

Fair Housing for Tenants with Disabilities:

Understanding Reasonable Accommodations
and Reasonable Modifications

2018 Updated Edition

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NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NORTH CAROLINA HOUSING FINANCE AGENCY
SCHOOL OF GOVERNMENT AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
REASONABLE ACCOMMODATION STUDY GROUP

To request a copy of this publication, contact the N.C. Housing Finance Agency,
P.O. Box 28066, Raleigh, NC 27611-8066. Telephone (919) 877-5700.

The document, along with some of the referenced material,
is also available on the NCHFA website at <http://www.nchfa.com>.

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DISCLAIMER

Although this Guide contains legal information as well as suggestions for policies and practices, it is intended only as a reference. Landlords must use their best judgment in deciding how to implement reasonable accommodation and modification procedures. Individual cases and circumstances vary widely, and the law is always subject to change through legislative or judicial action. This guide is not intended to serve as a substitute for legal advice or to establish any lawyer-client relationship.

REASONABLE ACCOMMODATIONS STUDY GROUP

The ad hoc Reasonable Accommodations Study Group, sponsored by the Elderly Housing Rights and Consumer Protection Program, developed the original version of this Guide, entitled “Reasonable Accommodation for Residents with Mental Illness or Substance Abuse Problems,” in 1995. Membership of the Study Group included housing providers, service providers, attorneys and advocates for persons with mental illness and for low-income tenants.

The Guide’s initial purpose was to address issues involved in making reasonable accommodations for tenants and applicants with mental illness or substance use problems. The Study Group believed it was possible to create policies and procedures that satisfy the intent of the law without subjecting either landlords or persons with disabilities to undue burdens.

The 2008 update widened the original scope by making the Guide applicable to tenants with all types of disabilities. It included a new section on reasonable modifications as well as references to relevant court decisions covering the past ten years.

This 2018 update builds on the work of the 2008 version and continues its vision of providing a practical guide for housing providers in how to best serve tenants with disabilities. Along with updating the court cases and citations, this update adds more detailed information on three issues landlords are regularly asked to address: (1) service and assistance animals, (2) credit history and (3) criminal backgrounds. Representatives of the following organizations contributed generously to the development of this edition of the Guide or its 2008 predecessor:

- Apartment Association of North Carolina,
- Center for Universal Design at the College of Design, NC State University,
- Hatch, Little & Bunn, L.L.P.,
- Fair Housing Project of Legal Aid of North Carolina,
- North Carolina Human Relations Commission and
- North Carolina Justice Center.

Numerous other organizations and individuals also provided input and assistance in revising this document. The sponsors of this Guide wish to extend a special appreciation to the North Carolina Justice Center for their role in drafting the original document.

INTRODUCTION

Persons with disabilities face numerous obstacles to securing housing, ranging from architectural barriers to economics and personal circumstances. Fair housing laws recognize these barriers and include important mandates that, if understood and put into practice, expand housing choices and opportunities for persons with disabilities.

Fair housing laws prohibit discrimination against people based on their race, color, religion, national origin, sex, familial status or disability. For persons with disabilities, fair housing laws make it illegal to:

- Fail to make a reasonable accommodation in rules, policies and services to give a person with a disability equal opportunity to occupy and enjoy the full use of the housing; and
- Fail to allow reasonable modification to the premises if the modification is necessary to allow full use of the premises.

Americans know that race-based discrimination is illegal, but almost 30 years after the passage of the Fair Housing Amendments Act just slightly more than half of Americans know that it is illegal for landlords to refuse to make reasonable accommodations for persons with disabilities or to refuse to permit reasonable modification to a housing unit.¹

Determining what is a reasonable accommodation or a reasonable modification requires a balancing of interests and a case-by-case judgment as to what is “reasonable.” This Guide includes numerous examples which illustrate the standards courts have used in determining what is reasonable. In addition, the Guide includes a statewide list of legal, housing, and community resources (see Appendix D) to help tenants and landlords handle issues that arise in assessing and addressing the issue of reasonableness.

¹ Martin D. Abravanel, U.S. Dep’t of Hous. and Urban Dev., Do We Know More Now? Trends in Public Knowledge, Support and Use of Fair Housing Law, 11 (2006).

FAIR HOUSING LAW

The Civil Rights Act of 1968, also known as the Fair Housing Act, was passed to address a legacy of segregation and discrimination in housing markets throughout the United States. Together with subsequent amendments and additional laws, it has provided an avenue of redress for housing discrimination based on race, color, national origin, religion, sex, familial status and disability.

Housing providers can be held liable for housing discrimination based primarily on three grounds:

- **Intentional discrimination.** This is discrimination based on a housing provider treating a person differently *because* of his or her membership in a protected class. For example, if a provider refused to rent to a person *because* he or she had AIDS, or if a provider charged a family a higher deposit *because* their child had ADHD or a developmental disability, that would be intentional discrimination based on disability.
- **Discriminatory effect.** This is discrimination a housing provider does not do intentionally, but nonetheless impacts persons of a protected status disproportionately. This type of discrimination is sometimes called “disparate impact” discrimination. For example, if a provider required all prospective tenants to have employment income and would not consider a person’s income from disability payments, that would be unlawful discrimination because it would have a disparate impact/discriminatory effect based on disability.
- **Strict liability.** In certain circumstances, a housing provider may be held liable for certain actions that are deemed discriminatory. For example, if a provider makes an oral statement or prints advertising indicating a preference or limitation based on disability (e.g. “I don’t allow people on psychiatric medications”) or refuses to grant a reasonable accommodation or reasonable modification to a person with a disability, that is a violation of fair housing laws regardless of whether the provider intended to discriminate or not.

The purpose of this Guide is to help landlords, property managers and others understand a very specific part of fair housing law; namely what obligations they have under the law in relation to tenants, prospective tenants, or people with disabilities who are associated with tenants or prospective tenants.

Three federal laws and one North Carolina state law specifically prohibit housing discrimination against rental applicants or tenants because of a disability.

The federal laws are:

1. the Fair Housing Act of 1968 as amended in 1988 (“Fair Housing Act”), which prohibits discrimination based on race, color, religion, national origin, sex, familial status or disability and requires landlords to make reasonable accommodations and modifications for tenants with disabilities;

2. the Americans with Disabilities Act (“ADA”), enacted in 1990, which prohibits discrimination on the basis of disability in government-funded programs, including housing programs (Title II), as well as public accommodations (Title III). Under Title II, certain federally-funded housing providers, including federally-funded homeless shelters must provide reasonable accommodations and modifications. Under Title III, portions of private housing open to the public, such as rental or leasing offices, and other on-site locations used by the public, must be accessible to persons with disabilities; and
3. Section 504 of the Rehabilitation Act of 1973 (“Section 504”), which prohibits discrimination in certain federally-funded housing programs.

The North Carolina law is:

4. the State Fair Housing Act, which is substantially equivalent to the federal Fair Housing Act.

Depending on when a unit of rental housing was built and whether its construction was funded from certain federal sources (see *Box 1*), some or all of the fair housing laws mentioned above may apply. While other laws and local ordinances may also apply, this Guide is intended to inform readers of the rights provided to tenants with disabilities by these fair housing laws, and their reasonable accommodation and modification mandates.

Figure 1 presents an overview of the laws relating to illegal housing discrimination against persons with disabilities and defines the specific housing types for which each one is applicable.

Figure 1: Federal and State Laws Prohibiting Discrimination in Housing Against People with Disabilities

| Law | Housing Covered | Types of Practices Prohibited or Required | Definition of “Person with a Disability (or Handicap)” |
|--|---|---|--|
| Fair Housing Amendments Act 42 U.S.C. § 3601 et seq. (federal) | All types of “dwellings” that are designed or used as a residence, and any land or vacant property that is sold or leased as residential property. Some provisions do not apply to: 1. Rental dwellings of four or less units, when one unit is occupied by the owner. 2. Single family homes sold or rented by the owner without the use of a broker or discriminatory advertising. 3. Housing owned by private clubs or religious organizations that restrict occupancy in housing units to their members. | 1. Cannot discriminate in renting, selling, imposing terms and conditions, advertising, asking questions, or blockbusting (implying that people of a designation are entering the community in large numbers). 2. Must provide reasonable accommodations at the landlord’s expense. 3. Must allow reasonable modifications at the tenant’s expense. | Persons who: 1. Have a physical or mental impairment substantially limiting one or more major life activities, including caring for one’s self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. 2. Have a history of a physical or mental impairment substantially limiting one or more major life activities. 3. Are regarded as having a physical or mental impairment substantially limiting one or more major life activities. |
| Chapter 41A of N.C. General Statutes (state) | All housing, including common areas. Some provisions do not apply to: 1. Owner-occupied, “single family” housing (up to 4 units). 2. Owner-occupied boarding houses. 3. Private clubs, operating for commercial purposes. | 1. Cannot discriminate in the terms, conditions, or privileges of a real estate transaction or provision of facilities. 2. Cannot refuse to make reasonable accommodations to rules, practices, policies, or services. 3. Cannot refuse to allow the tenant to make reasonable modifications. | Same as above. |
| Americans with Disabilities Act (federal) | Title II applies to housing provided by state and local governments and their entities, including public housing authorities, regardless of whether they receive federal funds. Title III applies to places of public accommodation, such as commercial facilities and common areas of rental housing and homeless shelters. | Cannot deny qualified individuals the opportunity to participate in or benefit from federally funded programs, services, or other benefits. Cannot deny access to programs (all operations of the housing provider), services, benefits, or opportunities to participate as a result of physical barriers. The housing provider is not required to take steps that it can demonstrate will cause an undue financial or administrative burden or change the fundamental nature of the program. | Same as above. |
| Section 504 of the Rehabilitation Act 29 U.S.C. § 794 (federal) | Any housing program or activity receiving Federal financial assistance or any housing program or activity conducted by any executive agency of the U.S. government or by the United States Postal Service. See Box 1 on Page 16 for definition of “Federal Financial Assistance”. | Same as Title II and III of the ADA. 5% of units must be accessible for persons with mobility impairments and an additional 2% must be accessible for persons with visual or hearing impairments. | Same as above. |

| Law | Accessibility Requirements | Is Current Illegal Drug Use Covered? | Is a History of Illegal Drug Use Covered? | Are Alcoholics Covered? |
|---|--|--------------------------------------|---|--|
| <p>Fair Housing Amendments Act 42 U.S.C. § 3601 et seq. (federal)</p> <p>Accessibility Requirements apply to all ground floor or elevator accessed units in all buildings with four or more units built for first occupancy after March 13, 1991.</p> | <ol style="list-style-type: none"> 1. Dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 2. Dwellings with a building entrance on an accessible route shall be designed in such a manner that the public and common use areas are readily accessible to and usable by handicapped persons. 3. Dwellings with a building entrance on an accessible route shall be designed in such a manner that doors are wide enough to allow passage by persons in wheelchairs. 4. Dwellings with a building entrance on an accessible route shall be designed and constructed such that all premises contain an accessible route into and through the unit. 5. Light switches, electrical outlets, thermostats, and other environmental controls must be in accessible locations. 6. Dwellings must contain reinforced walls in bathrooms to allow installation of grab bars around toilet, tub, shower stall, and shower seat, where such facilities are provided. 7. Dwellings must contain usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. | No | Yes | Yes |
| <p>Chapter 41A of NC General Statutes (state)</p> | <p>Same as above. In addition, NC Building code contains accessibility requirements.²</p> | No | Yes | Yes |
| <p>Americans with Disabilities Act (federal)</p> | <p>To be readily accessible, a facility must be able to be approached, entered, and used by individuals with disabilities. All properties subject to Title II constructed after January 26, 1993, must be in compliance with the Americans with Disabilities Act Accessibility Guidelines or the Uniform Federal Accessibility Standards. Title III requires that the rental office, other common areas and parking be accessible.</p> | No | Yes | Yes |
| <p>Section 504 of the Rehabilitation Act 29 U.S.C. §794 (federal)</p> | <p>Properties must be “readily accessible” to persons with disabilities. Providers must ensure that individuals with visual, speaking, or hearing impairments can effectively communicate.</p> | No | <p>Yes, a person with a history of drug use who has been successfully rehabilitated, or someone who is participating in a drug rehabilitation program and is not currently using drugs illegally, is protected.</p> | <p>No, if alcoholism prevents an individual from participating in the housing program or poses a threat to the property or safety of others. Yes, otherwise.</p> |

² For more information, see the North Carolina Department of Insurance: <http://www.ncdoi.com>.

