REASONABLE MODIFICATIONS AND REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT

“HANDICAP” - HOW IS IT DEFINED?

- A physical or mental impairment which substantially limits 1 or more major life activities;
- A record of an impairment; or
- Being regarded as having such an impairment (whether a person has an impairment or not)

Exceptions:
(a) current, illegal use or addiction to a controlled substance as defined in section 102 of The Controlled Substances Act
(b) conduct toward a person solely because a person is a transvestite

CASE LAW DEFINING “HANDICAP”

- Swanson v. University of Cincinnati et al., 2001 U.S. App. LEXIS 20629 (6th Cir. 2001)
EXAMPLES OF PERSONS CONSIDERED TO BE PERSONS WITH DISABILITIES

- People suffering from Alzheimer’s Syndrome
- People suffering from senile dementia and organic brain syndrome
- People limited by developmental disabilities
- Elderly people suffering from chronic illnesses
- People with schizophrenia
- People diagnosed with HIV infection or other infectious diseases
- People who are mobility impaired

IMPORTANT EARLY CASES

- Smith & Lee Associates, Inc. v. City of Taylor, Michigan, 13 F.3d 920 (6th Cir. 1993)
- United States v. Southern Management Corp., 955 F.2d 914 (4th Cir. 1992)
WHAT IS A MAJOR LIFE ACTIVITY?

- Major life activities include but are not limited to:

  Caring for oneself
  Performing manual tasks
  Walking
  Seeing
  Hearing
  Speaking
  Breathing
  Learning
  Working
REASONABLE MODIFICATION

- 42 U.S.C. § 3604(f)(3)(A): It is unlawful to refuse to permit, at the expense of the person with a disability reasonable modifications to the dwelling, necessary to afford full use and enjoyment of the premises.

- "Dwelling" includes unit interior, unit exterior and even common areas.

REASONABLE MODIFICATION - PROHIBITED CONDUCT

- Examples:
  - Refusal to permit a person who is mobility impaired to build a ramp to the main entrance.
  - Refusal to permit a person to install studs and grab bars in the bathroom.
  - Refusal to permit doors to be widened in order for a person in a wheelchair to move through the dwelling.
  - Refusal to permit removal of cabinets under the sink in the kitchen so that a person in a wheelchair can reach the sink.
REASONABLE MODIFICATION - RULES OF THE ROAD

 The nexus
   The requester must be prepared to show that he has a disability and that there is a link between the disability and the requested modification
   The landlord can request documentation if the disability or the need is not obvious

REASONABLE MODIFICATION - DOCUMENTATION

 Landlords can ask for documentation of:
   The disability, and
   A description of the needed modification, and
   An explanation of the nexus between the disability and the requested modification.

 If the disability and the need are obvious, asking for documentation is not appropriate

 Documentation can come from a wide variety of sources, such as “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...”
REASONABLE MODIFICATION - RULES OF THE ROAD

- In a rental situation . . .
  - The landlord may condition modification upon the renter restoring the INTERIOR to the condition existing before modification, excepting reasonable wear and tear.
  - The landlord cannot require removal or restoration of modifications to interior of dwellings unless they affect subsequent tenants’ use.
  - In general, the landlord cannot require removal or restoration of modifications to common areas or dwelling exterior.

- In a rental situation . . .
  - The landlord may require the modification be in a workmanlike manner, with any required building permits obtained.
  - In VERY limited circumstances, landlord can require that money be put in escrow for restoration.
REASONABLE MODIFICATION - RULES OF THE ROAD

In a rental situation . . . those modifications that would assist the next renter need not be restored:

Examples:
- Remove grab bars in bathroom, not studs
- Doors that were widened need not be restored

A resident or applicant is not entitled to a reasonable modification unless he or she requests one.
- The request does not have to be in a particular form — it just needs to put the provider on notice.
- Obviously, it is best for all parties if the request is in writing.
- An undue delay in granting or responding to a request has been held to be a denial.
**REASONABLE MODIFICATION - RULES OF THE ROAD**

