

REASONABLE ACCOMMODATION

and

REASONABLE MODIFICATIONS

Under the

FAIR HOUSING ACT

(Self-Help Packet)

An Austin Tenants' Council
Fair Housing Program Publication

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Reasonable Accommodation & Reasonable Modifications Under the Fair Housing Act

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I. How to Use This Packet

The Fair Housing Program of the Austin Tenants' Council provides this packet for educational and informational purposes. Persons with disabilities, their friends, and advocates can use the forms in this packet for requesting reasonable accommodation and reasonable modifications under the Fair Housing Amendments Act of 1988. However, this packet is not a substitute for legal advice. Anyone seeking legal advice should contact an attorney.

II. The Fair Housing Act

The Fair Housing Amendments Act of 1988, known simply as the Fair Housing Act, prohibits discrimination in housing because of race or color, national origin, religion, sex, familial status, or handicap or disability. These categories are known as federal *protected classes*. Housing providers, real estate agents, mortgage lenders, and appraisers cannot discriminate or treat anyone differently because he or she is a member of any of the protected classes.

III. Additional Protections for Persons With Disabilities

Disability is one of the protected classes under the federal Fair Housing Act. Up until the amendment of this law in 1988, disabled persons not living in public housing were not protected from housing discrimination by federal law. Under federal fair housing law today, a housing provider cannot discriminate against a disabled person on the basis of their disability, or because they are disabled. This means that a housing provider cannot refuse to rent to someone, or set different terms or conditions, simply because that person has a disability or because of that person's particular disability. This kind of discrimination is called *disparate treatment*.

The Fair Housing Act defines a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities, someone who has a record of such an impairment, or someone regarded as having such an impairment. Major life activities include such functions as walking, breathing, seeing, hearing, working, etc. A disability can be temporary or permanent. Persons with temporary disabilities are protected against discrimination in the same way as are persons who have permanent disabilities.

In addition to prohibiting *disparate treatment* on the basis of disability, the Fair Housing Act grants persons with disabilities additional protection from housing discrimination. This additional protection falls into two categories: reasonable accommodation and reasonable modifications. These requirements of the Fair Housing Act were passed to make existing housing more accessible to and usable by persons with disabilities.

IV. Reasonable Accommodation Under the Fair Housing Act

Section 804(f)(3)(B) of the Fair Housing Act defines one type of discrimination against disabled persons as “a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling...” In summary, a housing provider is required by federal law to make reasonable accommodations in rules, policies, and procedures, to allow disabled persons equal opportunity to use and enjoy their dwelling.

V. What Is a *Reasonable Accommodation*?

As previously explained, reasonable accommodation under The Fair Housing Act refers to a change in rules, policies, practices or services, that a housing provider makes to allow a disabled person equal opportunity to use and enjoy a dwelling. What does this really mean?

The Fair Housing Act does not itself define what is considered *reasonable*, although it mandates reasonable accommodations for persons with disabilities. There is no clear litmus test in interpreting whether or not a request for reasonable accommodation by a disabled person is actually *reasonable*. However, in the Preamble to the Final Rule Implementing Fair Housing Amendments Act of 1988, it is stressed that housing providers are not required to provide counseling, medical, or social services to persons with disabilities that they do not normally provide to their non-disabled residents.

Reasonable accommodation is generally considered a change in rules, policies, practices, or services that is feasible and practical under the circumstances. In general, a request for reasonable accommodation is considered *reasonable* if the accommodation requested by the disabled person:

1. Will not cause an undue financial or administrative burden to the housing provider;

2. Will not cause a basic change in the nature of the housing programs available;
3. Will not cause harm or damage to others; and
4. Is technologically possible.

The following examples illustrate the concept of reasonable accommodation under the Fair Housing Act:

Example 1: Susan, a blind woman with a guide dog, applies for rental housing at an apartment complex that has a “No Pets” policy. There are available apartments and Susan meets all the criteria necessary for approval of her application. Upon Susan’s request, the housing provider must make a reasonable accommodation in their rules and policies to allow Susan to rent an apartment and keep her guide dog. Without her guide dog, Susan would not be able to live in an apartment and she would not have an equal opportunity to use and enjoy an apartment.

Example 2: John recently became disabled due to an on-the-job injury and he now cannot walk more than a short distance. The apartment complex where he lives offers parking to its residents on a first come first served basis. John makes a written request for reasonable accommodation to management that they designate a reserved parking space for him near his apartment so he will be able to walk the distance from his car to his apartment. John’s housing provider must make this reasonable accommodation in their services to allow John equal opportunity to use and enjoy his dwelling. Without reserved parking near his apartment, John would not be able to live at the apartment complex. Furthermore, it is *reasonable* that the housing provider bear the costs of any cosmetic and structural changes necessary to designate a reserved parking space for John as long as they are not an undue financial burden.