● Defining “Persons with Disabilities”

While this Guide refers to persons with disabilities, the fair housing laws use the term “handicap.” Cases interpreting fair housing laws make clear that the terms have the same meaning. According to the laws, persons with disabilities include those:

- with a physical or mental impairment that substantially limits one or more major life activity;
- with a record of having such an impairment; or
- regarded as having such an impairment whether they have the impairment or not.³

The following persons are not included in the definition of disability:

- persons currently engaging in the illegal use of a controlled substance;
- persons convicted of the illegal manufacture or distribution of a controlled substance;
- persons whose sole basis for claiming to be disabled is that the person is a “transvestite;”
- persons whose tenancy would constitute a “direct threat” to the health or safety of other individuals or whose tenancy would cause substantial physical damage to the property of others; and
- juvenile offenders and sex offenders, by virtue of their status.⁴

The definition of “disability” under fair housing laws is broader than the disability definition under regulations covering eligibility for federally-subsidized housing programs (such as Section 811) or federal disability benefits (such as SSI).⁵

● Determining Prohibited Conduct

Fair housing laws prohibit the following actions:

1. discrimination in the rental of housing because of the disability of the renter, a household member, or a person associated with the renter;⁶

³ For FHA: *see* 42 U.S.C. § 3602(h) (2012); 24 C.F.R. § 100.201 (2016). For Section 504: *see* 29 U.S.C. § 706(7) (2012); 24 C.F.R. § 8.3 (2016). For ADA: *see* 42 U.S.C. §121-2 (2012); 28 C.F.R. 35.104 (2016).

⁴ U.S. Dep’t of Hous. and Urban Dev. and U.S. Dep’t of Justice, Joint Statement of the Department of Housing and Urban Development and Department of Justice: Reasonable Accommodations Under the Fair Housing Act, (2004) [hereinafter *2004 Joint Statement*].

⁵ In determining eligibility for federally-assisted housing, a person with a disability is one who: (a) has a disability as defined under the Social Security Act; (b) has a developmental disability as defined by federal law or (c) is determined to have an impairment that: (i) is expected to be of long, continued and indefinite duration; (ii) substantially impedes the individual’s ability to live independently and (iii) is of such a nature that the disability could be improved by more suitable housing conditions.

⁶ 42 U.S.C. § 3604(f)(1) (2012).

2. discrimination in the terms or conditions of rental, or in the provision of services or facilities, because of a disability of the renter;⁷
3. inquiries to determine whether a tenant or person seeking to rent a dwelling unit has a disability;⁸
4. denying a reasonable accommodation or reasonable modification; and
5. discriminatory advertising.⁹

● The Special Case of Illegal Substance Use and Alcoholism

CURRENT USE OF ILLEGAL DRUGS

Individuals who currently use illegal drugs are explicitly excluded from protection under the federal and state Fair Housing Act.¹⁰

PAST USE/HISTORY OF ILLEGAL DRUG USE

The Federal and State Fair Housing Acts distinguish between individuals who are *currently* using illegal drugs and individuals who are not currently using illegal drugs but who have a *history* of addiction. Individuals who have a history of illegal drug use but are not currently using are considered to be “disabled” and are protected, by law, from discriminatory conduct. The laws are clear that an individual is protected if he or she is not using illegal drugs and: (1) has successfully completed a rehabilitation program; (2) has otherwise been rehabilitated or (3) is participating in a treatment program or self-help group.¹¹

ALCOHOLISM

Persons with alcoholism are treated differently under Section 504 than under the Fair Housing Act and the ADA (see *Figure 1*).

- The Fair Housing Act’s definition of disability includes alcoholism as a covered disability but provides a general exclusion for any individual whose tenancy would pose a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others, provided a reasonable accommodation could not eliminate the threat.¹²
- United States Department of Housing and Urban Development (HUD) regulations for Section 504 explicitly exclude from its definition of “individual with handicap” anyone whose current alcohol use prevents that person from participating in federally funded housing programs (which include meeting the terms of the lease) or whose current alcohol abuse would constitute a direct threat to property or the safety of others.¹³

⁷ 42 U.S.C. § 3604(f)(2) (2012).

⁸ 24 C.F.R. § 100.202(c) (2016).

⁹ 42 U.S.C. § 3604(c) (2012).

¹⁰ See e.g., 42 U.S.C. § 3602(h)(3) (2012).

¹¹ 29 U.S.C. § 705(20)(C)(ii) (2012). See *U.S. v. Southern Mgmt. Corp.*, 955 F.2d 914, 922 (4th Cir. 1992) (extending the ADA’s inclusion of “former” or “recovering” addicts as persons with a handicap to the FHA).

¹² See 42 U.S.C. § 3604(f)(9) (2012); Relevant Case #11 *infra* p. 24.

¹³ See 24 C.F.R. § 8.3 (2016) (defining “individual with handicaps” for Section 504 purposes).

DEFINING REASONABLE ACCOMMODATIONS

A “reasonable accommodation” is a change in the rules, policies, or procedures of a housing provider that is needed by a person with a disability in order to fully use or enjoy the dwelling or common areas. The mandate for making reasonable accommodations is found in both the Fair Housing Act and Section 504 (see *Figure 1*).

The Fair Housing Act requires housing providers to make reasonable accommodations as outlined in 24 C.F.R. 100.204(a), which states:

It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

The need for a reasonable accommodation may arise at the time person is applying for housing, during the tenancy, or to avoid eviction. It is the responsibility of the person with a disability, or someone acting on his or her behalf, to ask for a specific reasonable accommodation whenever one is needed.

The law does not establish any clear threshold (financial, administrative, or otherwise) for determining what is reasonable, but it does specify that landlords are not required to provide an accommodation if it would impose an “undue burden” or result in a “fundamental alteration” of the nature of the housing program.¹⁴ An undue burden is an unreasonable financial and administrative cost, which is demonstrated by comparing the financial and administrative costs of regular operation, the overall financial resources available to the landlord, and the costs of making the accommodation.¹⁵ A fundamental alteration is an accommodation that would change the basic operation or nature of services provided by significantly modifying, eliminating, or adding to the services that a landlord provides.¹⁶

● Individuals with Visual, Speaking, or Hearing Impairments

Landlords must ensure that individuals with visual, speaking, or hearing impairments can effectively communicate with them. For example, visually impaired persons may need to have the rental application or other written documents read to them or provided in an electronic format. Landlords should also be familiar with the Telecommunications Relay Service (TRS) which allows a deaf, hard of hearing, deaf-blind, or speech impaired individual to use special equipment to make telephone calls. The internet and cell phones have increased the ways in which persons with disabilities are able to communicate and made more TRS options available to serve users with different needs and circumstances. (For a brief overview of the different TRS methods and services, see Appendix E).

¹⁴ See *Southeastern Community College v. Davis*, 442 U.S. 397, 412–13 (1979).

¹⁵ *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2d Cir. 1995).

¹⁶ See *e.g., U.S. v. California. Mobile Home Park*, 29 F.3d 1413, 1416–17 (9th Cir. 1993).

A housing provider or a person with a disability can use TRS by calling the 7-1-1 Relay Center, where a specially trained operator relays messages between the relay user – using a text telephone or an assistive device – and a hearing person using a standard telephone. Note: Some people hang up on TRS calls because they think the CA is a telemarketer. If you hear, "Hello. This is the relay service..." when you pick up the phone, please don't hang up.

● Requests for Reasonable Accommodations

Upon receiving a request for a reasonable accommodation, the landlord should consider taking the following three steps. If a landlord denies a request for a reasonable accommodation, and the requesting individual files a complaint, the landlord's defense will rest upon proving that these steps were taken before the request was denied.

1. In requesting an accommodation, the requesting individual has disclosed that he or she has a disability. If the disability is obvious or otherwise known to the housing provider, no further inquiry should be made into the disability, and the person with a disability should not be required to obtain proof or verification of it. If the disability is not apparent, the landlord may ask for verification that the tenant has a disability as defined by the Fair Housing Act.
2. Establish that the accommodation is necessary. Verify that the requested accommodation will enable the requesting individual to have equal opportunity to use and enjoy a dwelling unit, including public and common use areas.
3. Determine that the accommodation is reasonable. Evaluate whether implementing the accommodation would impose an "undue burden" or result in a "fundamental alteration" of the nature of the housing program.

Once an accommodation is determined to be reasonable, the landlord cannot – directly or indirectly – impose the expense of providing the accommodation onto the tenant. For example, a landlord cannot require a person with a service animal to pay a pet deposit. Expenses incurred in providing reasonable accommodations must be paid by the landlord. It is recommended that requests for reasonable accommodations be made in writing, though this is not required.

● Relevant Cases

#1 Ulah was shown a model apartment and subsequently leased an apartment that was smaller than the model. She began to suffer from claustrophobia. She was prescribed Xanax, but the symptoms persisted. Ulah verbally requested that she be allowed to move into a larger apartment, but management told her that doing so involved "too much paperwork." Ulah submitted a notice of intent to vacate due to illness, and management sued her for unpaid rent. The court determined that because management was given notice of Ulah's disability but made no attempt to make a reasonable accommodation, they violated the Fair Housing Act and had discriminated against Ulah.¹⁷

#2 Steve, a tenant who had a mental disability, was in a fight with another tenant, and it was unclear which of the tenants provoked the other. After the fight, Steve asked that, in lieu of evicting him, the landlord give him a probationary period during which he would receive more closely monitored treatment as a reasonable accommodation. Steve produced a letter from his therapist explaining that Steve had a disability and that closer treatment would help. The

¹⁷ *Manor Park Apts. v. Garrison*, 2005-Ohio-1891 (11th Dist. Court of Appeals 2005).

landlord refused to grant Steve's requested accommodation. Because the landlord did not show why the proposed accommodation, or any other accommodation, would not have been reasonable, the court ruled that Steve had shown it was likely that his fair housing rights had been violated.¹⁸

#3 Carlo was keeping an emotional support dog in his condo in violation of the Condominium Association's "no pet" policy. When the Association learned of the dog, they sent him a letter informing him that he was in violation of the policy and that if the dog was not removed, Carlo would be fined. Carlo responded by informing the Board of Directors of the Association that the dog was an emotional support animal and that he was allowed to have one under federal law. Carlo included in his letter a note from his treating psychiatrist stating that the emotional support dog helped Carlo with his anxiety and depression. Still, the Association did not waive the "no pet" policy. The conflict led to Carlo selling his condo, after which he brought suit against the Association alleging discrimination in violation of the Fair Housing Act. The court upheld an administrative ruling that the Association has discriminated against Carlo.¹⁹

#4 Toni suffers from oversensitivity to multiple chemicals, for which she receives Social Security Disability payments. When Toni moved in, her landlord accommodated many requests by removing the carpet, cleaning with specified chemicals, cleaning the air ducts, and repainting. The tenant below Toni used cleaning solutions that irritated her, and Toni asked the landlord to evict that tenant. The court ruled that the rights of the tenant that lived downstairs did not have to be violated as part of a reasonable accommodation.²⁰

● Service and Assistance Animals

Permission to have a service or assistance animal live with a tenant is one of the most commonly requested accommodations that landlords receive. For purposes of the Fair Housing Act and Section 504, HUD defines an "assistance animal" as "an animal that works, provides assistance or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability." Animals *do not* need to have special training in order to qualify as an assistance animal under the Fair Housing Act or Section 504.

A service or assistance animal is not a pet. As a result, "no pets" policies, breed, weight or size restrictions and additional fees or deposits that apply to pets are not applicable to service or assistance animals for people with disabilities. Further, there are many types of assistance animals in addition to more common ones, such as dogs.

Requests for service or assistance animal should be treated like all other requests for reasonable accommodations. While a request may be denied if the *specific animal* in question would pose a direct threat or cause substantial physical damage, a landlord cannot base his or her decision on the breed, size or weight of the animal. Rather, the landlord must base it on objective evidence about the particular animal's actual risk and not on speculation about the animal or prior bad conduct by other animals of the same breed, for example.

Under the ADA, a "service animal" is a more narrowly defined term and refers to a dog or miniature horse that has received special training to assist a person with a disability. In most

¹⁸ *Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307 (E.D.N.Y. 2012).

¹⁹ *Castillo Condo. Ass'n v. U.S. Dep't of Hous. And Urban Dev.*, 821 F.3d 92, 95-100 (1st Cir. 2016).