- **The interactive process**
  - When the landlord rejects a request as unreasonable, he should discuss alternatives with the tenant.
  - A landlord should not propose alternative accommodations if the requested one is reasonable (example: “Instead of widening my doorways, why don’t you just move to a ‘handicap’ apartment?”)
  - (Note – though HUD says this process is required, the 6th Circuit, which includes Tennessee, says it is not. Groner v. Golden Gates Apts., 250 F.3d 1039 (6th Cir. 2001))

- **Landlord preferences**
  - If the modification is to the interior of a unit and must be restored at moveout, the landlord cannot dictate a particular design for aesthetic reasons.
  - If the modification is to a common area or to the interior of the dwelling and will remain after moveout, the landlord may be able to dictate a design if it imposes no additional cost on the tenant.
REASONABLE MODIFICATION - RULES OF THE ROAD

- Landlord preferences continued
  - Landlord cannot dictate a particular contractor
  - Landlord can require that modification be done in a “workmanlike” manner
  - Landlord can require that all necessary building permits be secured

REASONABLE MODIFICATION - SECTION 504

- In housing that receives federal financial assistance, the housing provider bears the financial responsibility for modification unless it’s an undue burden.
- If the modification is an undue burden, the provider can move the tenant to an accessible unit.
DISABILITY — REFUSAL TO ALLOW A REASONABLE MODIFICATION

Hollis v. Chestnut Bend Homeowner's Ass'n, 760 F.3d 531 (6th Cir. 2014)

- A Family in Franklin, TN, have two young children, both with Down Syndrome. The children need extra space in the house for equipment for physical therapy and therapeutically appropriate play, so they asked for permission to build a sun room.
- The family tried for about 10 months to get a design approved by the HOA's architectural review committee. The committee repeatedly rejected the designs as either being aesthetically unpleasing or incomplete.

Hollis v. Chestnut Bend Homeowner's Ass'n, 760 F.3d 531 (6th Cir. 2014) (cont'd)

- In October 2011, a lawyer from Tennessee Fair Housing Council requested a list of acceptable materials from the committee and submitted a design based on the list.
- The committee again refused the design, reneging on their acceptance of a metal roof (which a neighbor already had) and also demanding that the family agree, as a condition of acceptance, that the family get permission to have the equipment outside overnight. (different terms and conditions)
DISABILITY — REFUSAL TO ALLOW A REASONABLE MODIFICATION

Hollis v. Chestnut Bend Homeowner’s Ass’n, 760 F.3d 531 (6th Cir. 2014) (cont’d)

- Because of the refusal, the family moved out and sued in February 2012.
- The defendants moved for summary judgment, and the trial judge found that:
  - Even though the Committee probably denied the reasonable modification request, the plaintiffs failed to provide a “scintilla of evidence” that the modification was motivated by animus against people with disabilities.
  - The parents did not have standing to sue on their own because they did not articulate any damages, but they could sue as “next friends” (guardians) of the children.

The family appealed to the 6th Circuit, which held that:
- Animus, or intent, is NOT required to prove a violation of the right to a reasonable modification (or accommodation)
- The family articulated damages (such as loss on the sale of their house and moving costs out of pocket) and thus had standing as plaintiffs.

The 6th Circuit sent the case back to the trial court, which cleared the case for trial. The case settled for $156,000 and policy changes on the part of the HOA.
DISABILITY — REFUSAL TO ALLOW A REASONABLE MODIFICATION

Scott v. Croom, Case No. No. 1:12-cv-1132 (D.N.M. 2013)

- Tenant developed multiple sclerosis and the need to use a wheelchair after living in a rental house for two years.
- Tenant asked the landlord if he could make modifications to the house at his expense to make the house accessible.
- Landlord refused the modifications and refused to renew the tenant’s lease.
- The parties reached a settlement whereby the landlord agreed to pay the tenant $200,000.

REASONABLE ACCOMMODATION
REASONABLE ACCOMMODATION - PROHIBITED CONDUCT

• 42 U.S.C.§3604(f)(3)(B) - Refusal to make reasonable accommodation in rules, policies, practices, and services, when such may be necessary to afford the individual the equal opportunity to use and enjoy the dwelling.

