Reasonable Accommodation Citations

I. Statutes

A. Fair Housing Act (FHAA)
   Applies to all rental situations with very few exceptions
   42 USC 3604(f)(3)(b) “Discrimination includes…a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”

B. Section 504 of the Rehabilitation Act (Section 504)
   Applies only to entities receiving HUD funds
   28 C.F.R 35.130(b)(7)(i) “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”

C. Title II of the Americans with Disabilities Act (ADA)
   Applies to public entities that provide housing, including public housing agencies, state & local government housing. 42 U.S.C 12132

II. Definitions

Person with Disability: An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of having such impairment, or being regarded as having an impairment. Persons living with HIV are included, as well as alcoholism and drug addiction, other than addiction cause by current, illegal use of a controlled substance. (FHAA)

Reasonable Accommodation: 42 USCS 3604(f)(3)(B)

The FHAA’s definition of unlawful discrimination encompasses a refusal to modify or change rules, policies, practices or services as a reasonable accommodation when such modifications or changes may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Direct Threat 42 USC 3604(f)(9)

An individual with a disability whose tenancy would constitute a “direct threat” to the health or safety of another or result in substantial physical damage to the property of others except when the threat can be eliminated or significantly reduced by a reasonable accommodation
III. Cases/Resources

Alexander v. Choate, 469 U.S. 287, 301 (1985)

Section 504 requires recipients of federal assistance to provide reasonable accommodation to disabled individuals.

Majors v. Housing Authority of the County of DeKalb, 652 F. 2nd 454 (5th Cir. 1981)

Tenant with mental illness living in subsidized housing made a reasonable accommodation request for modification of a no-pets policy. 5th Circuit reversed and remanded lower court’s decision granting the Housing Authority’s motion summary judgment.

Janush v. Charities Housing Development Court, 169 F. Supp.2d 1133 (N.D)

Tenant with mental illness living in subsidized housing made a reasonable accommodation request for a pet, and Housing Authority denied on basis that only service dogs were a reasonable accommodation. Court ruled that whether an accommodation is reasonable is a fact-specific inquiry, requiring an analysis of the burdens imposed on the housing authority and the benefits to the disabled person.

DOJ cases and briefs involving disability discrimination in housing:

https://www.justice.gov/crt/recent-accomplishments-housing-and-civil-enforcement-section#jp
disability (link confirmed as of Feb. 2018)

Joint Statement of HUD and DOJ Reasonable Accommodations under the Fair Housing Act

IV. Sample Reasonable Accommodation Letter

Please note that landlords have no right under the law to require a letter from a medical provider documenting the disability. However, if the client is willing to have their medical provider write such a letter, it may be helpful to obtain one and include it with the request for the reasonable accommodation. My experience is that is speeds the process up.

January 9, 2017

Property Manager for _________

Re: Tenant name and address

Dear Property Manager:

Pursuant to the Fair Housing Act, I am making a reasonable accommodation request on behalf of my client, _____. _____. has a psychiatric disability and his symptoms are worsened by residing in his current apartment.

I am therefore requesting a reasonable accommodation under the federal Fair Housing Act and Section 504 of the Rehabilitation Act. Housing subsidy providers and landlords are subject to the Fair Housing Act, which requires that housing providers make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

I am asking that you modify your transfer policy and approve a transfer to another subsidized apartment building. As the enclosed letter from his medical provider attests, ______________ frequently notes to that he is disturbed by strange and unusual noises during all hours of the day and night, which interrupt his sleep and contributes to and exacerbates excessive anxiety and symptoms of depression.

Please send your reply in writing about this request for accommodation within thirty days or no later than February 15th. Please contact me at (215) __________ if you have any questions.

Sincerely,

__________________

Cc: Client and Case Manager