²⁰ *Temple v. Gunsalus*, 1996 WL 536710 (6th Cir. 1996).

circumstances, housing providers who follow the assistance animal requirements of the FHA or Section 504 will also be in compliance with ADA rules governing service animals.²¹

● Other Frequent Types of Reasonable Accommodations

While defining “reasonable accommodation” is difficult, examples of past accommodations can help landlords and tenants understand the nature, scope, and type of accommodations that are “reasonable.” Below are examples of what a reasonable accommodation might look like:

- A landlord creates a designated parking spot for a tenant with a disability who has difficulty walking long distances.
- A landlord assists a prospective tenant with a mental impairment fill out the application.
- A landlord allows a tenant that needs a live-in home-healthcare aide to add that person to the lease as an additional occupant in the unit.
- A landlord lets a tenant with a mobility impairment move from a third-floor unit to a first-floor unit without the customary fee for moving to a different unit.
- A prospective tenant with no rent history due to an extended stay in a group home or psychiatric facility is allowed to provide a reference from an employer or social worker instead of a previous landlord.
- A tenant is notified by the landlord in advance of painting or pest treatments because of the tenant’s chemical sensitivity.²²

Reasonable accommodations can arise in various contexts for several different conditions. By learning the rules, and being flexible, landlords and tenants can often come to agree on arrangements that make renting and leasing property a pleasant experience for all parties.

²¹ For more information on service and assistance animals *see* U.S. DEP’T OF HOUS. AND URBAN DEV., SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS, (2013) *available at* https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf.

²² BAZELON CENTER FOR MENTAL HEALTH LAW, WHAT “FAIR HOUSING” MEANS FOR PEOPLE WITH DISABILITIES, 15 (2011).

DEFINING REASONABLE MODIFICATIONS

A “reasonable modification” is a change in the physical structure of a dwelling that allows a person with a disability to fully use and enjoy the dwelling. The change can be to the interior of a housing unit or to common or other public spaces, including parking areas, of rental housing covered by the Fair Housing Act. The landlord must allow physical or structural modifications if they are “reasonable” and necessary for the tenant to enjoy and use the premises.²³

● Requests for Reasonable Modifications

Upon receiving a request for a reasonable modification, the landlord should consider taking the following three steps. If a landlord denies a request for a reasonable modification, and the requesting individual files a complaint, the landlord’s defense may rest upon proving that these steps were taken before the request was denied.

1. In requesting a modification, the requesting individual has disclosed that he or she has a disability. If the disability is obvious or otherwise known to the housing provider, no further inquiry should be made into the disability, and the person with a disability should not be required to obtain proof or verification of it. If the disability is not apparent, the landlord may ask for verification that the tenant has a disability as defined by the Fair Housing Act.
2. Establish that the modification is necessary. Verify that the requested modification will enable the requesting individual to have equal opportunity to use and enjoy a dwelling unit, including public and common use areas.
3. Determine that the modification is reasonable. Evaluate whether the modification is structurally possible and will not damage the property or unreasonably interfere with other tenants’ use of the building or features.

It is recommended that requests for reasonable modifications be made in writing, though it is not required.

● Who Pays for the Modification?

Three questions should be asked in order to determine who will pay for a reasonable modification:

1. If the property was developed, even in part, with certain types of federal funds (see *Box 1*), the landlord must pay for the modification unless doing so would impose undue financial and administrative burdens on the operation of the housing facility.²⁴
2. If a multifamily (4 or more units) building was designed for first occupancy after March 13, 1991, it was required to meet certain accessibility requirements under the Fair Housing Act.²⁵ If the modification requested is necessary because the building is out of compliance with the Fair Housing Act, the owners are financially responsible for all

²³ 42 U.S.C. § 3604(f)(3)(A) (2012).

²⁴ 24 C.F.R. § 8.23(b)(1) (2016).

²⁵ 42 U.S.C. § 3604(f)(3)(C) (2012).

expenses necessary to bring the property into compliance with the law.²⁶ The fact that a building was approved by a local building inspector and received a Certificate of Occupancy does not prove that it meets Fair Housing Act requirements.²⁷

3. If the property did not receive federal financial assistance and meets the minimum accessibility requirements, then the tenant can be required to pay for the modification to the unit.

FEDERAL FINANCIAL ASSISTANCE DEFINED:

If a housing development is funded, even in part, with federal sources or receives a donation of land from a federal source, Section 504 of the Rehabilitation Act applies. Some common sources of Federal Financial Assistance are:

- HOME
- Community Development Block Grants (including Section 108 loans)
- Section 202 and 811 Supportive Housing for the Elderly or Persons with Disabilities
- McKinney-Vento Supportive Housing (permanent or transitional)
- USDA Rural Development Section 514, 515, and 538
- Public Housing Authorities
- Privately owned developments with federal project-based rental assistance

Most sources of direct or indirect federal funding trigger Section 504. However, there are some that do not. Three common federal programs that *do not* trigger Section 504 regulations are: (1) Low-income Housing Tax Credits, (2) tax-exempt bonds, and (3) properties developed without federal funds that are rented with Housing Choice Vouchers (Section 8), Shelter Plus Care Assistance, or other tenant-based rental assistance.

Box 1: Federal Financial Assistance Defined

● Standards for Modifications

If the tenant is paying for the alteration, the landlord can require that the work be done properly, that it comply with all necessary building and architectural codes, and that the tenant be responsible for obtaining all required permits.²⁸

For modifications made inside a tenant's unit, the landlord can also require that at the end of the tenancy the unit be restored to its original condition, but only if the modification will interfere with a future tenant's use of the unit.²⁹ Modifications made to common areas do not have to be restored by the tenant at the end of his or her tenancy. Many modifications, such as the installation of grab bars or widening doorways, do not interfere with a future tenant's use. If the alterations are substantial and the tenant cannot provide adequate assurances regarding payment for the restoration, the landlord can further require that a tenant pay into an interest-

²⁶ For guidance on technical compliance with the Fair Housing Act see North Carolina Housing Finance Agency, *Fair Housing Act Self-Evaluation Form*, NCHFA (July 21, 2017, 9:39 AM), <http://www.nchfa.com/es/rental-housing-partners/rental-developers/fair-housing-act-self-evaluation>.

²⁷ 42 U.S.C. § 3604(f)(6)(B) (2012).

²⁸ 42 U.S.C. § 3604(f)(3)(A) (2012); 24 C.F.R. § 100.203 (2016).

²⁹ 24 C.F.R. § 100.203(c) (2016).

bearing escrow account.³⁰ Any escrow agreement should be described in writing and signed by both the tenant and the landlord.

● Relevant Cases

#5 Todd, who uses a “Section 8” voucher to help pay his rent, has a child who uses a wheelchair. The bathroom door in the apartment was too narrow to permit the wheelchair to pass through it. Todd asked the landlord for permission to widen the doorway at his own expense. The landlord may not refuse to permit Todd to make the modification, but because the tenant-based “Section 8” voucher does not qualify as federal financial assistance, the landlord is not required to incur the costs of the modification. Further, the landlord may not condition permission on Todd paying for the doorway to be narrowed at the end of the lease because the wider doorway will not interfere with the landlord’s or next tenant’s use and enjoyment of the premises.³¹

#6 The Weiss family lived in a condo near the beach and had a son that required a wheelchair. They requested that a ramp be built that would enable the son to access the beach. The Condominium Association requested that the family provide the plans for the ramp, produce the necessary building permits, and pay for the ramp. Because the family refused to provide plans, produce permits and pay for the ramp, the modification they requested was unreasonable and the Condominium Association did not violate the Fair Housing Act by denying them permission to build it.³²

³⁰ 24 C.F.R. § 100.203(a) (2016).

³¹ 24 C.F.R. § 100.203(c) (2016).

³² *Weiss v. 2100 Condo. Ass’n, Inc.*, 941 F. Supp. 2d 1337 (S.D. Fla. 2013).

REASONABLE ACCOMMODATION AND MODIFICATION PROCEDURES

Accommodating tenants with disabilities requires flexibility and the application of good management techniques. The number of possible accommodations or modifications will be as numerous and diverse as the number of residents they assist. Many variations can be made to the suggestions below, and appropriate alternatives should be considered. Landlords should also draw upon outside experts and organizations that provide information and technical assistance (see Appendix D).

The first step, however, is creating an environment that is receptive to change, supportive of people with disabilities, open to a tenant's disclosure of a disability and sensitive to relationships among tenants.

● General Management Practices

All Landlords should:

1. Make sure they understand their obligations under federal and state anti-discrimination laws.
2. Increase their awareness of disability issues. Disabilities come in many forms and affect each person differently. Clearly communicate their expectations to residents, both in writing and orally, at move-in and throughout the term of tenancy. Expectations should be clearly set out in the lease (and rules, if any).
3. Establish a process for handling requests for accommodations and modifications.
4. Prominently display lists of community resources and contacts as well as information from supportive service providers.
5. Not discuss the tenant's disability with other tenants or third parties without the tenant's specific written permission.

Decisions involving denying a request for a reasonable accommodation or modification should generally be made by senior management personnel or the property owner, rather than the site manager.

● Admissions Policies

Landlords may not reject a tenant's application because of his or her disability or factors relating to the disability.³³ Landlords also may not use stereotypes to reject an applicant. A refusal based on concerns about the health and safety risk to others, for instance, should be based on documented past history of the specific applicant or tenant rather than on the landlord's judgment about possible future behavior.³⁴ Landlords can refuse to rent to someone who either:

- Fails to meet legitimate screening criteria, such as the financial ability to pay the rent, or
- Who would pose a direct threat to the health and safety of other individuals or would result in substantial physical damage to the property of others (see pp. 31-32 for more information).

³³ See *e.g.*, *Meadowbriar Home for Children, Inc., v. G.B. Gunn*, 81 F.3d 521, 530 (5th Cir. 1996).

³⁴ See *Hackett v. Comm'n on Human Rights and Opportunities*, 1996 WL 457157 (Conn. Super. 1996).

Poor credit and criminal history are common barriers for many tenants, including persons with disabilities. Landlords may still be required to make reasonable accommodations or modifications for applicants with poor credit or a criminal record if the reason the applicant has poor credit or a criminal record is directly related to their disability.

In considering requests for reasonable accommodations in the screening process, as elsewhere, the landlord must consider individual circumstances and facts. The requested accommodation must be reasonable, i.e. it will not cause an undue financial and administrative burden or result in a fundamental alteration of the nature of the housing program. The landlord does not have to waive the protective policy entirely, but can accommodate an applicant by modifying it for the situation. In the case of a past criminal history, a lease addendum could clearly state that criminal activity in violation of the lease will lead to eviction proceedings.³⁵ In the case of poor credit, if the period of paying bills on time has been too short to establish a pattern of financial responsibility, the tenant could be asked to have a co-signer for the initial term of their lease until they can demonstrate their ability to pay rent on time.³⁶

³⁵ See *Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307 (E.D.N.Y. 2012). See also *Box 1*, *infra* p. 16.

³⁶ See *Giebeler v. M&B Associates*, 343 F.3d 1143 (9th Cir. 2003). See also *Box1*, *infra* p. 16.

CRIMINAL BACKGROUND SCREENING

Many landlords utilize criminal background screening when deciding whether to rent to a particular applicant. While criminal history is not a protected class, landlords must exercise caution in this area, as overbroad screening could result in violations of fair housing laws.

First, if a landlord uses any type of background screening (criminal, credit, immigration, etc.), this should be done consistently for all tenants or prospective tenants, not only ones who “look” suspicious.

Second, landlords should not make decisions based solely on an arrest. Rather, decisions should be based on convictions. (If a person has an arrest with pending charges, the provider could either delay a decision until the outcome is determined or evaluate the pending charge as a conviction, pending resolution.

Third, for convictions, the housing provider must consider the nature, seriousness, and time of the conviction. A recent conviction for a serious offense that could indicate the person presents a threat to others’ safety or to property can be used to deny tenancy. However, a conviction for a minor offense or one that occurred many years ago should not be used to deny tenancy to an applicant.

Fourth, under some circumstances the Fair Housing Act may require landlords to make reasonable accommodations for people who can demonstrate a direct link between their disability and the behavior underlying their conviction if the proposed accommodation can, with reasonable assurances, prevent the tenant from being a direct threat to the safety of other tenants. One example might be granting an accommodation to approve a tenant who was convicted for disturbing the peace, even though that conviction would normally make them ineligible, if the person’s actions were caused by a mental disability and the person has changed his treatment plan to prevent future similar behavior.

Additional reasonable accommodations for applicants with a criminal record might include:

- allowing a tenant who has a drug conviction due to an addiction to rent because she no longer uses drugs, has completed substance abuse treatment, and has not been arrested subsequently, or
- renting to a tenant with a criminal history of vagrancy, trespassing, and assault because the convictions happened while he was homeless due to mental illness and he has not been convicted of a crime since getting into treatment.

