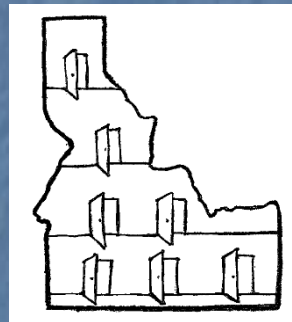


Reasonable Accommodations & Service Animals

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Who Is Disabled As Defined by the Fair Housing Act?

A person who (42 U.S.C. 3602 (h)(1)-(3)):

- has a physical or mental impairment that substantially limits one or more major life activities
- has a record of such impairment
- is regarded as having such an impairment

Physical or Mental Impairment

Includes, but is not limited to:

- Orthopedic, visual, speech, hearing impairments
- Cerebral palsy
- Autism
- Epilepsy
- Cancer
- Heart disease
- Diabetes
- HIV/AIDS
- Mental or cognitive
- Emotional illness
- Learning disabilities
- Alcoholism
- Prior drug addiction (current users not covered)

What Is a Major Life Activity?

Functions or activities that are of central importance to daily life such as (not an exclusive list):

- Caring for one's self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working

What is “reasonable accommodation”?

- A reasonable accommodation is some exception or change to the rules, policies, services, or regulations. (42 U.S.C. §3604(f)(3)(B)).

Reasonable Accommodation Process

- The Fair Housing Act applies to all housing, unless specifically exempted.
- The Act provides several exemptions at 42 U.S.C. §§3603 and 3607 (alternatively, consult 24 C.F.R. §100.10).
- In requesting a accommodation, the preliminary determination that must be made is whether the housing at issue is covered by the Fair Housing Act and the housing provider must therefore comply with the requirements of the Act.
- If a tenant requests an accommodation, the housing provider *must* accommodate the tenant if: (1) the housing is covered by the Fair Housing Act, and (2) the request is “reasonable.”

HUD Guidance on Reasonable Accommodations

Accommodations:

<http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf>

What do reasonable accommodation forms look like?

Sample Forms:

- <http://www.ifhcidaho.org/index.php/resources/guide-reasonable-accom> (Sample IFHC Ken Nagy Document)
- <http://www.idaholegalaid.org/node/2266/about-reasonable-accommodations-andor-modifications> (ILAS Interactive Self-Help Form)

Examples of Reasonable Accommodations

- Permitting a service or companion animal in “no-pet” community
 - Not charging pet deposit
 - See the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 14, 2004. 24 C.F.R. §100.204(b) provides examples.

A Housing Provider Cannot Request Proof of Need When

There is an obvious disability with an obvious need for a reasonable accommodation.

Example: A person with a sight impairment requests a waiver to "a no pet policy" for his seeing-eye dog. No reasonable accommodation request or proof of need required.

A Housing Provider Can Request Proof of Need When

- There is a non-obvious disability or an obvious disability with a non-obvious need, a housing provider may request that a tenant provide proof showing that the accommodations requested will provide the tenant with an equal opportunity to use and enjoy place of residence.
- See the HUD/DOJ Statement on Reasonable Accommodations at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf> .

Proof of Disability and Need

- By a “qualified professional or person in the position to know”

Some examples are:

- Vocational rehabilitation counselor
 - Case manager
 - Physician’s Assistant, RN
 - Therapist, Physician
- Should never disclose the severity or nature of the disability
 - Must show the relationship between disability, the accommodation, and how it will affect housing

Housing Providers can:

- Confirm that a verifiable disability exists through a qualified professional or person who is in a position to know
- Verify that the resident with a disability can still meet essential obligations of tenancy:
 - Pay rent
 - Care for the apartment
 - Report required information to the landlord

Housing Providers *Cannot*:

- Ask about the nature or severity of a person's disability
- Directly ask the qualified professional or person in a position to know for the proof
- Charge an extra fee or additional deposit
- Deny accommodations if:
 - proof of necessity is presented
 - suggested accommodations are reasonable

A request is reasonable when it is not an:

- **undue financial or administrative burden** - evaluate the financial impact the accommodation would have on the budget or resources
- **fundamental alteration to the nature of the operation** - evaluate whether you are being asked to provide a service not normally provided in your business and doing so would change your operations or business

Housing Providers Should Never:

- Delay
- Outright Deny
- Ignore a Reasonable Accommodation/Modification

Housing Providers Should ALWAYS:

- Engage in an interactive dialogue with the tenant, consumer, participant
- Document actions

Reasonable Accommodation Resources

- www.ifhcidaho.org or contact@ifhcidaho.org
- www.hud.gov
- www.idaholegalaid.org

FHA Service/Companion Animal Discussion ONLY

Definition Support Animal under FHA

Support Animals Are Assistive Devices, Not Pets!!!

- **An assistive device** like a wheelchair, cane, crutches.
- **The term support animal is the same as** service animal, companion animal, emotional support animal, assistance animal. They are interchangeable.
- They help persons with disabilities use and enjoy their dwellings and ameliorate the effects of their disability.

When can one ask for a service animal?