• Refusal to permit a mobility impaired person a designated parking place near their entry when such is necessary due to their disability.

• With a no pets policy, refusal to permit an assistance animal to reside with a person with a mental illness when the assistance animal is necessary to their mental well-being.

• Charging a pet deposit to a person with a sight impairment to have a seeing eye dog reside with them.
REASONABLE ACCOMMODATION — RULES OF THE ROAD

Nexus

- An accommodation request must show . . .
- The person has a disability.
- The accommodation is reasonable by showing
  - It will not require a fundamental alteration in the nature of the program and
  - It will not pose "an undue financial or administrative burden."
  - That the request will enhance the person’s enjoyment of the dwelling by ameliorating the manifestations of the person’s disability.

REASONABLE ACCOMMODATION — DOCUMENTATION

- Landlords can ask for documentation of:
  - The disability, and
  - A description of the needed accommodation, and
  - An explanation of the nexus between the disability and the requested accommodation.
- If the disability and the need are obvious, asking for documentation is not appropriate
- Documentation can come from a wide variety of sources, such as “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…”
REASONABLE ACCOMMODATION


- Plaintiff, who is legally blind and had a Section 8 voucher, sued a management company (which runs the Section 8 program in Dayton) for denying her reasonable accommodation request that all written communication be provided to her in audio format.
- The case settled, with the management company agreeing to assign the plaintiff a single point of contact for assistance with her Section 8 voucher and to provide her with communications in an audio format.

A SHORT DISCUSSION ABOUT ASSISTANCE ANIMALS
REASONABLE ACCOMMODATIONS — ASSISTANCE ANIMALS

- Under the Fair Housing Act, all kinds of animals can assist people with disabilities in their housing — guide dogs, large dogs that help people walk, cats that provide companionship, etc. The animal does not need to be specially trained or certified as an assistance animal, but the tenant must still be able to demonstrate that the animal is necessary and can perform the function the tenant requires.

- Housing providers can require that the animal be well-behaved, vaccinated, and cleaned up after.

REASONABLE ACCOMMODATIONS — ASSISTANCE ANIMALS

- It is not appropriate for a housing provider to require a “pet deposit” for an assistance animal.

- Breed, size, and weight limitations may not be applied to assistance animals. Instead, housing providers must make individualized assessments about each animal’s actual conduct.
REASONABLE ACCOMMODATIONS — ASSISTANCE ANIMALS


- Private plaintiffs and the Department of Justice alleged that the defendants engaged in discriminatory conduct that included limiting tenants with assistance animals to one section of the complex; subjecting tenants with assistance animals to pet fees; requiring assistance animals to be licensed or certified; and banning companion or uncertified service dogs.

- Owners of complex agreed to pay a total of $167,000, including $125,000 to a family that was not allowed to move in because of their assistance animal.

- Complex also agreed to get training and change its policies.

REASONABLE ACCOMMODATIONS — ASSISTANCE ANIMALS


- After the landlord agreed to rent an apartment to Book and arrangements were made to pay a security deposit and get keys, Book provided a doctor’s note stating her need for an emotional support dog.

- Landlord then rejected Book’s application and wrote “Denial Due to Pet and Svc Dog” on the application.

- Judge found that the landlord failed to make a reasonable accommodation and awarded Book $12,000 in damages as well as attorney’s fees and costs.
REASONABLE ACCOMMODATIONS — ASSISTANCE ANIMALS

*United States v. East River Housing Corp.* (13 Civ. 8650, S.D.N.Y 2015)

- Between 2011 and 2013, East River, a New York housing cooperative, instituted eviction proceedings against three different tenants who requested that they be allowed to keep their dogs as assistance animals.
- In each case, the tenants filed discrimination complaints with HUD, which sided with the tenants.
- East River elected to have the cases heard in federal court, which brought in the Department of Justice.