Box 2: Criminal Background Screening

TENANTS WITH POOR OR NO CREDIT HISTORY

While landlords may ordinarily consider income and credit history in making rental decisions, refusing to rent to a prospective tenant due to a lack of credit or poor credit history can be a violation of the Fair Housing Act if the person's credit history is associated with his or her disability and the proposed accommodation is reasonable. For example, prospective tenants may have poor credit due to an inability to pay medical bills associated with treating their disability or an inability to work for a period of time because of their disability. Or a person may not have a credit history due because their disability prevented them from working for an extended period of time. A reasonable accommodation might include allowing a prospective tenant to have someone co-sign the lease when ordinarily co-signing is not allowed.

While prospective tenants can ask for reasonable accommodations to address their credit history, landlords can refuse to grant requests that would cause an undue administrative and financial burden. For example, landlords are not required to reduce the rent as an accommodation.

Additional reasonable accommodations for applicants with poor credit history might include:

- accepting an applicant with a bankruptcy on her credit report, if the bankruptcy was due to a serious illness that interrupted her working life and she has paid her bill on time since declaring bankruptcy, or
- approving an applicant who, because of a prior untreated mental illness, had engaged in uncontrolled spending that resulting in poor credit and defaults on loans where the person has since received treatment for his illness and is in compliance with a repayment plan.

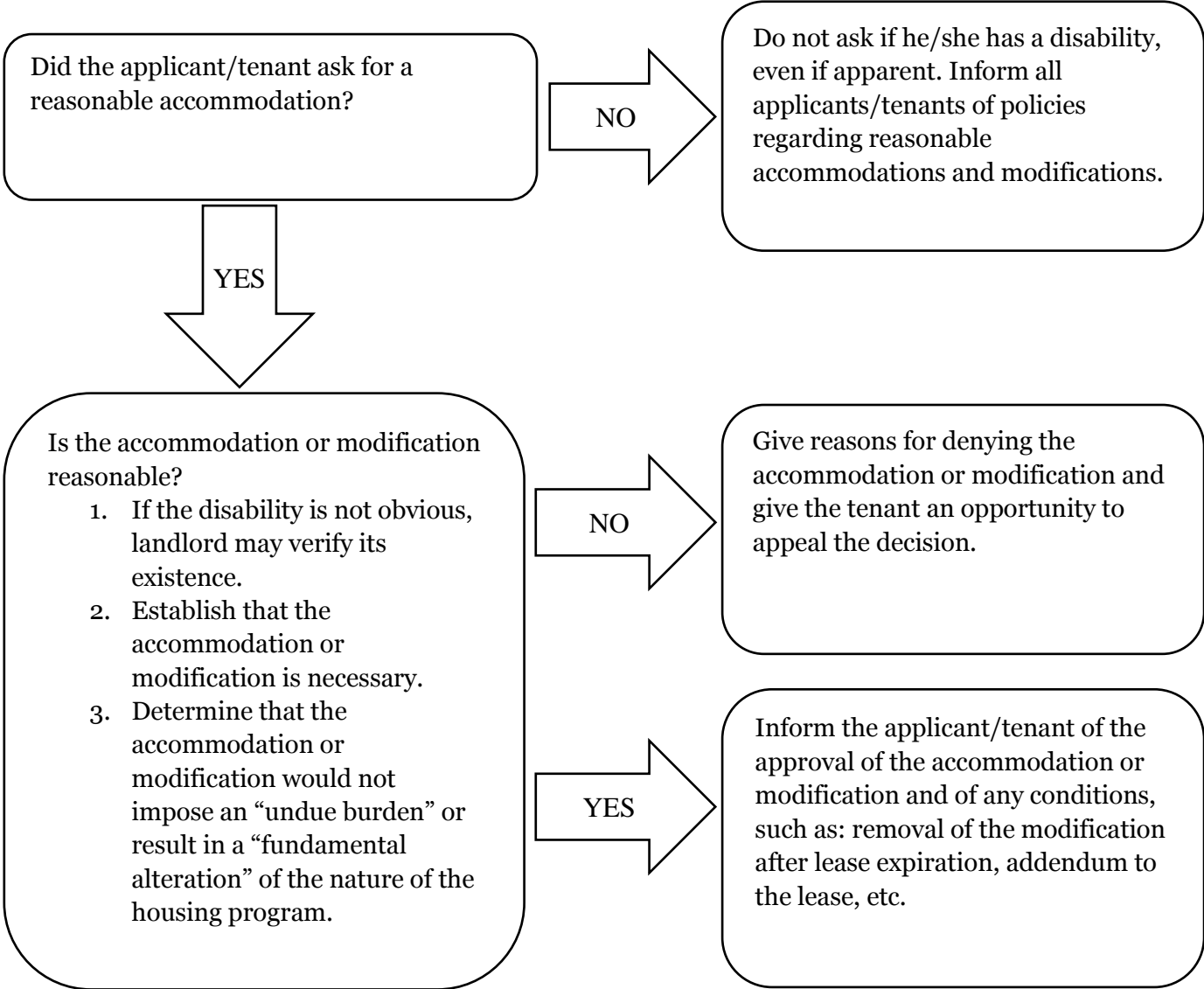
Box 3: Tenants with Poor or No Credit History

Landlords should consider taking the following steps to determine what a reasonable accommodation is regarding the tenant screening process:

1. In requesting an accommodation, the requesting individual has disclosed that he or she has a disability. If the disability is obvious or otherwise known to the housing provider, no further inquiry should be made into the disability, and the person with a disability should not be required to obtain proof or verification of it. If the disability is not apparent, the landlord may ask for verification that the tenant has a disability as defined by the Fair Housing Act.
2. Verify that the requested accommodation will enable the requesting individual to have an equal opportunity to use and enjoy a dwelling unit, including public and common use areas.
3. Determine that the accommodation is reasonable. Evaluate whether implementing the accommodation would impose an "undue burden" or result in a "fundamental alteration" of the nature of the housing program.

No person comes with a guarantee that he/she will be a good tenant, but a thoughtful and well-documented reasonable accommodation process can both protect the landlord from undue risk and allow the tenant with a disability access to housing.

Figure 2: Reasonable Accommodations or Modifications Flow Chart



● Questions During the Application Process

A prospective tenant does not have to disclose a disability unless he or she is seeking a reasonable accommodation or modification.³⁷ Even if the disability is apparent, the landlord should not ask about it.³⁸ If the applicant discloses a disability, the landlord may then ask follow-up questions but only to the extent necessary to determine the reasonableness of a particular accommodation or modification.³⁹

The landlord must be careful to ask the same questions and apply the same screening criteria to all potential tenants and to ensure that the questions asked do not have the effect of probing for information that relates to a disability.⁴⁰ For example, the landlord may not ask whether a person is capable of “living independently.”⁴¹ While the question may appear to be neutral, it may have the effect of eliciting information about a disability and is not relevant to whether the prospective tenant will be able to comply with the terms of the lease.

WHAT QUESTIONS ARE LEGAL?

The following are examples of questions that landlords may ask regarding an applicant’s ability to follow the terms of the lease:

1. Will the applicant pay rent and other fair charges in a timely manner?
2. Will the applicant care for and avoid damaging the unit and the common areas, use facilities and equipment in a reasonable way, create no health, safety or sanitation hazards and report maintenance needs?
3. Will the applicant avoid interfering with the rights and enjoyment of others and avoid damaging the property of others?
4. Will the applicant avoid criminal activity that threatens the health, safety or rights of other tenants or staff and avoid drug-related criminal activity?
5. Will the applicant comply with necessary and reasonable house rules, program requirements of HUD (if applicable) and health and safety codes?

WHAT QUESTIONS CANNOT BE ASKED?

Generally, it is illegal for landlords to ask:

1. whether an applicant has a disability;
2. whether an applicant has a particular type of disability;
3. questions about an applicant’s disability, including its severity;
4. any question, such as “Do you take any medications?” that would require an applicant to disclose his or her disability;
5. whether any member of the applicant’s family or any friend or associate has a disability;
and

³⁷ See *Taylor v. Harbour Pointe Homeowners Ass’n*, 690 F.3d 44, 48–51 (2d Cir. 2012).

³⁸ 24 C.F.R. § 100.202(c) (2016).

³⁹ *Jankowski, Lee & Associates v. Cisneros*, 91 F.3d 891 (7th Cir. 1996).

⁴⁰ 24 C.F.R. § 100.202(c) (2016).

⁴¹ See *Cason v. Rochester Hous. Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 1990).

6. whether the applicant has the ability to live independently or evacuate the dwelling (see p. 29–30).

Exceptions to the above rules include the following scenarios:

- If an applicant has applied for a housing program designated for individuals with disabilities or with a certain type of disability, the applicant may be asked if he or she has a qualifying disability.⁴²
- If a person is applying for housing where a priority or preference is in place for persons with disabilities, the applicant may be asked if he or she qualifies for that priority or preference.⁴³
- If an applicant is trying to qualify for an allowance that reduces rent on the basis that he or she has a disability (i.e., in some HUD assisted housing the \$400 allowance for elderly, disabled, and handicapped families; the allowance for unreimbursed medical expenses in excess of three percent (3%) of annual income and the handicap assistance allowance), he or she may be asked to verify that he or she has a disability and disability-related expenses when relevant.⁴⁴
- If the applicant requests a reasonable accommodation or modification, the landlord may ask follow-up questions about the disability, but only to the extent necessary to understand (1) that the individual has a disability and (2) the connection between the disability and the accommodation or modification requested.⁴⁵

● Denial of Tenancy or Accommodations

When any application for tenancy is denied, the landlord should indicate that an opportunity to request a reasonable accommodation is available if the applicant believes it would enable him or her to meet the terms of the lease. A landlord could include the following language in a rejection letter: “If you are a person with a disability, and the reason your application is being denied is related to your disability, you may contact us no later than [date, time] to discuss whether a reasonable accommodation by us would make your application acceptable.”⁴⁶

If an applicant’s request for a reasonable accommodation is denied, the applicant should be told the reason for the denial and given an opportunity to respond. In responding, the applicant could point out that:

- the reason given for the denial is actually the result of a disability;
- that there has been a change in the applicant’s ability to be a good resident; or
- that there is a plan that will enable the applicant to be a good resident.

Any one of these outcomes, if applicable, is grounds for reconsideration. If the request is reconsidered, each step of considering the request (see p. 15) should be repeated and documented.⁴⁷

⁴² 24 C.F.R. § 100.202(c)(2) (2016).

⁴³ 24 C.F.R. § 100.202(c)(3) (2016).

⁴⁴ 24 C.F.R. § 5.611 (2016).

⁴⁵ *Jankowski, Lee & Associates v. Cisneros*, 91 F.3d 891 (7th Cir. 1996).

⁴⁶ THE COMPASS GROUP, *FAIR HOUSING: A GUIDEBOOK FOR OWNERS AND MANAGERS OF APARTMENTS* (2d ed. 2008).

⁴⁷ For sample forms for use with tenants, see Appendices A and B.

● Relevant Cases

#7 John applied to rent a one-bedroom apartment. On his application he listed his monthly income at \$850 and his occupation as “disabled.” John has been unable to work because of complications from AIDS. John has a history of prompt rental payment and no negative credit history. John’s application was denied for failing to meet the minimum monthly income requirement, a failure directly related to his disability status. The apartment denied John’s mother’s attempt to act as a cosigner because of the landlord’s strict no-cosigner policy. The court determined that even if an administrative policy seems disability-neutral, the failure to offer or to accept a reasonable accommodation to the administrative policy was a violation of the Fair Housing Act.⁴⁸

#8 Denise had an apartment with a state-sponsored entity that provided housing for persons with severe physical or mental disabilities but that were still capable of “independent living.” After she moved in, her health deteriorated, and she required hospitalization for symptoms related to her disability. Once Denise’s stay in the hospital ended, she was asked to move out because management believed she was no longer capable of independent living. Further, as part of their application process, the apartment required that applicants submit medical records to verify their ability to live independently. The apartment violated the FHA *both* by requiring submission of medical records and by determining whether prospective tenants were capable of independent living. State-sponsored programs for people with disabilities can verify that applicants are in fact disabled, but they cannot inquire as to the nature or details of the disability. Similarly, housing providers cannot require that a tenant or tenant applicant be able to live “independently” without assistance from friends, family or an in-home aid.⁴⁹

⁴⁸ *Giebler v. M&B Associates*, 343 F.3d 1143 (9th Cir. 2003).