Example 3: Maria was recently diagnosed with a disability that prevents her from working. She now receives an SSDI check every 5th day of the month rather than income from an employer. Under her lease contract, her rent is due on the first day of each month and late fees begin to accrue on the third day of the month. Maria makes a written request for reasonable accommodation that her landlord waive late fees and allow her to pay rent on the sixth day of each month without penalty. Maria’s landlord must make this reasonable accommodation in rules to allow her an equal opportunity to use and enjoy her dwelling, as long as it does not cause an

undue financial or administrative burden. The key in this example is the nexus or tie-in between Mary's disability and her income. Maria's disability affects when she receives her income, which in turn affects when she can pay her monthly rent.

VI. Reasonable Modifications Under the Fair Housing Act

Section 804(f)(3)(A) of the Fair Housing Act requires a housing provider to allow a disabled tenant, at their expense, to make reasonable modifications of existing premises if they may be necessary to afford such person full enjoyment of the premises or dwelling. Modification means a change to a structure that will allow physical access to a person with a disability. This requirement is applicable to the interior of a disabled person's dwelling as well as public and common use areas of an apartment complex. Such modifications may be requested at any time; it is not necessary that they be requested at the beginning of a tenancy. Please Note: The Fair Housing Act makes clear that such modifications will be the financial responsibility of the disabled person making the request.

A person seeking reasonable modifications must seek approval from their housing provider before making the modifications. In addition, a housing provider can require the following before approving the modification:

1. That the disabled person provide a reasonable description of the proposed changes, and
2. That the disabled person provide assurance that the modifications will be done in a workmanlike manner and that any required building permits will be obtained.

In some rental cases, a housing provider can condition approval of a request for reasonable modifications:

- When requested modifications would interfere with the landlord's or future tenant's use or enjoyment of the premises, a landlord may condition approval of the modifications on the tenant agreeing to restore the interior of the premises to their previous condition (before modifications made); and
- The landlord can require that the tenant make payments over a period of time into an interest bearing escrow account to ensure that funds will be available to pay for the restorations at the end of the tenancy. The total of such payments should not exceed the cost of the restorations and the interest should accrue to the benefit of the tenant.

The following examples illustrate reasonable modifications under the Fair Housing Act:

Example 1: Anthony has a son who uses a wheelchair. Anthony has applied for an apartment, but the doorways of the apartment are too narrow for his son to pass through. Anthony makes a written request for reasonable modifications that the housing provider allow him to have the doorways of the apartment widened at his expense. The housing provider must allow these modifications. In most cases, Anthony would not be responsible for paying for the doorways to be narrowed at the end of his tenancy because the widened doorways will not interfere with the landlord's or next tenant's use and enjoyment of the dwelling.

Example 2: Faith has a disability affecting her balance. She sends a written request for reasonable modifications to her landlord to allow grab bars to be installed in the bathroom of her apartment at her expense. Faith's landlord must permit these modifications to be made. But, because the modifications may interfere with the landlord's or next tenant's use or enjoyment of the dwelling, the landlord can condition approval of the modifications on Faith agreeing to have the grab bars removed at the end of her tenancy. Also, the landlord can require that Faith make monthly payments into an interest bearing escrow account in order to ensure the availability of funds for the restoration of the bathroom walls at the end of Faith's tenancy. Removal of the grab bars at the end of Faith's tenancy is considered reasonable; however, any additional reinforcement of the bathroom walls necessary to install grab bars would not have to be undone because such "behind the wall" changes would not affect the landlord's or next tenant's use or enjoyment of the premises.

VII. How to Request Reasonable Accommodation or Reasonable Modifications

It is always best to correspond with your landlord in writing whenever possible. Accordingly, ATC recommends that all requests for reasonable accommodation or requests for modification be made in a letter sent by certified mail return receipt requested or hand-delivered with a witness. Make sure that your letter is signed and dated, and that you have copies of the letter before you send or deliver it.

The Fair Housing Act does not require persons with disabilities to prove that they are disabled or provide information to their housing provider about the nature or

severity of their disability. However, in many cases it may be beneficial to include supporting documentation from a medical professional with your request for reasonable accommodation or reasonable modifications. ATC recommends that our clients with disabilities requesting reasonable accommodation or reasonable modification voluntarily provide supporting documentation from a medical professional or service provider because this usually expedites the process of obtaining approval for the request. ATC does not recommend that you provide your landlord with detailed information about the nature or severity of your disability, unless you feel comfortable doing so.

It is difficult to standardize requests for reasonable accommodation and requests for modifications because of the uniqueness of persons with disabilities and their situations. Most fair housing complaints ATC receives from persons with disabilities involve details that are unique to the client or situation. If you would like to make a request for reasonable accommodation or reasonable modifications and need assistance, ATC can provide you with information and help in writing your request letter. What follows are instructions on writing such request letters.

