

# REASONABLE ACCOMMODATIONS AND REASONABLE MODIFICATIONS IN HOUSING

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# REASONABLE ACCOMMODATIONS AND REASONABLE MODIFICATIONS IN HOUSING

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# Introduction to Florida Housing

- Florida Housing Finance Corporation (Florida Housing) is a public corporation of the State of Florida. Florida Housing administers the governmental function of financing or refinancing housing, which includes federal and state resources. This consists of the state affordable housing trust fund and Low Income Housing Tax Credits for the development of multifamily rental housing.
- Florida Housing is not a department of the executive branch of state government but is an instrumentality of the State. Our responsibilities are described in Chapter 420, Florida Statutes.
- We provide financing for “sticks and bricks.” Developers who are building multifamily rental housing apply to us for financing in a competitive process. Florida Housing does not provide or administer rental assistance, HUD Section 8, or supportive services for individuals or tenants.
- In administering our resources, our mission is to serve Floridians who need well maintained, affordable housing. Among our objectives is to increase the supply of rental housing for persons with disabilities, persons who have special housing needs, and those that are homeless.

# Section I – Laws Overview

Florida Housing requires all properties financed by Florida Housing to comply with the following disability/accessibility laws:

- Florida Accessibility Code for Building Construction as adopted pursuant to Section 553.503, Florida Statutes;
- Americans with Disabilities Act
  - Title II
  - Title III
- Fair Housing Act
- Section 504 of the Rehabilitation Act

## Section I – Laws Overview

# What do these laws mean in context of Florida Housing requirements?

- Florida Accessibility Code for Building Construction
  - The Florida Building Commission updated the Florida Accessibility Code for Building Construction for consistency with the 2010 ADA Standards and Florida law, Part II, Chapter 553, Florida Statutes.
  - The intent is to maintain the US Department of Justice certification of the Code as substantially equivalent to the ADA Standards so compliance with the Code provides presumption of compliance with the ADA Standards.

# Section I – Laws Overview

What do these laws mean in context of Florida Housing requirements?

- ADA Title II

- Florida Housing is a public corporation functionally related to the state and governed by Florida Statute. Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. As a public entity, Florida Housing cannot discriminate in the access to its programs for people with disabilities. Title II as applied to Florida Housing means that new construction and alterations in its programs must comply with the 2010 Standards for Accessibility Design (Standards).

## Section I – Laws Overview

# What do disability laws mean in context of Florida Housing requirements?

- ADA Title III
  - Title III requires public accommodations and commercial facilities to follow the requirements of the Standards. Florida Housing-financed developments are privately owned, so are covered under Title III.
  - This means that all developments must be readily accessible to and usable by persons with disabilities.
- Florida Housing requires areas to be made accessible to mobility-impaired residents and their visitors, including those in wheelchairs. This shall include, but is not limited to, accessible routes and entrances, paths of travel, primary function areas, parking, trash bins, mail and package receiving areas for residents, pool and other amenities, including paths of travel to amenities and laundry rooms, including washers and dryers.

## Section I – Laws Overview

# What do disability laws mean in context of Florida Housing requirements?

- Fair Housing Act

- FHA prohibits discriminatory housing practices based on disability.
- Applies to the sale, rental, and financing of dwellings.
- Covers multifamily housing built for first occupancy after March 13, 1991.
- FHA provides that a failure to design and construct multifamily dwellings to include certain features of accessible design will be regarded as unlawful discrimination.
- Buildings must meet specific design requirements so public and common use spaces and facilities are accessible to people with disabilities.
- In addition, the interior of dwelling units must be designed so they too meet certain accessibility requirements.



## Section I – Laws Overview

# What do disability laws mean in context of Florida Housing requirements?

- Fair Housing Act is a modest set of accessibility requirements. The Act does not require “fully accessible units.”
- “Fully accessible” means, within accessibility laws and codes, that a dwelling unit is designed and constructed to provide accessibility for wheelchair users throughout the unit.
- Florida Housing has required developments to build a higher level of accessibility than FHA.

## Section I – Laws Overview

# What do disability laws mean in context of Florida Housing requirements?

- Section 504
  - All developments must comply with Section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR Part 8 (“Section 504 and its related regulations”). All Developments must meet accessibility standards of Section 504.
  - This means that Florida Housing-financed developments, including those that are financed with the Low Income Housing Tax Credit program, are required to provide a minimum of 5 percent of the total dwelling units, but not fewer than one unit, to be accessible for individuals with mobility impairments. An additional 2 percent of the total units, but not fewer than one unit, must be accessible for persons with hearing or vision impairments.