⁴⁹ *Laflamme v. New Horizons, Inc.*, 605 F. Supp. 2d 378 (D. Conn. 2009).

LEASE VIOLATIONS AND OTHER TENANCY MATTERS

Residents sometimes fail to follow important parts of the lease or repeatedly break minor rules. Persons with disabilities, like all other residents, may be evicted for failure to comply with the terms of the lease or rules of the property. However, as with initial occupancy, landlords are required to make reasonable accommodations to the extent necessary to allow the residents with disabilities to have an opportunity to comply with the terms of the lease. The following suggestions should help landlords to deal effectively with residents with a disability who violate the lease:

1. Managers must distinguish between behavior that is merely irritating and behavior that is so destructive of the rights of other residents that it violates the lease. Residents do not have a right to be shielded from seeing or interacting with persons with disabilities. However, residents do have a right to be protected from behavior that threatens their quiet enjoyment or safety.
2. Education of residents may be helpful so that problems do not occur or escalate. Ideally, a neutral, expert, third party would provide such education with the goal of increasing the residents' understanding. Local human service organizations offer tapes, workshops, and lectures on disabilities. Advocacy and vocational support groups can also provide assistance (see Appendix D).
3. If a resident violates the lease agreement, the landlord may issue a notice of lease violation or lease termination. This notice should clearly communicate the reason and include information about reasonable accommodations (see Appendix A).
4. All notices of denial, lease violations, and lease terminations should include the opportunity for an informal meeting (see Appendices B and C).
5. Landlords must treat residents with respect, especially when discussing reasonable accommodations.
6. Landlords should offer assistance, such as referrals to social service agencies, to help residents comply with the stated expectations.
7. If a resident violates his or her lease after receiving a reasonable accommodation, the landlord may pursue enforcement options. However, another reasonable accommodation may be appropriate if the previous accommodation did not adequately address the tenant's disability.
8. Landlords should respect an individual's privacy. Not everyone with a disability wants their neighbors to know about their disability. However, if a resident indicates a willingness to discuss his or her condition, the landlord may want to facilitate such a discussion.
9. Landlords should take into account the degree to which the problematic behavior is involuntary. Many disabilities result in behavior that cannot be readily controlled and that some neighbors may consider annoying or disturbing. In some cases, landlords could ask the resident with the disability whether he or she would allow the landlord to provide limited information to specific neighbors that will allay their concerns and help eliminate further conflict. The landlord should not share information without consent.

● Step-by-Step Process for Handling Lease Violations

When confronted with a resident who breaches his or her lease, the landlord can use the steps listed below as a model. Of course, the particular circumstances of each situation will determine which of the steps are warranted or appropriate.

1. When a resident commits a violation that provides sufficient cause for immediate lease termination, the landlord should:
 - a. send the resident a termination letter explaining how the resident's action constituted a violation of the lease;
 - b. allow the resident an opportunity to discuss his or her termination; and
 - c. tell the resident that if a disability caused the violation, he or she may request an accommodation.
2. When a resident commits a violation that does not warrant immediate lease termination, the landlord should:
 - a. send the resident a warning letter explaining how the resident's action constituted a violation of the lease;
 - b. allow the resident the opportunity to discuss the matter; and
 - c. inform the resident that if a disability caused the violation, the resident may request an accommodation.
3. Landlords should provide the opportunity to request a reasonable accommodation for a disability to all residents who violate their lease agreement. Offering such a provision only to those whom the landlord suspects of having a disability may be considered discrimination. During the meeting with the resident to discuss the lease violation, the landlord should:
 - a. discuss the matter openly with the resident;
 - b. use a copy of the resident's lease as reference when explaining how the resident's action constituted a violation; and
 - c. ask the resident if he or she understands everything explained in the warning/lease termination letter. This will give the resident the chance to discuss his or her disability, if any.
4. If the resident discloses a disability and requests an accommodation, the landlord should:
 - a. have a healthcare provider or other reliable third person with knowledge verify the disability, if the disability is not readily apparent;
 - b. utilize the qualified person that verified the disability as a resource for providing the reasonable accommodation (see Appendix D for a list of available resources); and
 - c. follow the steps for "Requests for Reasonable Accommodations" on pp. 12-13.
5. When reviewing a request for a reasonable accommodation, the landlord may consider the following:
 - a. whether the accommodation will prevent future violations of the lease; and
 - b. whether the accommodation will place an undue financial and administrative burden on the management company or owner, or result in a fundamental alteration in the nature of the housing program. If so, or if the accommodation will not prevent future

- violations, the requested accommodation is likely not a “reasonable” accommodation under the FHA and the landlord is not required to make the accommodation.⁵⁰
6. If the manager decides that a reasonable accommodation should be made for the tenant, the manager may prepare a lease addendum that includes this accommodation. The addendum may also include a provision stating that the lease may be terminated if the violation occurs again.
 7. If the resident does not disclose a disability or attend a meeting to discuss the violations, the manager should suggest possible sources of support for the resident, e.g. family, friends, or social service agencies. The landlord must respect the tenant’s right to privacy. Before involving a third party the landlord should try to resolve the matter with the resident.
 - a. If this is not possible, the resident must give written permission before a third party can become involved.
 - b. If permission is granted, the landlord should contact the source of assistance informing them that if the resident has a disability, the resident has the right to request an accommodation.
 8. If a meeting is successfully arranged between the manager, resident and a third-party support person for the tenant, the manager should encourage an active discussion of the problem between all three parties. To facilitate discussion, the manager should:
 - a. try to foster an atmosphere in which the resident may speak freely about his or her problems and disclose a disability, if any, and
 - b. allow the tenant’s support person to make suggestions that might help prevent future violations and use the support person as a resource if an accommodation is requested.

The resident is not required to participate in any meeting with third parties. If the resident decides not to participate with the third party, the landlord has met its duty by providing the resident the opportunity to request an accommodation or have a request made on the resident’s behalf.

If the resident does not disclose a disability and the landlord decides to contact a relative or social service representative, then these steps must be taken for all residents who do not discuss or disclose a disability and not just for those residents thought to have a disability.

● Early Termination of a Lease

A tenant may develop a disability, or an existing disability may become so severe during the term of a lease, that he or she cannot meet the obligations of the lease. In cases in which there is no reasonable accommodation or modification that can remedy the situation, the tenant may have no choice but to find alternative housing. The tenant should request that the landlord permit an early termination of the lease, and the landlord should grant that request, if it is reasonable. Either the tenant or the landlord may offer an alternative accommodation, such as another unit that is more suitable for the tenant.

As with other determinations of reasonableness, a landlord may only refuse to terminate the lease without penalty if the accommodation would result in an undue burden or fundamentally

⁵⁰ See *infra* pp. 12–13.

alter the nature of the services provided. In determining reasonableness, the landlord may consider the following:

- likelihood of filling the vacancy given vacancy rates in the same building, complex, or area;
- any particular characteristics of the dwelling that make it desirable or undesirable;
- the amount of time remaining on the lease term;
- the size of the owner's business; and
- the owner's overall resources.

● Relevant Cases

#9 Bruce, who suffers from an undisclosed mental illness, signed a one-year lease with an apartment complex, paying a portion of his rent and supplementing his payment with assistance from HUD. After living in his apartment for three days, his condition worsened, and he was hospitalized. His psychiatrist determined that it would be unsafe for Bruce to continue to live alone in the apartment, and Bruce sought to terminate the lease early. Bruce was assessed for the remaining rent and cleaning charges. The court determined that failure to allow for the early termination of a lease may constitute a failure to provide a reasonable accommodation as required by the Fair Housing Act.⁵¹

#10 Susan, a tenant with a physical disability, was required to walk a considerable distance from her parking spot to her apartment, causing her pain and difficulty. The apartment complex normally rents reserved parking spaces for a fee, but Susan requested that she be reserved a space for free. None of the available reserved spaces were near Susan's apartment. The complex offered to designate some handicapped spaces, but none near her apartment. The court ruled that the complex would not have been unduly burdened by reserving a previously unreserved space for Susan's use without charge as a reasonable accommodation under the Fair Housing Act.⁵²

#11 Gary and his wife rented a unit in a manufactured home park. Gary was diagnosed as having a schizoaffective disorder, but he stopped taking his medication. After Gary was arrested for assaulting his wife and walking to an adjacent public park with a loaded rifle, his wife was informed that they were no longer welcome to rent their unit. Gary was treated for his psychosis and for a chemical dependency that worsened his condition. The park refused a provisional plan outlined by the treatment facility to return Gary to independent living because the park considered him a "direct threat." The court ruled that this constituted a violation of the Fair Housing Act for failing to attempt to provide a reasonable accommodation.⁵³

#12 Phyllis has AIDS-related, non-Hodgkin lymphoma. Phyllis lives in a rent controlled apartment in New York for most of the year, but she spends the winter months in Florida to improve her health. Having a roommate while absent from the apartment for an extended period was a violation of the lease terms, but Phyllis asked that she be allowed to violate the lease term as a reasonable accommodation to help defray her housing costs. The court ruled that when a reasonable accommodation request is not directly related to a disability, but is based on

⁵¹ *Samuelson v. Mid-Atlantic Realty Co.*, 947 F. Supp. 756 (D. Del. 1996).

⁵² *Hubbard v. Samson Mgmt. Corp.*, 994 F. Supp. 187 (S.D.N.Y. 1998).

⁵³ *Cornwell & Taylor v. Moore*, 2000 WL 1887528 (Minn. Ct. App. 2000).

economic concerns stemming from the disability, the landlord does not have to make an accommodation to allow lease violations.⁵⁴

#13 While a tenant in a mobile home park, Barbara was subject to a lease provision that she be responsible for maintaining the yard around her home. The park sought to evict Barbara for failure to conduct maintenance, and she responded that an illness had prevented her from doing the work. Barbara obtained a caretaker to live rent-free in her home in exchange for doing maintenance. The park again sought to evict her for keeping a roommate not listed on the lease. The court upheld a finding that attempting to evict Barbara instead of allowing the alternative arrangement was a violation of the Fair Housing Act.⁵⁵

#14 Karen, who is wheelchair-bound, and her daughter moved into Cottonwood Apartments and were placed on a top-floor apartment. Karen and her daughter both contacted management and requested to be moved to a lower floor, where a two-bedroom apartment was available. The court determined that where an alternative apartment is available, it is a violation of the Fair Housing Act for an apartment complex to refuse to accommodate a tenant with a disability by not allowing the tenant to transfer to a different apartment.⁵⁶

#15 Linda, suffering from multiple sclerosis, moved into a condominium with a caregiver and two dogs. After one of her dogs died, Linda obtained a puppy to train as a service dog, which was a violation of the Condominium Association's rules. The dog was trained to provide emotional support for Linda and to alert others when she was in need of assistance. The court found that prohibiting Linda from keeping the dog as a service animal was a violation of the Fair Housing Act for failing to provide Linda a reasonable accommodation.⁵⁷

● Protecting the Health and Safety of Other Residents

Landlords may believe that they are protecting the safety of all their residents by excluding persons with disabilities from the tenancy. They may even believe they are under some obligation to do so, based on the possibility that tenants with disabilities could pose a threat to the health or safety of other tenants or their property. In fact, such action by the landlord could constitute illegal conduct.

First, fair housing law does not allow for exclusion of individuals based on fear, speculation, or stereotypes about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment of the facts of the particular situation. Such an individualized assessment should consider:

- the nature, duration, and severity of the risk or injury;
- the probability that injury will occur; and
- whether there are any reasonable accommodations that will eliminate the direct threat.⁵⁸

For example, a tenant with developing Alzheimer's may have a history of causing cooking-related fires, creating a concern for the safety of the resident and other tenants. Reasonable

⁵⁴ *Marks v. BLDG Mgmt. Co., Inc.*, 2002 WL 764473 (S.D.N.Y. 2002).

⁵⁵ *Boulder Meadows v. Saville*, 2 P.3d 131 (Colo. Ct. App. 2000).

⁵⁶ *Roseborough v. Cottonwood Apartments*, 1996 WL 490717 (N.D. Ill. 1996).

⁵⁷ *Fulciniti v. Village of Shadyside Condo. Ass'n*, 1998 U.S. Dist. Lexis 23450 (W.D. Pa. 1998).

⁵⁸ See 2004 Joint Statement, *supra*.

accommodations, such as removing the stove or making it inoperable, can eliminate this risk. The tenant can have a microwave or receive Meals on Wheels as an alternative.