A. How to Write a Request for Reasonable Accommodation

- 1. Identify yourself -- include your name and address.** If you are an advocate writing a request for reasonable accommodation letter for someone else, be sure to identify both yourself and the disabled person you are assisting.

Example:

“I, Tom Tenant, live at 2310 Sycamore Street #124, Austin, TX 78741.”

- 2. State that you are a person with a disability, you are covered under the protections for disabled persons of the Fair Housing Act, and the letter is a Request for Reasonable Accommodation.**

Example: “I am a person with a disability as defined under the Fair Housing Act, and I am covered under the protections for disabled persons of the Fair Housing Act. This letter is a formal Request for Reasonable Accommodation under the Fair Housing Act.”

- 3. Describe the rule or policy that is problematic to you.**

Example: “Parking for residents is currently available on a first come first served basis and I must often park at a far distance from my apartment.”

- 4. State your Request for Reasonable Accommodation.**

It is important that your request is clear and easy to understand. It is necessary that your request be related to your disability.

Example: “I request that you make a reasonable accommodation in your rules and policies to designate a reserved parking space for me near my apartment.”

5. State that you need the Reasonable Accommodation in order to have equal opportunity to use and enjoy the dwelling.

Example: “This accommodation is reasonable and necessary in order for me to use and enjoy my dwelling.”

6. Cite the applicable section of the Fair Housing Act that protects your rights.

Example: “Section 804(f)(3)(B) of the Fair Housing Act defines unlawful discrimination against disabled persons as ‘a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling...’.”

7. State that you would like a written response to your request within a reasonable amount of time.

Example: “Please provide a written response to my request within 5 days of your receipt of this letter.”

8. State that you are willing to seek enforcement of your rights should your Request for Reasonable Accommodation be refused or ignored.

Example: “I am prepared to seek enforcement of my rights under the Fair Housing Act if my request is not granted, which may include filing a complaint with the U.S. Department of Housing & Urban Development and/or filing a civil lawsuit. However, I would much rather resolve this matter without the involvement of HUD or litigation. I appreciate your attention to this critical matter and look forward to your written response.”

9. Sign and date your letter. Be sure you make copies of the letter for your files before you send it. Once again, send your letter by certified mail return receipt requested or hand-deliver it with a witness.

B. Example Request for Reasonable Accommodation Letter

Ms. Owner
4506 S. Lamar
Austin, TX 78704

February 1, 2008

I, Tom Tenant, live at 2310 Sycamore Street #124, Austin, TX 78741. I am a person with a disability as defined under the Fair Housing Act, and I am covered under the protections for disabled persons of the Fair Housing Act. This letter is a formal Request for Reasonable Accommodation under the Fair Housing Act.

Parking for residents is currently available on a first come first served basis and I must often park at a far distance from my apartment. I request that you make a reasonable accommodation in your rules and policies to designate a reserved parking space for me near my apartment. This accommodation is reasonable and necessary in order for me to enjoy and use my dwelling.

Section 804(f)(3)(B) of the Fair Housing Act defines unlawful discrimination against disabled persons as “a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling...”

Please provide a written response to my request within 5 days of your receipt of this letter. I am prepared to seek enforcement of my rights under the Fair Housing Act if my request is not granted, which may include filing a complaint with the U.S. Department of Housing & Urban Development and/or filing a civil lawsuit. However, I would much rather resolve this matter without the involvement of HUD or litigation. I appreciate your attention to this critical matter and look forward to your written response.

Sincerely,

Tom Tenant

C. How to Write a Request for Reasonable Modifications

- 1. Identify yourself -- include your name and address.** If you are an advocate writing a request for reasonable modifications letter for someone else, be sure to identify both yourself and the disabled person you are assisting.

Example: “I, Jane Tenant, live at 1619 E. Cesar Chavez, Austin, TX 78702.”

- 2. State that you are a person with a disability, you are covered under the protections for disabled persons of the Fair Housing Act, and the letter is a Request for Reasonable Modifications.**

Example: “I am a person with a disability as defined under the Fair Housing Act, and I am covered under the protections for disabled persons of the Fair Housing Act. This letter is a formal Request for Reasonable Modifications under the Fair Housing Act.”

- 3. Describe the architectural barrier that is problematic to you, that limits your access.**

Example: “There is a step at the threshold of the door to my townhouse that I cannot navigate in my wheelchair.”

- 4. State your Request for Reasonable Modifications.** It is important that your request is clear and easy to understand.

Example: “I request that you permit me to have the step removed and a ramp installed to allow me access to my home.”

- 5. State that you need the Reasonable Modification in order to have equal opportunity to use and enjoy the dwelling.**

Example: “This modification is reasonable and necessary in order for me to use and enjoy my dwelling.”