- Before and during a tenancy in a rental unit, housing program, etc. Anytime!
- If a person is applying for a unit, it is best to notify the housing provider of the service animal when the tenant applies. If the housing provider denies the request or says you have to apply first, ask for help from the IFHC to educate the provider.
- During a person's tenancy, if s/he needs a service animal, make the request before getting the support animal. Remember the housing provider should NOT outright deny, delay or ignore the request. If the qualified professional says the person needs one, and the person has a pet that can address the need for the disability, notify the housing provider.

Support animals can be any age, breed, size, weight, and species!!!!

- Except State/County/City may impose limits on exotic animals and vicious breeds. However, a reasonable accommodation may be appropriate in some circumstances. These regulations should not apply to support/companion/service animals under FHA.
- See HUD's Insurance Policy Restrictions as a Defense for Refusals to Make Reasonable Accommodations:
- <http://servicedogcentral.org/content/files/2006-06-12%20HUD%20memo%20on%20insurance%20policy%20restrictions%20related%20to%20reasonable%20a%20ccommodations.PDF> . Be Careful!

How many service animals can a person have?

- There is no limit on the number of service animals a person and or family can have. That being said, a housing provider can request a proof of need for each support animal for the person with the disability that is obvious but has a nonobvious need for an animal or whose disability is not obvious and there is not an obvious need for the animal.
- The qualified professional or person in the position to know should show how s/he needs an animal for each disabling condition.
- **Attention:** Some advocacy groups might argue that a person with a disability with multiple service animals which have a symbiotic relationship that helps one condition should not have to show a connection for each animal to each condition. Examine each request on a case-by-case basis and get help when you need it to properly address a request.

What if my service animal has a litter/babies?

- The litter is rarely considered service animals if ever.
- Your housing provider may give you a violation of the rules notice and request you remove the litter once weaned. May charge you a pet deposit if pets are allowed, or waive it, if the tenant agrees to remove the litter once weaned.
- Housing providers should never force the person to get rid of the service animal and litter until the puppies, kittens etc. are weaned.
- Any damage caused by the litter may be charged to the tenant.

Can a housing provider require service animals to...

Have shots and a license?

- If the State, city, or county requires animals to be licensed and or receive certain shots, you can require it. You can also request a reasonable accommodation from the regulating government body if needed.

Insurance?

- No. In unusual situations in which the support animal is an exotic pet or “vicious” breed and the housing provider’s insurance prohibits them or puts restrictions, then the housing provider should request a reasonable accommodation from the regulating government body or insurance company if needed.

Can a housing provider require service animals to...

Be spayed/neutered?

- No. While it may be great idea because of overpopulation, do NOT require it as it may be financial barrier to the person with the disability or cause harm to the service animal.

Declawing?

- No, as it may cause harm to the service animal.

Be on a leash?

- It depends. If city or county ordinance requires an animal to be leashed, then it may be required, unless an animal cannot perform its work, such as alerting a person with Epilepsy that s/he is going to have a seizure and then keeping the person safe. You can also request a reasonable accommodation from the regulating government body if necessary. Don't require cats to be leashed.

What if the reasonable accommodation or proof of need letter looks questionable or comes from an online source?

What if the proof of need provider writes proof of need letters for everyone?

What if the proof of need doesn't say the person has a disability or needs the accommodation or doesn't provide a connection to the disabling condition?

Best Practice:

- Because persons with disabilities need service animals and accommodations, housing providers should engage in an interactive dialogue and get the tenant help from a fair housing organization or an organization that helps persons with disabilities.
- Let the organization get the tenant/homeowner help clarifying the reasonable accommodation and or proof of need.
- As a Housing Provider, do NOT contact the qualified professional/person in position to know directly or outright deny, delay or ignore a request.

Does the tenant have to ask for a reasonable accommodation for a visitor's companion animal before the animal visits?

If the visitor was in the common areas, there is no need to ask for an RA. If they are going into the unit, it might depend, presuming there is a no pets policy. In an example of visitors to the property, the tenant would request the RA on behalf of the person with a disability; generally, no documentation is required, unless they come regularly and the need is not obvious. Please keep in mind, however, that as with any FH situation, specific fact patterns can vary greatly, thereby changing the FH implications and requirements of any situation.

- Note: In Idaho, it is misdemeanor to interfere with a ADA defined service animal and there is immediate remedy for those individuals.

Please contact the following with any questions and/or concerns:

U.S. Department of Housing and
Urban Development (HUD)

1-800-669-9777

-or-

1-800-927-9275 (TDD)

www.hud.gov

Intermountain Fair Housing Council
(208) 383-0695 in Boise

-or-

1-800-717-0695 (toll-free)

Web Resources:

- www.fairhousinglaw.org
- www.nationalfairhousing.org
- <http://fairhousing.jmls.edu/>
- <http://www.usdoj.gov/crt/housing/>
- www2.state.id.us/ihrc/about.htm
- www.hud.gov
- www.bazelon.org
- www.idaholegalaid.org
- www.ifhcidaho.org