Second, it is important to note that generally landlords are not liable for the criminal acts of their tenants.⁵⁹

● The Issues of Living Independently and Evacuation

Landlords may be concerned about tenants' ability to take care of themselves generally or to engage in a more specific activity, such as evacuating safely from an upper floor in the event of an emergency. Regardless of the motivation behind such concerns, they are not criteria that landlords may consider for applications or existing tenancies. Landlords should not ask about the tenant's ability to live independently, nor should they ask about the tenant's arrangements for assistance in such matters.⁶⁰

Tenants can make arrangements with relatives, live-in aides, neighbors, or a contract service provider to assist them with daily chores and in the event of an emergency. Similarly, in multi-story buildings, with or without an elevator, tenants with disabilities may not be *required* to live on the first floor. While the landlord cannot make a determination whether or not tenants can evacuate, if a tenant *requests* a move to another floor because of a disability, this would often be a reasonable accommodation.

● Relevant Case

#16 A city housing authority provided a questionnaire and conducted an in-home examination to determine if applicants could live independently. Daisy was denied housing because the authority determined that her inability to walk without a walker, incontinence and use of adult diapers, and her need for ten-hour daily assistance rendered her unable to live independently. The court determined that such a requirement and investigation into an applicant's ability to live independently constitutes unlawful discrimination based on disability.⁶¹

⁵⁹ See *Shepard v. Drucker & Falk*, 63 N.C. App. 667 (1983); *Davenport v. D.M. Rental Properties, Inc.*, 217 N.C. App. 133 (2011).

⁶⁰ For more on this, see *supra* text accompanying note 50.

⁶¹ *Cason v. Rochester Hous. Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 1990).

CONSEQUENCES

Failure to comply with fair housing laws can have significant negative consequences for management companies and owners, including:

- actual damages to a tenant, including pain and suffering;
- injunctive relief, which could cover future business activities, such as preventing a company from buying other apartment complexes;
- civil penalties (as of 2017, the could be up to \$20,111 for a first offense);⁶²
- punitive damages; and
- reasonable attorney's fees and costs.

⁶² HUD publishes inflation-adjusted civil penalty amounts periodically, so this number will likely change in the future. Inflation Catch-Up of Civil Monetary Penalty Amounts Final Rule and Adjustment of Civil Monetary Penalty Amounts for 2017, 82 Fed. Reg. 24,521, 24523 (May 30, 2017).

APPENDICES

- APPENDIX A: Sample Notice of Rights
- APPENDIX B: Sample Tenant Screening Procedures
- APPENDIX C: Sample Request and Response Forms
- APPENDIX D: Housing Resource Guide
- APPENDIX E: Telecommunications Relay Service

APPENDIX A:
Sample Notice of Rights

NOTICE OF RIGHT TO REASONABLE ACCOMMODATION AND
MODIFICATION

IF YOU HAVE A DISABILITY and any of the following kinds of changes would help you live here, use the facilities, or take part in programs on-site, you can ask for these kinds of changes, which are called reasonable accommodations:

- A change in the rule or the way we do things
- Repair or modification in your apartment, or a special type of apartment
- A change or repair to some other part of the buildings or grounds
- A change in the way we communicate with you or give you information.

If you can show that you have a disability, and if your request is reasonable, not too expensive or too difficult to arrange, we will try to make the changes you request.

We will give you an answer in _____ days, unless there is a problem getting the information we need or unless you agree to a longer time. We will let you know if we need more information or verification from you or if we would like to talk with you about other ways to meet your needs.

If we turn down your request, we will explain the reasons. You can give us more information if you think it will help us.

If you need help filling out the **Reasonable Accommodation/Modification Request Form**, or if you want to give us your request in some other way, we will help you do so.

You can get a **Reasonable Accommodation/Modification Request Form** in the management office.

This notice can be given to applicants and tenants and/or posted in the management office.

APPENDIX B: Sample Tenant Screening Procedures

SAMPLE B1: CRIMINAL BACKGROUND SCREENING PROCEDURE

The management company will conduct a criminal background check on each adult member of an applicant household. An adult means a person 18 or older.

If the criminal background report reveals negative information about a household member and the management company proposes to deny admission due to the negative information, the subject of the record (and the applicant, if different) will be provided notice of the proposed adverse action and an opportunity to dispute the accuracy of the record. The notice will include the name, address, and telephone number of the agency that composed the criminal record report and inform the applicant of his or her right to dispute the accuracy of the criminal record report as well as his or her right to a free copy of the criminal record report.

If the applicant does not contact the management company to dispute the accuracy of the criminal record within 14 calendar days, the management company will send a written notice of ineligibility to the applicant stating the specific reason for denial and advise the applicant of their appeal rights and – if disabled – their right to request a reasonable accommodation, if applicable.

If the applicant's criminal conviction was related to his or her disability, the management company will consider a reasonable accommodation.

The management company will not consider an arrest or charge that was resolved without conviction. In addition, the management company will not consider expunged or sealed convictions. The management may deny admission if an applicant has pending charges at the time of application.

Where the management company considers denying admission to a household based on a criminal conviction or pending criminal charge, the management company will conduct an individualized assessment of the criminal record and its impact on the household's suitability for admission. This individualized assessment will include consideration of the following factors: (1) the seriousness of the criminal offense; (2) the relationship between the criminal offense and the safety and security of residents, staff, or property; (3) the length of time since the offense, with particular weight being given to significant periods of good behavior; (4) the age of the household member at the time of the offense; (5) the number and nature of any other criminal convictions; (6) evidence of rehabilitation, such as employment, participation in a job training program, education, participation in a drug or alcohol treatment program, or recommendations from a parole or probation officer, employer, teacher, social worker, or community leader; and (7) tenancy supports or other risk mitigation services the applicant will be receiving during tenancy.

SAMPLE B2: CREDIT SCREENING PROCEDURE

Credit reports will be obtained for all applicant household members who are 18 years of age or older. The credit report must demonstrate that the applicant has paid financial obligations as agreed. Monies owed for medical related expenses will be disregarded.

Either the management company or a third-party screening company retrieves credit records and independently assesses an applicant's credit performance, assigning greater weight to activity reported over the most recent 24-month period. An applicant may be rejected if the report demonstrates a history of poor credit with little or no effort made to address the outstanding debts.

An applicant will be denied if the credit report shows:

- Unpaid balance(s) owed to current or previous landlord(s).
- Outstanding debt to a utility company that would prohibit the applicant from establishing utility service in his/her name prior to move-in. Applicants may be re-considered if they provide evidence the debt has been paid and the utility company will provide service.
- A bankruptcy that has not been discharged.

Should the applicant be rejected based on credit, the Landlord will provide the applicant with the name and contact information of the credit reporting agency. All applicants may appeal the rejection and, if disabled, may request a reasonable accommodation. The Landlord will waive a rejection based solely on credit if the negative information can be mitigated to the satisfaction of the Landlord by substantially reducing the financial risk to the Landlord. Such examples of mitigation of risk include an applicant providing an acceptable third-party guarantor of the lease or paying an increased security deposit.

APPENDIX C:
Sample Request and Response Forms

SAMPLE C1:
REASONABLE ACCOMMODATION REQUEST FORM FOR TENANTS

I have a disability. I believe that the problems causing you to reject my application for housing are related to my disability.

1. This is why I think the problem happened as a result of my disability:

2. I think the problem is not likely to happen again because:
The things described below have changed in my life.

or

A reasonable accommodation would solve the problem.
The accommodation I request is:

3. You can verify that the problem for which I would be rejected from housing was a result of my disability by contacting:

Name:

Phone:

Address:

4. You can verify the reasons that I think the problem is not likely to happen again and that I will be likely to continue doing what I need to do to avoid these problems by contacting:

Name:

Phone:

Address:

5. You can verify that the reasonable accommodation I am requesting is necessary and likely to solve the problem by contacting:

Name:

Phone:

Address:

[signature]

SAMPLE C2:
REASONABLE ACCOMMODATION REQUEST FOR CURRENT TENANT

Date: _____

Building Manager's Name: _____

Address: _____

Dear _____,

I live in Apt. # _____ at
_____. I have a disability that
prevents me from:

I am therefore requesting a reasonable accommodation. I have attached a verification from _____ of my disability and the functional limitation I experience as well as the accommodation(s) I need in order to compensate for my disability. I am asking for this accommodation so that I can have full use and enjoyment of my home.

Please reply to my request in writing within the next ten (10) business days. If you have any questions about my request, please do not hesitate to contact me. I look forward to your response and appreciate your attention to this matter.

Sincerely,

[signature]

SAMPLE C3:
**REASONABLE ACCOMMODATION REQUEST FORM FOR TENANTS
FACING EVICTION/LEASE TERMINATION**

I have a disability. I believe that the problems causing you to send me a lease violation notice or eviction notice are related to my disability.

6. This is why I think the problem happened as a result of my disability:

7. I think the problem is not likely to happen again because:
The things described below have changed in my life.

or

A reasonable accommodation would solve the problem.
The accommodation I request is:

8. You can verify that the problem for which I would be evicted from housing was a result of my disability by contacting:

Name:

Phone:

Address:

9. You can verify the reasons that I think the problem is not likely to happen again and that I will be likely to continue doing what I need to do to avoid these problems by contacting:

Name:

Phone:

Address:

10. You can verify that the reasonable accommodation I am requesting is necessary and likely to solve the problem by contacting:

Name:

Phone:

Address:

[signature]

**SAMPLE C4:
ASSORTED RESPONSE LETTERS FROM LANDLORDS**

RESPONSE NO. 1 (requesting confirmation letter from service providers)

Date: _____

Dear _____,

We have received your request for a reasonable accommodation, specifically:

_____.

Please provide us with a letter from your service provider(s) confirming your disability status and need for the accommodation or modification. Once we receive confirmation, we will give prompt consideration to your request.

Sincerely,

[signature]

RESPONSE NO. 2 (outlining accommodation to be made)

Date: _____

Dear _____,

We have received your request for a reasonable accommodation, specifically:

_____,
together with your healthcare provider's letter documenting your disability and need for the accommodation.

We will provide the accommodation as follows: _____

_____.

Sincerely,

[signature]

RESPONSE NO. 3 (asking for clarification of accommodation request)

Date: _____

Dear _____,

We have received your request for a reasonable accommodation. However, we are unclear about your specific needs and would like to meet with you to discuss the accommodation request.

Please contact me as soon as possible so that we can discuss what will best meet your needs.

Sincerely,

[signature]

RESPONSE NO. 4 (outlining reasons for denial of accommodation)

Date: _____

Dear _____,

We have received your request for a reasonable accommodation, specifically:

_____.

We have given your request reasonable consideration and have decided to deny your request for the following reason(s):

_____.

Under federal and state fair housing laws, we are not required to grant requests that, in our evaluation, are unreasonable. If you feel our determination is incorrect, or if you have suggestions for an alternative accommodation, please do not hesitate to contact us.

Sincerely,

[signature]

**SAMPLE C5:
REASONABLE MODIFICATION REQUEST**

Date: _____

Building Manager's Name: _____

Address: _____

Dear _____,

I live in Apt. # _____ at

_____.

I have (or a member of my family has) a disability that prevents me from:

_____.

As an accommodation for such a disability, I request your permission to

_____.

at my expense. I intend to hire _____ to do the work.

_____ is willing to discuss the project with you and discuss any concerns you may have. If you wish, I can have any changes removed when I vacate my unit.

Please respond to my request for a reasonable modification in writing with ten (10) business days. I look forward to your response and appreciate your attention in this matter.

Sincerely,

[signature]

**SAMPLE C6:
REASONABLE MODIFICATION RESPONSE FROM LANDLORD**

Date: _____

Dear _____,

We have received your request for a reasonable modification, specifically, to be allowed to:

_____.

We have spoken to _____, who has assured us that the project will be done in a professional manner to meet building codes.

Your request to make this modification is granted. Please let me know when the work begins and ends.