## Section I – Laws Overview

# What do disability laws mean in context of Florida Housing requirements?

- Section 504
  - Five percent of the units must be made fully accessible for mobility-impaired individuals within the interior of the units.
  - These units must comply with the Uniform Federal Accessibility Standards (UFAS) in the construction features for kitchens, bathrooms, hallways, doorways, closets, bedrooms, etc.

## Section I – Laws Overview

# What do disability laws mean in context of Florida Housing requirements?

- Section 504
  - Two percent of the units must be made fully accessible for communication-impaired individuals and comply with those UFAS standards. These units do not have to have mobility features, just the UFAS communication features.
  - The two percent of units for communication-impaired persons is in addition to the five percent of units for mobility-impaired persons.

# Section II - Reasonable Accommodation

Federal nondiscrimination laws require housing providers to grant requests for reasonable accommodations and modifications in rules, policies, practices, procedures and services that are necessary to afford a person with a disability an equal opportunity to use and enjoy housing.

Fair Housing Act, ADA Titles II and III, and Section 504 require nondiscrimination. Florida Housing-financed developments are required to comply with these laws.

Section II will cover reasonable accommodations relating to these laws and Florida Housing requirements. Section III will cover structural changes relating to reasonable accommodations and modifications.

## Section II - Reasonable Accommodation

- A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces, or to fulfill their program obligations. Please note that the ADA often refers to these types of accommodations as “modifications.”
- Any change in the way things are customarily done that enables a person with disabilities to enjoy housing opportunities or to meet program requirements is a reasonable accommodation.
- Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny persons with disabilities an equal opportunity to enjoy a dwelling or participate in the program.
- Not all persons with disabilities will have a need to request a reasonable accommodation. However, all persons with disabilities have a right to request or be provided a reasonable accommodation at any time.
- Under Section 504 and the ADA, public housing agencies, other federally-assisted housing providers, and state or local government entities are required to provide and pay for structural modifications as reasonable accommodations/modifications.

## Section II - Reasonable Accommodation

### Example of a reasonable accommodation

- A housing provider has a policy requiring tenants to pay their rent in person at the office. A tenant with a psychiatric illness that makes her afraid to leave her unit requests that she be permitted to mail her rent payment. The provider must make an exception to its payment policy to accommodate this tenant.

# Section II - Reasonable Accommodation

## Example of a reasonable accommodation

A private apartment complex has a first come-first served parking lot.

A resident with a mobility disability gets home from work at 6:30 pm and has to park at the far end of the lot. He has great difficulty walking to the apartment entrance. He requests that management reserve a space for him close to the entrance.

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider.

Providing a parking accommodation could include installing signage, repainting markings, redistributing spaces, or installing curb cuts.



## Section II - Reasonable Accommodation

### Example of a reasonable accommodation

A private housing provider has a policy excluding animals. A resident indicates that she has a psychiatric disability and because of the disability she needs a cat.

Even if a lease says "no pets" or restricts pets, landlords are required to make a reasonable accommodation to allow pets who serve as assistance animals, which includes animals who provide emotional support.

Technical guidance material refers to allowing animals as a “reasonable accommodation” and uses the term “assistance animal.”

## Section II - Reasonable Accommodation

### Example of a reasonable accommodation

An assistance animal can be a cat, dog or other type of companion animal, and does not need to be trained to perform a service. The emotional and/or physical benefits from the animal living in the home are what qualify the animal as an assistance animal. A letter from a medical doctor or therapist is all that is needed to classify the animal as an assistance animal.

**Service animals - Defined only in the ADA titles II and III, not the Fair Housing Act, and is defined differently from an assistance animal. Service animals are trained to perform a service related to a disability.**

## Section II - Reasonable Accommodation

### Pet fees under the Fair Housing Act and ADA

- Service and assistance animals are not technically pets and owners do not have to pay pet fees. The landlord, however, can charge a security deposit and may still seek money from the tenant if there is any damage caused by the animal to the home. Also, if there is a nuisance issue the landlord does have the right to try to remove the assistance animal through legal proceedings.

