their ability to provide the accommodation, it is incumbent upon the landlord to request documentation or open a dialogue. Jankowski & Lee Assocs. V. Cisneros, 91 F.3d 891, 895 (7th Cir. 1996).

To assess an accommodation, do the D-A-N-C-E!

D: DISABILITY

In order to qualify for a reasonable accommodation in housing, the applicant must prove that he/she is disabled. In California, the definition of disability is extremely broad. A person is "disabled" for purposes of fair housing laws if they have a physical or mental impairment that limits one or more major life activities. Cal. Gov. Code §§12926(i) & (k)

**The Federal definition is similar but requires a substantial impairment. 42 U.S.C. §3602(h).*

If the requestor's disability is obvious or otherwise known to the housing provider and if the need for the requested accommodation is obvious, the provider may not request any other information about the disability. Otherwise, the housing provider may only request as much information as necessary to evaluate the need for the accommodation. Disclosure of a specific diagnosis may not be necessary if medical support for the accommodation is provided. See HUD-DOJ Joint Statement of Reasonable Accommodation at 12-14.

A: ACCOMMODATION

Identify the policy, practice, or service that the tenant needs accommodated. The tenant, or someone acting on behalf of the tenant, must request the accommodation. There are no required phrases or specific format for the request to be made, and the request may be made at any time. See HUD-DOJ Joint Statement at 10.

N: NECESSITY/NEXUS

A tenant must show that his/her requested accommodation *may be necessary* to afford him/her equal opportunity to use and enjoy their dwelling. "Without a causal link between the defendants' policy and the plaintiff's inquiry, there can be no obligation on the part of defendants to make a reasonable accommodation." U.S. v. California Mobile Home park Mgmt. et al., 107 F. 3d 1374, 1380 (9th Cir. 1997) ("Mobile Home II").

The analysis of a requested accommodation is always highly fact-specific and requires case-by-case determination.

U.S. v. California Mobile Home Park Mgmt., et al., 29 F.3d. 1413, 1418 (9th Cir. 1994). It is advisable to narrowly-tailor an accommodation request as much as possible to clearly show necessity and withstand this close analysis.

C: COST

One of a housing provider's two defenses in an accommodation case is that granting the requested accommodation would result in an undue financial or administrative burden. This usually comes down to the COST of granting a reasonable accommodation.

Accommodations need not be free of all possible cost to the landlord. Giebeler at 1152. Financial considerations do not automatically disqualify a requested accommodation; the history of fair housing laws show that Congress anticipated that landlords would have to shoulder certain costs involved, so long as they are not unduly burdensome. Mobile Home I at 1416.

Tenants cannot be charged for their accommodations – this is akin to a surcharge on disability. See HUD-DOJ Joint Statement at 9-10.

Analyzing the cost of a requested accommodation also requires the same careful case-by-case analysis involved when initially determining the necessity of an accommodation.

E: EFFECT

A housing provider's second defense in a reasonable accommodation case is that the EFFECT of granting the accommodation would be a fundamental alteration of the operation of its program.

A fundamental alteration is a change that alters the essential nature of a provider's operations. See HUD-DOJ Joint Statement at 8.

REASONABLE ACCOMMODATION EXAMPLES:

The following examples are for illustrative purposes only and should not be viewed as binding decisions of whether a reasonable accommodation should be granted or not. Since each reasonable accommodation request is fact specific and the analysis can be complicated and time consuming, all parties should discuss this with your legal counsel or another qualified person.

Example of an accommodation that would not be a fundamental alteration:

An individual has cognitive impairments that limit his ability to manage his finances. He uses a third party representative payee. He requests that he be able to pay rent through the payee rather than pay directly from his checking account, and that any nonpayment notices be sent to the payee as well as himself.

Since processing rent payments is part of the essential operations of the apartment building, the accommodation is not a fundamental alteration. Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

Example of an accommodation that would be a fundamental alteration:

An individual has physical impairments which make shopping extremely difficult for her. She requests that the landlord shop for her groceries on a weekly basis. If a landlord does not normally provide shopping services for residents, a reasonable accommodation request to shop for this individual would likely constitute a fundamental alteration.

If a property owner or their representative denies a reasonable accommodation, they could be violating a Fair Housing Law by not fulfilling this request, and tenants should contact the following agencies for further counseling or legal advice:

Disability Community
Resource Center
dcrc@dcrc.co
(310) 390-3611

Housing Rights Center
info@housingrightscenter.org
(800) 477-5977

Civil Rights Department
accommodations@calcivilrights.ca.gov
(844) 541-2877