- 6. Cite the applicable section of the Fair Housing Act that protects your rights.**

Example: “Section 804(f)(3)(A) of the Fair Housing Act makes it unlawful to refuse to permit a person with a disability, at their expense, reasonable modifications of existing premises if they may be necessary to afford such person full enjoyment of the premises or dwelling.”

- 7. State that you would like a written response to your request within a reasonable amount of time.**

Example: “Please provide a written response to my request within 5 days of your receipt of this letter.”

- 8. State that you are willing to seek enforcement of your rights should your Request for Reasonable Modifications be refused or ignored.**

Example: “I am prepared to seek enforcement of my rights under the Fair Housing Act if my request is not granted, which may include filing a complaint with the U.S. Department of Housing & Urban Development and/or filing a civil lawsuit. However, I would much rather resolve this matter without the involvement of HUD or litigation. I appreciate your attention to this critical matter and look forward to your written response.”

- 9. Sign and date your letter.** Be sure you make copies of the letter for your files before you send it. Once again, send your letter by certified mail return receipt requested or hand-deliver it with a witness.

D. Example Request for Reasonable Modifications Letter

Mr. Landlord
1314 W. 6th
Austin, TX 78701

February 1, 2008

I, Jane Tenant, live at 1619 E. Cesar Chavez, Austin, TX 78702. I am a person with a disability as defined under the Fair Housing Act, and I am covered under the protections for disabled persons of the Fair Housing Act. This letter is a formal Request for Reasonable Modifications under the Fair Housing Act.

There is a step at the threshold of the door to my townhouse that I cannot navigate in my wheelchair. I request that you permit me to have the step removed and a ramp installed to allow me access to my dwelling. This modification is reasonable and necessary in order for me to use and enjoy my dwelling.

Section 804(f)(3)(A) of the Fair Housing Act makes it unlawful to refuse to permit a person with a disability, at their expense, reasonable modifications of existing premises if they may be necessary to afford such person full enjoyment of the premises or dwelling.

Please provide a written response to my request within 5 days of your receipt of this letter. I am prepared to seek enforcement of my rights under the Fair Housing Act if my request is not granted, which may include filing a complaint with the U.S. Department of Housing & Urban Development and/or filing a civil lawsuit. However, I would much rather resolve this matter without the involvement of HUD or litigation. I appreciate your attention to this critical matter and look forward to your written response.

Sincerely,

Jane Tenant

VIII. Blank Form Letters

Blank Request for Reasonable Accommodation Letter
Blank Request for Modifications Letter

IX. ATC Fair Housing Program Brochure

X. HUD Brochure — “Fair Housing: It’s Your Right”

Request for Reasonable Accommodation

Attention: _____

Address: _____

City, State Zip: _____

Date: _____

I, _____, live at _____. I am a person with a disability as defined under the Fair Housing Act, and I am covered under the protections for disabled persons of the Fair Housing Act. This letter is a formal Request for Reasonable Accommodation under the Fair Housing Act.

This is the rule, policy, procedure, or service that is problematic to me: _____

I request that you make the following reasonable accommodation in your rules, policies, or procedures, to allow me equal opportunity to use and enjoy my dwelling: _____

Section 804(f)(3)(B) of the Fair Housing Act defines unlawful discrimination against disabled persons as “a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling...”

Please provide a written response to my request within _____ days of your receipt of this letter. I am prepared to seek enforcement of my rights under the Fair Housing Act if my request is not granted, which may include filing a complaint with the U.S. Department of Housing & Urban Development and/or filing a civil lawsuit. However, I would much rather resolve this matter without the involvement of HUD or litigation. I appreciate your attention to this critical matter and look forward to your written response.

Sincerely,

Request for Reasonable Modifications

Attention: _____

Address: _____

City, State Zip: _____

Date: _____

I, _____, live at _____. I am a person with a disability as defined under the Fair Housing Act, and I am covered under the protections for disabled persons of the Fair Housing Act. This letter is a formal Request for Reasonable Modifications under the Fair Housing Act.

This is the architectural barrier that prevents or limits my access: _____

I request that you permit me to have the following modifications made to allow me equal opportunity to use and enjoy my dwelling: _____

Section 804(f)(3)(A) of the Fair Housing Act makes it unlawful to refuse to permit a person with a disability, at their expense, reasonable modifications of existing premises if they may be necessary to afford such person full enjoyment of the premises or dwelling.

Please provide a written response to my request within ____ days of your receipt of this letter. I am prepared to seek enforcement of my rights under the Fair Housing Act if my request is not granted, which may include filing a complaint with the U.S. Department of Housing & Urban Development and/or filing a civil lawsuit. However, I would much rather resolve this matter without the involvement of HUD or litigation. I appreciate your attention to this critical matter and look forward to your written response.

Sincerely,