# Section II - Reasonable Accommodations

## Florida Housing Tenant Application and Selection Requirements

- There are Florida Housing requirements relating to tenant application and selection that will go into affect for properties awarded in 2019-2020.
- Included is a requirement that the owner must include and prominently place the following information in the property's application for tenancy packet that is provided to all interested households:
  - ✓ A description of reasonable accommodations or modifications for persons with disabilities. The description shall include accommodations that must be considered by the property such as:
    - ✓ Physical dwelling unit modifications
    - ✓ Individualized assessments of mitigating factors related to a disability that adversely affected a household's credit, eviction, or criminal history.
    - ✓ The description shall include the process for requesting a reasonable accommodation, the determination approach, and decision-making timelines.

# Section II - Reasonable Accommodations

## Florida Housing Tenant Application and Selection Requirements

The owner must include and prominently place the following information in the property's application for tenancy packet that is provided to all interested households (continued):

- ✓ A description of an applying household's or existing tenant's housing protections pursuant to the Violence Against Women Reauthorization Act of 2013 (VAWA). The description will include that applying households may request that the Development conduct an individualized assessment of mitigating factors related to being a victim of domestic violence, dating violence, sexual assault, and stalking that adversely affected the household's credit, eviction, or criminal history.

# Section II - Reasonable Accommodations

## Florida Housing Tenant Application and Selection Requirements

There are other Florida Housing requirements relating to tenant application and selection that will go into affect for properties awarded in 2019-2020. They are summarized here:

For households with extremely low-income:

- ✓ The credit history related to medical expenses, cable and internet services will not be taken into consideration when conducting credit checks.
- ✓ ELI Household's Income Requirement Policy – The household monthly income must not be required to be more than two times the monthly rent. (e.g., If the monthly rent is \$500, the household monthly income will not be required to exceed \$1,000.)
- ✓ The eviction history look-back period will not be more than 5 years. A household is permitted one eviction during the 5-year look-back period, unless the eviction was due to causing physical harm to development staff, tenants or intentional property damage.

## Section II - Reasonable Accommodations

# Florida Housing Tenant Application and Selection Requirements

For households with extremely low-income (2019-2020 requirements continued):

- ✓ It is prohibited to charge a fee to a household that is applying for tenancy in a unit that is set-aside for extremely low-income households for the purposes of reserving or holding a unit.
- ✓ The application for tenancy fee will be no more than \$35 per adult in a household.
- ✓ A security deposit for new tenants will be not more than the amount of one month's rent.

# Section III. Reasonable Modifications

## Structural Changes

- Under Fair Housing Act, “reasonable modification” refers to a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.
- In ADA Titles II and III “reasonable modifications” applies to modifying policies, practices or procedures to avoid discrimination.
- The ADA uses the term “alteration” to mean any change to an existing building or facility that affects usability.



# Section III. Reasonable Modifications

## Structural Changes

### Fair Housing Act

- Housing provider must **permit** individual to make modifications at individual's expense. FHA uses term “reasonable modifications.”

### Section 504 of Rehab Act & ADA Title II

- Housing provider must **make** modification unless “undue burden.”

# Section III – Reasonable Modifications

## Structural Changes

### Critical

- Fair Housing Act ONLY requires housing provider to permit resident to make modifications. Resident bears the cost.
- Section 504 and ADA: The cost obligation is the housing provider's.
- For Florida Housing-financed properties, check with Florida Housing to determine under which regulation the structural change should apply.

# Section III – Reasonable Modifications Structural Changes

If housing providers wants a different design than the resident suggests:

- Permitted, if the design doesn't cost more and if the alternative design will meet the tenant's needs.
- If alternative design costs more – housing provider pays.

# Section III – Reasonable Modifications

## Structural Changes

### Example

Because of a mobility disability, a tenant wants a ramp outside the building in a common area.

- A landlord, as an owner of a place of "public accommodation," has an independent obligation to comply with the ADA and must provide a ramp in the common area.
- Who must pay for this structural change? This change is requested for a common area that falls under the ADA. The owner/landlord must pay for the ramp.

# Section III – Reasonable Modifications

## Structural Changes

### Example

Mr. C has multiple sclerosis. At the toilet there are horizontal grab bars on the back and side wall as required. He says he needs a third grab bar that folds down at the toilet.

- The apartment is one of the units that is fully accessible for mobility-impaired residents under the requirements of Section 504. (5% of the units.)
- The owner/landlord must accommodate the request.
- Who must pay for this structural change? The owner/landlord must pay for this structural modification.

# Section III – Reasonable Modifications

## Structural Changes

### Example

Because a tenant uses a wheelchair, she has requested that her housing provider allow the removal of the base cabinets and lower the kitchen sink to provide for greater accessibility.