When you vacate your unit, we request you _____

Sincerely,

[signature]

APPENDIX D: Housing Resource Guide

Agencies to Contact with Fair Housing Concerns

N
NC Human Relations Commission
1318 Mail Service Center
Raleigh, NC 27699-1318

1711 New Hope Church Rd
Raleigh, NC 27609
919-431-3036

Local Human Relations Councils/Commissions with Paid Staff

Charlotte-Mecklenburg Community Relations*

600 E. Trade Street
Charlotte, NC 28202
(704) 735-6121

Durham Human Relations* **
Golden Belt Building, Building 2
807 E. Main Street
Durham, NC 27701
(919) 560-4107

Fayetteville-Cumberland Human Relations
City Hall – 433 Hay Street
Fayetteville, NC 28301
(910) 433-1696

Goldsboro Community Affairs
City Hall - Post-Office Drawer A
214 N. Center Street
Goldsboro, NC 27530
(704) 336-2424

Greensboro Human Relations*
P.O. Box 3136
City-County Complex
1 Government Plaza
Greensboro, NC 27834

(336) 373-2038

Orange Co. Dept. of Human Rights and Relations* **
200 S. Cameron Street
Hillsborough, NC 27278
(919) 245-2487

Raleigh Human Resources Division
P.O. Box 590
Raleigh, NC 27602
(919) 996-6100

Rocky Mount Human Relations
P.O. Box 1180
Rocky Mount, NC 27802
(919) 972-1182

Wilson Human Relations
P.O. Box 10
112 N. Goldsboro Street
Wilson, NC 27893
(252) 399-2308

Winston-Salem Human Relations*
P.O. Box 2511
Winston-Salem, NC 27102
(336) 727-2429

Legal Services

Legal services are available statewide for individuals who cannot afford to hire an attorney and who meet low-income guidelines based on family size. Legal Aid of North Carolina has 20 offices across the state that can offer help in the following areas:

- Housing and public benefits
- Consumer protection
- Employment
- Family or domestic issues.

For more information, see the Legal Aid of North Carolina website at www.legalaidnc.org. You can also call the toll-free Helpline at 1-866-219-5262.

In addition, LANC's Fair Housing Project is available to provide information concerning a person's rights under the federal Fair Housing Act as well as legal representation in certain cases.

● Legal Services Offices

Note: To apply for help, please use the online application at www.legalaidnc.org or call the toll-free Helpline at 1-866-219-5262.

For assistance with fair housing issues, contact the Fair Housing Project at:

Fair Housing Project

Legal Aid of North Carolina
224 S. Dawson St.
Raleigh, NC 27601
(855) 797-3247
www.fairhousingnc.org

Ahoskie Office

Bertie, Camden, Chowan, Currituck, Dare,
Gates, Halifax, Hertford, Northampton,
Pasquotank, Perquimans

Asheville Office (Senior Law Project)

Buncombe, Henderson, Madison, Polk,
Rutherford, Transylvania

Boone Office (Domestic Violence)

Alleghany, Ashe, Avery, Mitchell, Watauga,
Wilkes and Yancey

Charlotte Office

Mecklenburg

Concord Office

Cabarrus, Stanly, Union

Durham Office

Caswell, Durham, Franklin, Granville,
Person, Vance, Warren

Fayetteville Office

Cumberland, Harnett, Sampson

Gastonia Office

Cleveland, Gaston, Lincoln

Greensboro Office

Davidson, Guilford, Montgomery,
Randolph, Rockingham, Rowan

Greenville Office

Beaufort, Carteret, Craven, Hyde, Jones,
Martin, Onslow, Pamlico, Pitt, Tyrell,
Washington

Hayesville Office

Clay

Morganton Office

Alexander, Avery, Burke, Caldwell,
Catawba, McDowell, Mitchell, Watauga,
Yancey

Pembroke Office

Hoke, Robeson, Scotland

Pittsboro Office

Alamance, Chatham, Lee, Moore, Orange

Raleigh Office

Johnston, Wake

Sylva Office

Cherokee, Clay, Graham, Haywood,
Jackson, Macon, Swain & Qualla Indian
Boundary

Wilmington Office

Bladen, Brunswick, Columbus, Duplin,
New Hanover, Onslow, Pender

Wilson Office

(Edgecombe, Greene, Lenoir, Nash,
Wayne, Wilson)

Winston-Salem Office

Alleghany, Ashe, Davie, Forsyth, Iredell,
Stokes, Surry, Wilkes, Yadkin

**Additional Legal Services for Low-
Income Clients:**

Pisgah Legal Services

(Buncombe, Henderson, Madison, Polk,
Rutherford, Transylvania)

Mailing: P.O. Box 2276

Asheville, NC 28802

Toll-free (800) 489-6144

Offices in: Asheville, Brevard,
Hendersonville, Marshall and
Rutherfordton

<http://www.pisgahlegal.org/>

Charlotte Center for Legal Advocacy

(Charlotte Metro area, West-central North
Carolina)

1431 Elizabeth Ave.

Charlotte, N.C. 28204

Local: 704-376-1600

Toll-free: 800-438-1254

En Español: 800-247-1931

<http://www.lssp.org/>

Disability Rights North Carolina
(Statewide)

3724 National Drive, Suite 100

Raleigh, NC 27612

Toll-Free: 877- 235-4210

Local: 919-856-2195

<http://www.disabilityrightsncc.org/>

Services for older Adults, Adults with Disabilities, and their Families

The North Carolina Department of Health and Human Services (NC DHHS) division of Aging and Adult Services supports a wide range of home and community-based services by two primary means:

1. Working with sixteen Areas agencies on Aging and numerous public and private local organizations, the array of services, programs, and protections offered to persons aged sixty (60) and older varies from one county to another based on local need and other factors. Services allowing persons to remain in independent living can include but are not limited to:
 - Adult daycare/ day health
 - Congregate nutrition
 - Family caregiver support
 - Home delivered meals
 - Housing and home improvement
 - In-home aide service
 - Legal services
 - Ombudsman services
 - Senior centers
 - Senior employment program
 - Transportation
 - View additional information for area Agencies on Aging at <https://www.ncdhhs.gov/divisions/daas>.

2. Working with programs and protections for the adult population age eighteen (18) and above with disabilities, and their families. These services, which can vary from one county to another, are intended to enable persons to maintain independent living and can include:
 - Adult protective services
 - At-risk case management
 - Counseling (includes financial management needs)
 - Guardianship
 - In-home special assistance
 - Transportation
 - View more information on Independent Living with disabilities at <https://www.ncdhhs.gov/assistance/disability-services/independent-living-for-people-with-disabilities>.

● Area Agencies on Aging

Region A

(Cherokee, Clay, Graham, Haywood,
Jackson, Macon, Swain [EBCI])
Southwestern Commission
Area Agency on Aging
125 Bonnie Lane
Sylva, NC 28779
Local: (828) 586-1962
Fax: (828) 586-1968
<http://www.regiona.org>

Region B

(Buncombe, Henderson, Madison,
Transylvania)
Land-of-Sky Regional Council
339 New Leicester Hwy., Suite 140
Asheville, NC 28806
Local: (828) 251-6622
Fax: (828) 251-6353
<http://landofsky.org>

Region C

(Cleveland, McDowell, Polk,
Rutherford)
Isothermal Planning and
Development Commission
P. O. Box 841
Rutherfordton, NC 28139
Local: (828) 287-2281
Fax: (828) 287-2735
<http://www.regionc.org>

Region D

(Alleghany, Ashe, Avery, Mitchell,
Watauga, Wilkes, Yancey)
High Country Council of
Governments
468 New Market Blvd.
Boone, NC 28607
Local: (828) 265-5434
Fax: (828) 265-5439
<http://www.regiond.org>

Region E

(Alexander, Burke, Caldwell,
Catawba)
Western Piedmont Council of
Governments

P. O. Box 9026

Hickory, NC 28603
Local: (828) 322-9191
Fax: (828) 322-5991
<http://www.wpcog.org>

Region F

(Anson, Cabarrus, Gaston, Iredell,
Lincoln, Mecklenburg, Rowan,
Stanly, Union)
Centralina Council of Governments
525 North Tryon Street
Charlotte, NC 28202
Local: (704) 372-2416
Fax: (704) 347-4710
<http://www.centralinaaging.org/>

Region G

(Alamance, Caswell, Davidson,
Guilford, Montgomery, Randolph,
Rockingham, Stokes, Surry, Yadkin)
Piedmont Triad Regional Council
1398 Carrollton Crossing Drive
Kernersville, NC 27284
Local: (336) 904-0300
Fax: (336) 904-0302
<http://www.ptrc.org>

Region J

(Chatham, Durham, Johnston, Lee,
Moore, Orange, Wake)
Triangle J Council of Governments
4307 Emperor Blvd, Suite 110
Durham, NC 27703
Local: (919) 558-2711
Fax: (919) 549-9390
<http://www.tjaaa.org>

Region K

(Franklin, Granville, Person, Vance,
Warren)
Kerr Tar Regional
Council of Governments
1724 Graham Avenue
P.O. Box 709
Henderson, NC 27536
Local: (252) 436-2040
Fax: (252) 436-2055

<http://www.kerrtarcog.org/aging/>

Region L

(Edgecombe, Halifax, Nash,
Northampton, Wilson)
Upper Coastal Plain Council of
Governments
121 W. Nash St.
P. O. Box 9
Wilson, NC 27893
Local: (252) 234-5952
Fax: (252) 234-5971
<http://www.ucpcog.org>

Region M

(Cumberland, Harnett, Sampson)
Mid-Carolina Council of
Governments
P. O. Drawer 1510
Fayetteville, NC 28302
Local: (910) 323-4191
Fax: (910) 323-9330
<http://www.mccog.org/>

Region N

(Bladen, Hoke, Richmond, Robeson,
Scotland)
Lumber River Council of
Governments
30 CJ Walker Road
Pembroke, NC 28372
Local: (910) 618-5533
Fax: (910) 521-7556
<http://www.lumberrivercog.org/>

Region O

(Brunswick, Columbus, New
Hanover, Pender)
Cape Fear Council of Governments
1480 Harbour Drive

Wilmington, NC 28401
Local: (910) 395-4553
Fax: (910) 395-2684
<http://www.capefearcog.org>

Region P

(Carteret, Craven, Duplin, Greene,
Jones, Lenoir, Onslow, Pamlico,
Wayne)
Eastern Carolina Council of
Governments
233 Middle Street
P. O. Box 1717
New Bern, NC 28563
Local: (252) 638-3185
Fax: (252) 638-3187
<http://www.eccog.org/>

Region Q

(Beaufort, Bertie, Hertford, Martin,
Pitt)
Mid-East Commission
1385 John Small Avenue
Washington, NC 27889
Local: (252) 946-8043
Fax: (252) 974-1852
<http://www.mecaaa.org>

Region R

(Camden, Chowan, Currituck, Dare,
Gates, Hyde, Pasquotank,
Perquimans, Tyrrell, Washington)
Albemarle Commission
512 South Church Street
Hertford, NC 27944
Local: (252) 426-5753
Fax: (252) 426-8482
www.albemarlecommission.org

Services for older Adults, Adults with Disabilities, and their Families

Services to assist with mental health, developmental disabilities, and substance abuse problems are available statewide through local management entities (LMEs) and state institutions.

For more information, see the North Carolina Department of Health and Human Services – Division of Mental Health Developmental Disabilities and Substance Abuse Services website at <https://www.ncdhhs.gov/divisions/mhddsas/AdultMentalHealth>. For information about which LME/MCO coordinates services for your areas, see the LME/MCO directory here: <https://www.ncdhhs.gov/providers/lme-mco-directory>

Vaya Health

(Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, Yancey)
200 Ridgefield Court, Suite 206
Asheville, NC 28801
Phone: 828-225-2785
Fax: 828-225-2796
Crisis Line: 800-849-6127

Cardinal Innovations Healthcare Solutions

(Alamance, Cabarrus, Caswell, Chatham, Davidson, Davie, Forsyth, Franklin, Granville, Halifax, Mecklenburg, Orange, Rockingham, Person, Rowan, Stanly, Stokes, Union, Vance and Warren)
4855 Milestone Avenue
Kannapolis, NC 28081
Phone: 704-939-7700
Fax: 704-939-7907
Crisis Line: 800-939-5911

Partners Behavioral Health Management

(Burke, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry, Yadkin)
901 South New Hope Road
Gastonia, NC 28054
Phone: 704-884-2501
Fax: 704-884-2713
Crisis Line: 888-235-4673
Counties Served:

Alliance Behavioral Healthcare

(Cumberland, Durham, Johnston, Wake)
4600 Emperor Boulevard
Durham, NC 27703
Phone: 919-651-8401
Fax: 919-651-8672
Crisis Line: 800-510-9132

Sandhills Center

(Anson, Guilford, Harnett, Hoke, Lee, Montgomery, Moore, Randolph, Richmond)
1120 Seven Lakes Drive
West End, NC 27376
Phone: 910-673-9111
Fax: 910-673-6202
Crisis Line: 800-256-2452

Trillium Health Resources Office

(Brunswick, Carteret, Nash, New Hanover, Onslow, Pender, Beaufort, Bertie, Camden, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, Jones, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell, Washington)
1708 E. Arlington Blvd.
Greenville, NC 27858-5872
Phone: 866-998-2597
Crisis Line: 877-685-2415

Eastpointe Office

(Bladen, Columbus, Duplin, Edgecombe, Greene, Lenoir, Robeson, Sampson, Scotland, Wayne, Wilson)
514 East Main Street
Beulaville, NC 28518
Phone: 800-913-6109
Fax: 910-298-7180
Crisis Line: 800-913-6109

Vocational Rehabilitation Independent Living Program

Assisting individuals with significant disabilities in achieving independence is the primary objective of Vocational Rehab's ("VR") Independent living Program.

