

A collection of military medals and a compass are arranged on a wooden surface. In the top left, there is a red ribbon with a circular emblem. Below it is a silver star-shaped medal with a central emblem. To the left of the star is a blue ribbon with a circular emblem. Below the blue ribbon is another silver star-shaped medal. In the bottom left corner, there is a circular compass with a white face and black markings. A pair of glasses with thin metal frames and a red-tipped pen are also visible on the surface.

Reasonable Accommodations and Modifications

Department of
Housing & Urban
Development
SDHDA Conference
October 14, 2020



AGENDA

- ◆ Fair Housing Laws
- ◆ Fair Housing and Section 504 Requirements
- ◆ Reasonable Accommodations and Modifications



FAIR HOUSING LAWS

- ◆ TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (recipients of federal financial assistance)
- ◆ FAIR HOUSING ACT (FHA) OF 1968, AS AMENDED IN 1988
- ◆ SECTION 504 OF THE REHABILITATION ACT OF 1973 (recipients of federal financial assistance)
- ◆ AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)



Section 504 Compared to the Fair Housing Act

- ◆ *Fair Housing Act* - Discrimination - Seven Protected Classes – Nine in South Dakota. This includes Disability.
- ◆ *Section 504* – Accessibility in Federally Funded Projects - Programs and Physical facilities.



Discrimination

- ◆ **Who is protected under the Fair Housing Act?**
- ◆ What are the 7 protected classes under the Federal Fair Housing Law?
- ◆ What are the protected classes under South Dakota Law?



Protected Classes

- ◆ Race
- ◆ Color
- ◆ Religion
- ◆ National Origin
- ◆ Sex (Gender)
- ◆ Familial Status
- ◆ Disability

South Dakota (2)

*Ancestry

*Creed



Section 504



Discrimination Prohibited

- ◆ No qualified person with a disability shall, solely on the basis of disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal Financial assistance.

DISABILITY

- ◆ A Person with a physical or mental impairment that substantially limits one or more major life activities.
- ◆ A person with a record of such impairment.
- ◆ Is regarded as having an impairment.



Persons with Disabilities

Major Life Activities:

- ❖ Seeing
- ❖ Walking
- ❖ Learning
- ❖ Performing Manual Tasks

Hearing

Breathing

Speaking

Taking Care
of one's Self





◆ **REASONABLE ACCOMMODATIONS**
&
REASONABLE MODIFICATIONS



Reasonable Accommodations

- ◆ A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.



Requesting an Accommodation



A reasonable accommodation must be requested.



A request can be made at any time, by the person with a disability, a family member, or by someone else who is acting on behalf of the person with a disability.



Request does not have to be in writing. It can be oral or by any other effective method.



Housing provider should place the request in writing and document the outcome.



Applying the principles ...

- Housing providers must evaluate reasonable accommodation requests by using general principals.
- The process should be quick and easy and should involve determining the answers to two questions:
 - 1.) Does the requester have a disability?
 - 2.) Does the requester have a disability-related need for the reasonable accommodation?
- Determinations should be made on a case-by-case basis.



What is Reasonable?

- ◆ For an accommodation to be reasonable, there must be an identifiable relationship or nexus between the requested accommodation and the individual's disability.
- ◆ The requested accommodation must be necessary to ameliorate the effects of the disability and provide the person with a disability an equal opportunity to use and enjoy a dwelling.

Reasonable Cont.

- ◆ The requested accommodation must be reasonable:
 - *Does not impose an undue financial and administrative burden on housing provider.
 - *Does not fundamentally alter the nature of the housing providers operations.



Reasonable Accommodations

- ◆ Example of Undue Financial and Administrative Burden:
 - Requesting maintenance staff of a small housing provider take out the garbage of a disabled tenant who is physically unable to open the dumpster on a daily basis when maintenance staff is only onsite two days per week
- ◆ If a housing provider believes an accommodation imposes an undue financial and administrative burden, it should start an interactive dialogue with the requester and explore alternative accommodations



Reasonable Accommodations

- ◆ Undue Financial and Administrative Burden
 - An action that requires significant difficulty or expense
 - Must balance the burden to the housing provider with the benefits to the resident
 - Factors to consider:
 - Cost of the accommodation
 - Financial resources of the housing provider
 - Administrative responsibilities imposed on the housing provider because of the requested accommodation





Reasonable Accommodations

◆ Fundamental Program Alteration

- Change that would be so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change
- Example of Fundamental Alteration:
 - Mobility impaired resident requests housing provider transport him to the grocery store and assist him with his shopping
- ◆ If a housing provider believes granting an accommodation would cause a fundamental program alternation, it should start an interactive dialogue with the requester and explore alternative accommodations



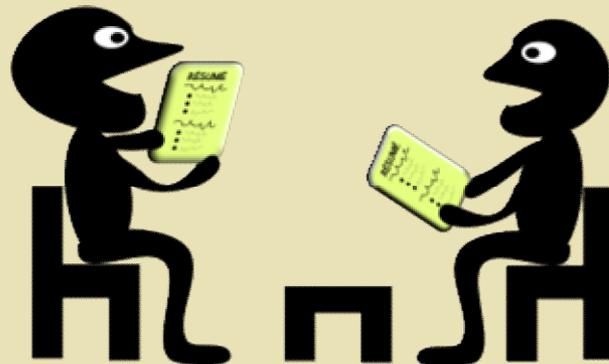
Verifying Reasonable Accommodations

- ◆ May request documentation of the need – only to the extent necessary to verify the disability and if an accommodation is needed.
- ◆ *May not acquire confidential medical records or inquire into the nature or severity of a person's disability.*
- ◆ Verification of disability and need for accommodation can be from: medical provider; licensed health provider; professional representing social service agency, disability agency or clinic, 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.
- ◆ Requiring health care provider to testify in court or sign a statement under penalty of perjury is problematic.