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REASONABLE ACCOMMODATIONS — ASSISTANCE ANIMALS

*United States v. East River Housing Corp.* (cont’d)

- East River asked the court to dismiss the case, saying there wasn’t statistical evidence of a “pattern and practice” of discrimination, that one of the plaintiffs’ claims were precluded by an earlier proceeding, and that HUD had failed to follow some of its prescribed procedures in its investigation.
- The Court ruled that none of those arguments were grounds for dismissal.
- The case settled for about $90,000 paid to the tenants, plus policy changes and training.
**REASONABLE ACCOMMODATIONS — ASSISTANCE ANIMALS**

*United States v. Riverbay Corp., 15 Civ. 4180 (S.D.N.Y. 2015)*

- Company had a cumbersome assistance animal policy that consisted of five forms (including one required to be completed only in blue ink and another required to be typewritten), prohibited certain breeds of dogs, required animals to be neutered or spayed, imposed annual renewal requirements and required the applicant to provide his or her medical records.

- HUD had issued 3 findings of discrimination against Riverbay, and an administrative law judge found that they discriminated.

**REASONABLE ACCOMMODATIONS — ASSISTANCE ANIMALS**

*United States v. Riverbay Corp., 15 Civ. 4180 (cont’d)*

- Between 2005 and 2011, Riverbay denied 28 of 42 requests for assistance animals.

- Under a settlement with the Department of Justice, Riverbay must adopt a new policy with respect to assistance animals, pay $600,000 into a fund to compensate victims and pay a $50,000 fine to the government.
REASONABLE ACCOMMODATION – RULES OF THE ROAD

- A resident or applicant is not entitled to a reasonable accommodation unless he or she requests one.
- The request does not have to be in a particular form – it just needs to put the provider on notice.
- Obviously, it is best for all parties if the request is in writing.
- An undue delay in granting or responding to a request has been held to be a denial.
- A request for a reasonable accommodation can occur even post-eviction.

REASONABLE ACCOMMODATION – NECESSITY

- As with modifications, there must be a nexus between the request and the disability.
- "[T]he concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability." Bronk v. Ineichen, 54 F.3d 425 (7th Cir. 1995).
REASONABLE ACCOMMODATION - NECESSITY - EXAMPLES

- Jane has depression, and her doctor has recommended that she get a small dog to help alleviate the symptoms of her depression. Jane can show a nexus between her depression and the need for a dog.
- Joe has a mobility impairment. He wants a small dog, even though the complex doesn’t allow pets. In his case, he cannot show a nexus between his disability and his requested accommodation.

REASONABLE ACCOMMODATIONS - UNREASONABLENESS - EXAMPLES

- Jane, who is blind, has a service animal who helps her get around. She requests that a maintenance worker walk the dog three times a day.
- Joe has diabetes. His nurse is on vacation, so he asks that someone from the office assist him with his insulin shots twice a day.
REASONABLE ACCOMMODATION - 
DOCUMENTATION

- Landlords can ask for documentation of:
  - The disability, and
  - A description of the needed accommodation, and
  - An explanation of the nexus between the disability and the requested accommodation.

- If the disability and the need are obvious, asking for documentation is not appropriate

- Documentation can come from a wide variety of sources, such as “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…”

REASONABLE ACCOMMODATION — 
INTERACTIVE PROCESS

- When the landlord rejects a request as unreasonable, he should discuss alternatives with the tenant

- A landlord should not propose alternative accommodations if the requested one is reasonable
REASONABLE ACCOMMODATION — RECENT CASE

Harbor Cove Homeowners Association, and HAE Investments Ltd., FHEO No. 09-13-0274 (Sept. 30, 2013)

- A family with a disabled son filed a complaint with HUD, alleging that the Harbor Cove Homeowners Association, First Columbia Management Inc., and HAE LTD discriminated against them by refusing to allow the family to park an ambulance in their driveway.
- The family had provided a letter to the respondents documenting its need for the ambulance to transport their son, who can only travel in a prone position.
- Under the terms of a conciliation agreement, the respondents will pay the family $65,000 and will establish a reasonable accommodation policy.