- The owner/landlord must provide this modification under the Fair Housing Act.
- Who must pay for this structural change? This change is requested for an interior of a unit, not a common area, and the resident is responsible for paying for the costs related to a modification of a unit.
- The housing provider is permitted to ask the tenant to replace the cabinets and raise the sink back to its original height.

# Section III – Reasonable Modifications

## Structural Changes

### Example

A blind tenant wants Braille signage.

- A landlord, as an owner of a place of "public accommodation," has an independent obligation to comply with the ADA and must provide Braille signage in the common areas.
- Who must pay for this structural change? This change is requested for a common area that falls under the ADA. The owner/landlord must pay for the Braille signage.

# Section III – Reasonable Modifications

## Structural Changes

### Example

Because of a hearing disability, a tenant wishes a peephole installed in her door so she can see who is at the door before she opens it.

- The owner/landlord must provide this modification under the Fair Housing Act.
- Who must pay for this structural change? This change is requested for an interior of a unit, not a common area, and the resident is responsible for paying for the costs related to a modification of a unit.
- In practice, management will often agree to some type of cost sharing with the resident as a part of the interactive process expected under the Fair Housing Act .



# Structural Changes

## Fair Housing Act

Can housing provider require the resident to use a particular contractor?

- No. The housing provider may only require that whoever does the work is able to complete the work in a workmanlike manner and obtains all necessary building permits.

# Section IV. The request

- A request is any communication in which an individual asks or states a need to provide or to change something because of a medical condition.
- A person does not have to specify a particular accommodation although it is helpful if he or she can suggest one. It is sufficient for the individual requesting accommodation to state that some sort of change or assistance is required.
- The tenant or someone on his/her behalf must make the request.
- Can use plain language.
- Does not need to say “reasonable accommodation,” “reasonable modification,” “disability” or mention the law.
- Request can be oral or in writing.

# Section IV. The request

## Process

- Person makes request (plain language okay).
- Person has disability (obvious or documented).
- Needs to be a connection between the disability and request (obvious or documented).
- If housing provider thinks there's another effective accommodation/modification, engage in interactive process.
- A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation. A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation.

# Section IV – The Request

## Recommendation

- Put the request in writing.
- Include information (but not details) on the disability.
- Clarify connection between disability and request.
- Don't have to mention the law or the term “reasonable modification or “reasonable accommodation”. Might want to save this if later negotiations are necessary.

# Section V. What documentation may be required

If the need for the accommodation or modification is not obvious, the housing provider may require documentation that shows the nexus between the person's disability and the person's need for the requested accommodation.

- But housing provider may not inquire into the nature or extent of the disability.
- Housing provider may not ask for medical records.

## Section V. What documentation may be required

### Example

Mr. Z has been in a car accident. He now has quadriplegia and uses a power wheelchair. The only way he can leave his second floor apartment is to be carried out. He requests a transfer to a first floor apartment.

- The housing provider may not require documentation that Mr. Z has a disability and needs to move, as the need for the accommodation for his disability is obvious.
- However, if the disability is obvious but the need for the accommodation or modification is not, the landlord may only ask for necessary disability-related information.

# Section V. What documentation may be required

## Example

- A woman with a psychiatric disability states to her housing provider that she has a cat for emotional support. The property has a “no pets” policy. She asks for an exception to this policy for her cat because it is an assistance animal. Housing provider is required to allow her to have the assistance animal, but is permitted to require documentation of the need.
- If the disability is not obvious, a housing provider may request information that verifies the disability, describes the requested accommodation, and establishes the connection between the disability and the accommodation or modification.

## Section V. What documentation may be required

If the housing provider asks for written documentation, a letter from the following will be appropriate:

- A doctor or other medical professional
- A peer support group
- A non-medical service agency
- A reliable third party who is in a position to know about the individual's disability



# Reasonable Accommodations and Reasonable Modifications in Housing

**The information included in this presentation is for general informational purposes only.**

**Nothing in this document should be relied on as legal advice.**

# REASONABLE ACCOMMODATIONS AND REASONABLE MODIFICATIONS IN HOUSING

If someone you know needs help requesting a reasonable accommodation or reasonable modification under federal law, please contact the following resource organizations:

Disability Rights Florida - 800-342-0823

Florida Legal Services – 407-801-3450

FloridaLawHelp.org - a website of Florida legal resources  
(Has Reasonable Accommodation forms to download)



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