Housing Providers Responsibility

- ◆ **Engaging in an interactive dialogue:**

It is necessary, to engage in an interactive dialogue. One cannot simply refuse a request for a reasonable accommodation or modification. The interactive dialogue is an opportunity to become educated about the requester's needs and to find an effective and reasonable solution for the issue at hand.





Reasonable Modifications

- ◆ An accommodation may require a structural modification to unit or common area.
- ◆ Recipients are required to make and pay for the modifications.
- ◆ Difference between Fair Housing Act and Section 504 – who pays.

Common Reasonable Accommodations and Modifications

- ◆ Closer Accessible Parking Space
- ◆ Allowing a Live-in Aid
- ◆ Providing an alternative to trash removal
- ◆ Installing additional grab bars
- ◆ Removing a cabinet from under the sink





Examples of Reasonable Accommodations & Modifications

- ◆ Installing a strobe fire alarm and/or flashing door bell.
- ◆ Sign language interpreter for the Tenant's Association meeting.
- ◆ Being released early from the lease due to requiring an accessible unit and one is not available.

Reasonable Accommodation & Modification Examples Continued

- ◆ A tenant with a mental disability is being evicted for violating community rules – request for accommodation to stop eviction to allow for time to acquire medical treatment.
- ◆ A tenant becomes disabled and requests installation of a ramp.



Assistance Animals

- ❖ An assistance animal is not a pet!
- ❖ Assistance animals include
 - ◆ service animals and emotional
 - ◆ support/therapy and comfort
 - ◆ animals.



ASSISTANCE ANIMALS ...

- **Are animals that provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more symptoms or effects of a person's disability.**
- **Do not need to be trained or certified, serves a function for person with disability to alleviate their disability.**
- **Are not just dogs and may include cats, birds, guinea pigs, miniature horses, capuchin monkeys, snakes, tarantulas, etc.**





Assistance Animal Conditions

- ❑ Pet policies must clearly state that the policy does not apply to assistance animals.
- ◆ **HOUSING PROVIDERS...**
- ◆ May encourage licensing in accordance with any local laws.
- ◆ Must not require verification of licensure or inoculations as a condition of approval.
- ◆ May apply reasonable health and safety concerns, including ensuring that **INDIVIDUAL** animals are not a threat or nuisance.
- ◆ May require owners to clean-up after animals and maintain control of animals.

Assistance Animal Conditions

HOUSING PROVIDERS MAY NOT...

- Charge a pet deposit or a fee
- Deny access to housing or indoor and outdoor public and common use areas associated with housing

OR

- Impose breed, weight, number, or size limitations.



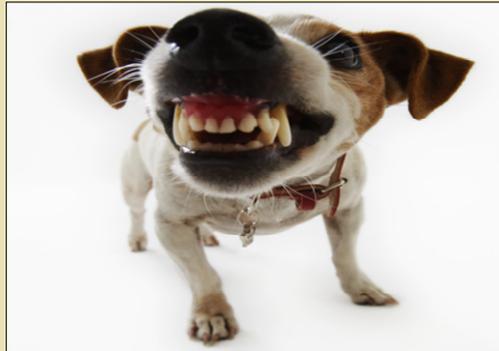


Documentation from the Internet

- ◆ Notably, the new guidance does address documentation for assistance animals from online sources:
 - “In HUD’s experience, such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal.”
 - “By contrast, many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a person’s health care professional that confirms a person’s disability and/or need for an animal when the provider has personal knowledge of the individual.”

Remedies if Animals are a Problem

- Provide tenant with lease violations
- Charge tenant for damages
- Evict the tenant, not the animal





ADA Service Animals in Housing

The ADA has different requirements than the Fair Housing Act/Section 504.

Entities covered by the ADA may only make two inquiries to assess requests under the ADA:

- 1) “Is this a service animal that is required because of a disability?”
- 2) “What work or tasks is the animal trained to perform?”



ADA Inquiries

- ◆ Covered entities may not ask about the “nature or extent of a person’s disability.”
- ◆ Covered entities may not require documentation or proof.
- ◆ Covered entities may not ask the two questions if it is “readily apparent that the animal is trained to do work or perform tasks for a person with a disability.” (EXAMPLE: A dog seen guiding a person with a visual impairment.)



Best Practices

- ◆ **Know the Law.**
- ◆ **Have written policies and procedures and follow them consistently.**
- ◆ **Document!**
- ◆ **Document!**
- ◆ **Document!**



Links to Resources

- ◆ www.hud.gov/fairhousing
- ◆ Fair Housing Laws:
<http://www.hud.gov/offices/fheo/FHLaws/index.cfm>
- ◆ Fair Housing logos:
<http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm>
- ◆ Fair Housing posters:
<http://www.hud.gov/offices/fheo/promotingfh/928-1.pdf>
- ◆ Reasonable Accommodations –Joint HUD and DOJ Memo
<http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>
- ◆ Reasonable Modifications – Joint HUD and DOJ Memo
https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf
- ◆ HUD Assistance Animal Guidance – January 2020
<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>
- ◆ HUD Assistance Animal Fact Sheet – January 2020
<https://www.hud.gov/sites/dfiles/PA/documents/AsstAnimalsGuidFS1-24-20.pdf>



QUESTIONS

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