That means providing services that enable these individuals to live and function in the homes and communities of their choice. Counselors and program participants jointly develop a plan that will provide a viable, cost-effective alternative to institutional living and in many cases help maintain or improve employment opportunities.

For more information, see <https://www.ncdhhs.gov/divisions/dvrs/vr-local-offices>.

Administrative Office:

2801 Mail Service Center
805 Ruggles Dr.
Raleigh, NC 27699-2801
Phone: (919) 855-3500
Fax: (919) 733-1628

Albemarle Office

(Union, Stanly, Montgomery,
Rowan,
Richmond, Anson, and Cabarrus)
702 Henson Street
Albemarle, NC 28801
Phone: (704) 985-1172/982-2568
Fax: (704)983-3797

Asheville Office

(Buncombe, Henderson, McDowell,
Madison,
Polk, Rutherford, and Transylvania)
8 Barbetta Drive
Asheville, NC 28806
Phone: (828) 670-3378
Fax: (828) 298-9330

Boone Office

(Alleghany, Ashe, Avery, Mitchell,
Watauga,
Wilkes, and Yancey)
245 Winklers Creek Rd, Suite A
Boone, NC 28607
Phone: (828) 265-5419
Fax: (828) 265-5359

Charlotte Office

(Gaston, and Mecklenburg)
5501 Executive Center Drive, Suite
101
Charlotte, NC 28212
Phone:(704)568-8804
Fax: (704)568-8579

Durham Office

(Chatham, Durham, Lee, Orange,
Person, and Granville)
4312 Western Park Place
Durham, NC 27705
Phone: (919) 560-6815
Fax: (919) 560-3231

Elizabeth City Office

(Bertie, Camden, Chowan, Currituck,
Dare, Gates, Pasquotank,
Perquimans, Tyrrell, and
Washington)
401 S. Griffin St., Suite 75
Elizabeth City, NC 27909
Phone: (252)338-0175
Fax:(252)338-0179

Fayetteville Office

(Bladen, Cumberland, Harnett,
Hoke, Robeson, Sampson,
Moore, Scotland)
1200 Fairmont Court
Fayetteville, NC 28304
Phone: (910) 486-1717
Fax: (910) 486-0651

Greensboro Office
(Alamance, Caswell, Guilford,
Randolph and Rockingham)
3401-A W. Wendover Ave.
Greensboro, NC 27407
Phone: (336) 852-4523
Fax: (336) 299-9281

Greenville Office
(Beaufort, Greene, Hyde,
Lenoir, Pitt and Wayne)
P.O. Box 2487
101 Fox Haven Dr.
Greenville, NC 27836
Phone: (252) 830-3471
Fax: (252) 830-6599

Hickory Office
(Alexander, Burke, Caldwell,
Catawba, Cleveland, Iredell and
Lincoln)
2661 Hwy. NC 127 South
Hickory, NC 28602
Phone:(828)294-0338
Fax: (828)294-0255

New Bern Office
(Carteret, Craven, Jones,
Onslow and Pamlico)
2832 Neuse Blvd.
New Bern, NC 28562
Phone: (252) 514-4806
Fax: (252) 514-4897

Raleigh Office
(Franklin, Johnston, Vance, Wake
and Warren) 2803 Mail Service
Center
436 N. Harrington St.
Raleigh, NC 27699-2803
Phone: (919)715-0543

Fax: (919)733-7745

Rocky Mount Office
(Edgecombe, Halifax, Hertford,
Martin, Nash, Northampton and
Wilson)
Station Square, Suite 163
Rocky Mount, NC 27804
Phone: (252) 446-0867
Fax: (252) 446-3191

Sylva Office
(Cherokee, Clay, Graham, Haywood,
Jackson, Macon and Swain)
100 Bonnie Lane, Suite C
P. O. Box 756
Sylva, NC 28779
Phone:(828)586-3455
Fax: (828)586-2129

Wilmington Office
(Brunswick, Columbus, Duplin, New
Hanover and Pender)
3340 JaeckleDrive,Suite201
Wilmington, NC 28403-2679
Phone: (910) 251-5810
Fax: (910) 251-2659

Winston-Salem Office
(Davidson, Davie, Forsyth, Stokes,
Surry and Yadkin)
2201 Brewer Road
Winston-Salem, NC 27127
Phone: (336) 784-2700
Fax: (336) 784-2714

APPENDIX E: Telecommunications Relay Service

● Background

Telecommunications Relay Service is a telephone service that allows persons with hearing or speech disabilities to place and receive telephone calls. TRS is available in all 50 states, the District of Columbia, Puerto Rico and the U.S. territories for local and/or long distance calls. TRS providers – generally telephone companies – are compensated for the costs of providing TRS from either a state or a federal fund. There is no cost to the TRS user.

● How does TRS work?

TRS uses operators, called communications assistants (CAs), to facilitate telephone calls between people with hearing and speech disabilities and other individuals. A TRS call may be initiated by either a person with a hearing or speech disability, or a person without such disability. When a person with a hearing or speech disability initiates a TRS call, the person uses a teletypewriter (TTY) or other text input device to call the TRS relay center, and gives a CA the number of the party that he or she wants to call. The CA places an outbound traditional voice call to that person, then serves as a link for the call, relaying the text of the calling party in voice to the called party, and converting to text what the called party voices back to the calling party.

● 711 Access to TRS

Just as you can call 411 for information, you can dial 711 to connect to certain forms of TRS anywhere in the United States. Dialing 711 makes it easier for travelers to use TRS because they do not have to remember TRS numbers in every state. Because of technological limitations, however, 711 access is not available for the Internet-based forms of TRS (VRS and IP Relay).

● What forms of TRS are available?

There are several forms of TRS, depending on the particular needs of the user and the equipment available:

Text-to-Voice TTY-based TRS is a "traditional" TRS service using a TTY to call the CA at the relay center. TTYs have a keyboard and allow people to type their telephone conversations. The text is read on a display screen and/or a paper printout. A TTY user calls a TRS relay center and types the number of the person he or she wishes to call. The CA at the relay center then makes a voice telephone call to the other party to the call, and relays the call back and forth between the parties by speaking what a text user types, and typing what a voice telephone user speaks.

Voice Carry Over allows a person with a hearing disability, but who wants to use his or her own voice, to speak directly to the called party and receive responses in text from the CA. No typing is required by the calling party. This service is particularly useful to senior citizens who have lost their hearing, but who can still speak. Hearing Carry Over allows a person with a speech disability, but who wants to use his/her own hearing, to listen to the called party and type his/her part of the conversation on a TTY. The CA reads these words to the called party, and the caller hears responses directly from the called party.

Speech-to-Speech Relay Service is used by a person with a speech disability. A CA (who is specially trained in understanding a variety of speech disorders) repeats what the caller says in a manner that makes the caller's words clear and understandable to the called party. No special telephone is needed. For more information, visit the STS Relay Service Consumer Guide.⁶³

Shared Non-English Language Relay Services - Due to the large number of Spanish speakers in the United States, the FCC requires interstate TRS providers to offer Spanish-to-Spanish traditional TRS. Although Spanish language relay is not required for intrastate (within a state) TRS, many states with large numbers of Spanish speakers offer this service on a voluntary basis. The FCC also allows TRS providers who voluntarily offer other shared non-English language interstate TRS, such as French-to-French, to be compensated from the federal TRS fund.

Captioned Telephone Service is used by persons with a hearing disability but some residual hearing. It uses a special telephone that has a text screen to display captions of what the other party to the conversation is saying. A captioned telephone allows the user, on one line, to speak to the called party and to simultaneously listen to the other party and read captions of what the other party is saying. There is a "two-line" version of captioned telephone service that offers additional features, such as call-waiting, *69, call forwarding, and direct dialing for 911 emergency service. Unlike traditional TRS (where the CA types what the called party says), the CA repeats or re-voices what the called party says. Speech recognition technology automatically transcribes the CA's voice into text, which is then transmitted directly to the user's captioned telephone text display.

IP Captioned Telephone Service combines elements of captioned telephone service and IP Relay. IP captioned telephone service can be provided in a variety of ways, but uses the Internet – rather than the telephone network – to provide the link and captions between the caller with a hearing disability and the CA. It allows the user to simultaneously both listen to, and read the text of, what the other party in a telephone conversation is saying. IP captioned telephone service can be used with an existing voice telephone and a computer or other Web-enabled device without requiring any specialized equipment. For more information, visit the IP CTS Consumer Guide.⁶⁴

Internet Protocol Relay Service is a text-based form of TRS that uses the Internet, rather than traditional telephone lines, for the leg of the call between the person with a hearing or speech disability and the CA. Otherwise, the call is generally handled just like a TTY-based TRS call. The user may use a computer or other web-enabled device to communicate with the CA. IP Relay is not required by the FCC, but is offered by several TRS providers. For more information, visit the IP Relay Service Consumer Guide.⁶⁵

Video Relay Service (VRS) – This Internet-based form of TRS allows persons whose primary language is American Sign Language to communicate with the CA in ASL using video conferencing equipment. The CA speaks what is signed to the called party, and signs the called party's response back to the caller. VRS is not required by the FCC, but is offered by several TRS

⁶³ The STS Relay Service Consumer Guide can be found at <https://transition.fcc.gov/cgb/consumerfacts/speechoospeech.pdf>.

⁶⁴ The IP CTS Consumer Guide can be found at <https://www.fcc.gov/consumers/guides/internet-protocol-ip-captioned-telephone-service>.

⁶⁵ The IP Relay Service Consumer Guide can be found at <https://www.fcc.gov/consumers/guides/ip-relay-service>.

providers. VRS allows conversations to flow in near real time and in a faster and more natural manner than text-based TRS. Beginning January 1, 2006, TRS providers that offer VRS must provide it 24 hours a day, seven days a week, and must answer incoming calls within a specific period of time so that VRS users do not have to wait for a long time. For more information visit the VRS Consumer Guide.⁶⁶

For more information visit the 711 consumer guide, available at <https://www.fcc.gov/consumers/guides/711-telecommunications-relay-service>.

● Mandatory minimum standards for TRS

TRS providers must offer service that meets certain mandatory minimum standards set by the FCC. These include:

- The CA answering or placing a TRS call must stay with the call for a minimum of 10 minutes to avoid disruptions to the TRS user (15 minutes for STS calls);
- Most forms of TRS must be available 24 hours a day, seven days a week;
- TRS providers must answer 85 percent of all calls within 10 seconds (but there are different answer speed rules for VRS);
- TRS providers must make best efforts to accommodate a TRS user's requested CA gender;
- CAs are prohibited from intentionally altering or disclosing the content of a relayed conversation and generally must relay all conversation verbatim unless the user specifically requests summarization;
- TRS providers must ensure user confidentiality and CAs (with a limited exception for STS) may not keep records of the contents of any conversation;
- The conversation must be relayed in real time;
- CAs must provide a minimum typing speed for text-based calls and VRS CAs must be qualified interpreters;
- For most forms of TRS, the provider must be able to handle emergency (911) calls and relay them to the appropriate emergency services;
- Emergency call handling procedures have been established for all kinds of TRS.

Users of Voice over Internet Protocol (VoIP) service, also can access relay services by dialing 711.

● Don't hang up!

Some people hang up on TRS calls because they think the CA is a telemarketer. If you hear, "Hello. This is the relay service..." when you pick up the phone, please don't hang up! You are about to talk, through a TRS provider, to a person who is deaf, hard-of-hearing, or has a speech disability.

● For more information

For more information about FCC programs to promote access to telecommunications services for people with disabilities, visit the FCC's Disability Rights Office website at <https://www.fcc.gov/general/disability-rights-office>.

⁶⁶ The VRS Consumer Guide can be found at <https://www.fcc.gov/consumers/guides/video-relay-services>.