

# DISABILITY & RELATED ISSUES

## FACT SHEET NO. 6

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Below are some common questions of those with and without disabilities. We suggest you also visit the HUD-DOJ Joint Memo on Reasonable Accommodations for more information (available on the FHD web site).

### **Who Qualifies as Disabled?**

Under most federal laws, disability is defined as: a physical or mental impairment which substantially limits one or more of a person's major life activities; a record of having such an impairment; and/or being regarded as having such an impairment.

This definition does not include current, illegal use of or addiction to a controlled substance. Also, an individual shall not be considered to have a disability solely because that individual is a transvestite.

The definition of major life activities includes, but is not limited to, activities such as: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and/or working. Disabilities can also be temporary such as pregnancy, recovering from surgery and/or an injury, etc.

### **Who may be covered?**

- Persons with mobility impairments such as orthopedic disabilities;
- Persons with sensory losses such as deafness and/or blindness;
- Persons with mental disabilities such as cognitive disabilities, head injuries, cerebral palsy;
- Persons with environmental chemical sensitivities;
- Persons with mental illnesses;
- Persons with hidden disabilities such as epilepsy, heart conditions, diabetes, chronic fatigue syndrome, learning disabilities, cancer, AIDS/HIV, etc.;
- Persons with age related disabilities such as arthritis, dementia, heart conditions, etc.; and/or
- Persons who are recovering alcoholics and/or drug addicts.

### **What are the exceptions?**

- Persons currently using illegal, controlled substances;
- Persons who have been convicted of the illegal manufacture and/or distribution of controlled substances;
- Persons who pose a direct threat to the health and safety of others.

### **What are Reasonable Accommodations and/or Modifications?**

**Accommodation:** An exception to the rules and regulations allowing a person with a disability full use or enjoyment of the premises.

**Modification:** Right to alter the physical premises to overcome obstacles interfering with the use of a dwelling unit by someone with a disability.

### **Can the housing provider ask about a tenant's**

### **disability or need for an accommodation and/or modification?**

-A housing provider cannot ask about a disability unless it is being used as a means to determine qualification for housing for the disabled;

-A consumer should request the accommodation/modification in advance;

-There is no limit on the number of accommodations/modifications requested and/or the number of times a consumer may request these needs;

-A housing provider cannot impose an accommodation/modification on a consumer who does not want one;

-A consumer is entitled to an accommodation/modification that affords equal opportunities to use and enjoy a dwelling, even if the accommodation/modification provided is not the one preferred by the consumer.

### **What are the most common areas requiring accommodations and/or modifications requests?**

(1) *Architectural accessibility:* parking, entrances, kitchens, bathrooms, hardware, path of travel within a dwelling, full access to common use areas, and environmental controls.

(2) *Programs:* Changes in rules, policies, practices or services so that a person with a disability can participate as fully in activities related to housing as could a person without a disability, such as a request for a service animal or foregoing an eviction to allow a case manager an opportunity to implement a treatment plan assisting the consumer with lease compliance.

**Exceptions:** If the housing provider can demonstrate that providing an accommodation or modification would: impose an "undue burden" or constitute a "fundamental alteration" in the service provided by the housing provider.

### **Can the provider ask for proof of the disability and/or need for the accommodation/modification?**

A housing provider can ask for verification of the disability (unless a readily apparent disability) and the need for the accommodation or modification from a qualified professional. The verification of the disability does not have to include a statement of what the disability is and/or a consumer does not have to provide and/or disclose medical records.

**Medical Professional Defined:** A medical professional is defined broadly under the EEOC employment guidance regarding reasonable accommodation requests, at least for purposes of putting one on notice of the request for accommodation. Medical professionals can include social workers, paraprofessionals, chiropractors, etc. A request for a reasonable accommodation and/or modification triggers an affirmative duty on the part of the housing

provider to exchange information with the consumer.

Case law on the issue of questioning the credentials of a medical professional to submit verification of a disability and/or the need for a reasonable accommodation is not completely developed, at least to the advantage of the housing provider. However, if, for example, a tenant with a mental disability submits a request for an accommodation that is verified by a chiropractor, the housing provider may seek additional information. The housing provider can request further verification of the need for the accommodation and further verification that the tenant is a qualified person with a disability. Again, a request for an accommodation and/or a modification, at the very least, puts the housing provider on notice that the need for an accommodation and/or a modification may exist. Denying the request without further review of information could lead to a violation of fair housing provisions.