REASONABLE ACCOMMODATION — RECENT CASE

HUD v. Brentwood Manor Apartments, No. 13-AF-0176-FH-017

- The owners and managers of the Brentwood Manor Apartments in Kansas City, Missouri, will pay a tenant with disabilities $20,000 to settle a disability discrimination complaint.
- The tenant alleged that the landlord refused to allow her sister to live with her in her apartment as a reasonable accommodation for her disability.
- Brentwood Manor had a policy prohibiting a tenant from adding a person to a lease for the first six months of her tenancy. It refused to waive this policy even though the tenant provided documentation from her doctor stating that she needed someone to live with her to assist with her care. As a result, the woman was forced to move out of the apartment.
- The complex must also develop a reasonable accommodation policy and send employees to fair housing training.
IMPORTANT EARLY CASES

- United States v. California Mobile Home Park Management Co., 107 F.3d 1374 (9th Cir. 1997)
- Jankowski Lee & Associates v. HUD., 91 F.3d 891 (7th Cir. 1996)
- Bronk v. Ineichen, 54 F.3d 425 (7th Cir. 1995)

REASONABLE ACCOMMODATION — BEHAVIORAL ISSUES

- A reasonable accommodation request may be necessary to allow a tenant (usually with a mental illness) more time or an alternative method to become lease-compliant
- Common scenario: Tenant is engaging in disability-related behavior the landlord considers “dangerous,” such as hoarding or behaving aggressively toward neighbors.
THE "DIRECT THREAT" EXCEPTION

- The Fair Housing Act states that housing does not have to be made available to someone who, as a manifestation of a disability
- Is a direct threat to the health and safety of others
- Whose tenancy would result in substantial physical damage to property of others.
- Cannot be utilized by a housing provider to presume that a person with a disability in general will pose a greater threat to health and safety of others than persons without disabilities.

IMPORTANT EARLY CASES

INQUIRY OF DISABILITY

- 24 C.F.R.§100.202: It is unlawful to - -
  - Make inquiry to determine whether those protected under the Act have a disability
  - Inquire as to the nature or severity of a disability

INQUIRY OF DISABILITY

- Inquiry may be made to determine - -
  - Applicant’s ability to meet requirements of ownership or tenancy
  - Qualification for dwelling for persons with disabilities or a particular disability
  - Eligibility for a preference for persons with disabilities
  - Current illegal drug use
  - Conviction of the illegal manufacture of a controlled substance
IMPORTANT EARLY CASES

- Cason v. Rochester Housing Authority, 748 F.Supp. 1002 (W.D.N.Y. 1990)

OTHER FEDERAL LAWS
OTHER FEDERAL LAWS

- Both laws provide that people with disabilities may not be excluded from programs or services operated by a public entity or programs that are federally funded
- Cover other kinds of facilities, not just “dwellings”

SECTION 504 OF THE REHABILITATION ACT OF 1973

- Prohibits discrimination on the basis of disability in any program or activity that receives financial assistance from any federal agency, including the U.S. Department of Housing and Urban Development (HUD) as well as in programs conducted by federal agencies including HUD.
- Regulations are at 24 C.F.R. Part 8
SECTION 504 (CONTINUED)

- Prohibits the same practices prohibited under the Fair Housing Act
- Requires reasonable accommodations
- Reasonable modifications are usually the financial responsibility of the housing provider, not the tenant
- Requires program accessibility, not just housing accessibility

SECTION 504 (CONTINUED)

- Communications
  - Recipients of federal funds must be able to communicate effectively with applicants, tenants, public
  - Recipient may need to furnish communication aids
  - Recipient should have procedures in place so that persons with hearing and vision impairments can get information
SECTION 504 (CONTINUED)

- 504 has certain accessibility requirements for new construction and alterations of housing and non-housing facilities that are federally assisted.
- For new construction, at least one unit or at least 5% of units, whichever is greater, must meet Uniform Federal Accessibility Standards (higher degree of accessibility than under the Fair Housing Act).

AMERICANS WITH DISABILITIES ACT

- Title II prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities (such as housing authorities). HUD enforces Title II when it relates to state and local public housing, housing assistance and housing referrals.
AMERICANS WITH DISABILITIES ACT (CONT.)

- Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public. For example, it covers the rental office since the rental office is open to the general public.