**Is the consumer or provider responsible for the financial burden necessary to provide adaptation?**

If the change is architectural, the consumer may be required to pay for reasonable modifications. Providers and consumers should check with the Fair Housing of the Dakotas or other resources such as the Department of Housing and Urban Development prior to requiring the consumer pay for the modifications.

The provider can, under certain circumstances, request the consumer to create an account with deposits equal to the amount necessary to restore the dwelling to original condition, if adaptations made would interfere with the use and enjoyment of the unit by the next consumer.

If the change is programmatic, the consumer cannot be charged directly and/or indirectly for the change in service.

**Service animal vs. companion animal vs. comfort animal:** A companion animal and/or comfort animal may both be service animals. If there is verification of the disability and the need for the reasonable accommodation that is represented to be the presence of that animal in order for the person with the disability to enjoy equal opportunity, the companion/comfort animal is considered a service animal and must be allowed in "no pets" buildings.

**Requiring insurance coverage for a service animal:**

The law prohibits imposition of additional burdens on the residency of a person with a disability if those tenancy provisions would subject that person to different and/or more adverse treatment than a similarly situated person without a disability. Imposing an additional term such as insurance coverage for a service animal would subject a person with a disability to different and/or adverse treatment because of their disability.

A housing provider can enforce the same conditions of tenancy against a person with a disability as are imposed on persons without disabilities. For example, the lease may

contain a clause that the tenant is liable for harm caused by his or her negligence. The housing provider would enforce this clause against a tenant who is using a barbecue that malfunctions and causes a fire damaging another tenant's property and/or person. A housing provider enforces the same provision against a tenant with a disability who fails to control his/her service animal. The key is uniform treatment and enforcement of terms and conditions for which a reasonable accommodation is not required.

**Requiring additional security deposits and/or increased rent for a service animal:** The law prohibits imposition of additional burdens on the residency of a person with a disability if those tenancy provisions would subject that person to different and/or more adverse treatment than a similarly situated person without a disability. Imposing an additional term such as a security deposit and/or increased rent for a service animal would subject a person with a disability to different and/or adverse treatment because of their disability.

These charges are not permitted, though deductions from the security deposit for any reasonably necessary additional cleaning work would be permitted, if also charged against tenants without disabilities who leave their units in a condition that requires such additional cleaning.

**Requiring proof of current inoculations for service animals:** Requiring proof of inoculation of a service animal would likely be permitted under the following circumstances. A lease agreement includes provisions requiring tenants to abide by all applicable state and local laws. The housing provider enforces these provisions against tenants with respect to storage and/or use of vehicles, equipment, firearms, etc. on the subject premises. There is a local law requiring inoculation and/or licensing of all animals. The housing provider requires proof that the animal meets the local requirements. An alternative rationale for this provision may be that no accommodation that creates a material risk to health and/or safety is reasonable. Proof of inoculation establishes that there is no material risk to health and/or safety in respect to inoculations.

**Requiring a service animal have specialized training and the tenant to submit verification of training:** A service animal does not have to receive specialized training in order to be considered a service animal. A service animal need only exhibit the ability to serve the person with the disability as is required for that person's needs.

**Tenants who may have visitors with disabilities:** A housing provider cannot deny the right of a tenant whose visitor(s) may have disabilities from bringing his/her service animal when visiting the tenant on-site. 8/08

*This document was adapted from materials of Montana Fair Housing, Missoula, MT. This information is not itself legal advice; for legal advice about a particular situation, contact an attorney. The Fair Housing of the Dakotas is a private, non-profit organization that serves North and South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all. The Fair Housing of the Dakotas is located at 909 Basin Avenue, Suite 2, Bismarck, ND 58504. Phone: 701-221-2530 or 1-888-265-0907. ND TDD: 1-800-927-9275 or ND Relay: 1-800-366-6889 (voice). SD TDD: 1-866-273-3323 or SD Relay: 1-800-877-1113. Alternative formats will be made available upon request. Email: info@fhdakotas.org*

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