



Fair Housing Rights of People with Disabilities
Training for Housing Counselors
January 12, 2016

Hypotheticals

Hypo 1

Peter shares custody of a dog with his ex-wife. Peter lives alone in a condominium building that has a “no pets” policy. The building has told Peter he cannot keep the dog. Peter states that he has Obsessive Compulsive and Generalized Anxiety Disorder and claims the dog is an emotional support animal that diffuses his anxiety and obsessive thinking, especially at night. Peter is a teacher at a suburban high school. He is also a part-time actor who has appeared in plays throughout Chicagoland. He states that he does not take his dog to work or when he is acting.

Question: What are your thoughts?

Peter has a right to a reasonable accommodation to the “no pets” policy under the Fair Housing Act (FHA).¹ A reasonable accommodation is an exception to a rule, policy, or procedure that is made in order to allow a person with a disability equal access and enjoyment of a property.²

Question: What, if any, questions can the property manager ask?

The housing provider is allowed to:

- **Ask for medical documentation that explains the need for this reasonable accommodation.³**
- **Ask for vaccination records.⁴**

¹ 24 C.F.R. § 100.204(b)(1).

² 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

³ DEP’T OF HOUSING & URBAN DEVELOPMENT, FHEO-2013-01, SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS 3-4 (2013).

Question: Does Peter need to show proof that the dog provides emotional support?

The housing provider may ask for medical documentation that states that the dog is needed because it provides emotional support that ameliorates Peter's disability.⁵

Question: Must the dog be professionally trained?

No, the housing provider may not require proof that the animal has been professionally trained.⁶ **But the housing provider may refuse to allow the animal if it poses a verifiable direct threat (e.g. bites someone).**⁷

Question: Assume management approves the dog. Can it assess a special pet fee?

No, a housing provider cannot charge a "pet fee", additional deposit, or increase the rent because Peter has a service animal.⁸

Question: What if the dog is a cat? What if the dog is a ferret?

An assistance animal does not have to be a dog; it can be any animal that provides assistance to a person with a disability.⁹

Question: Assume same scenario, except that the building allows pets, so management has no issue with Peter having the dog. However, the policy of the building is to charge a monthly pet fee. Can the building ask Peter to pay the fee?

No, a housing provider cannot charge a "pet fee", additional deposit, or increase the rent because Peter has a service animal.¹⁰

Question: What, if any, restrictions (e.g. where dog can go) can the building place on the support dog?

Generally, none, but examine case-by-case.

Question: Assume same scenario, except that Peter has a visual disability and claims the dog is a guide dog. Must Peter show proof that the dog is a guide dog?

⁴ *Id.* at 3; *Sanzaro v. Ardiente Homeowners Ass'n LLC*, --- F.Supp.2d ---, 2014 WL 2153917, at *9 (D. Nev. May 23, 2014).

⁵ DEP'T OF HOUSING & URBAN DEVELOPMENT, FHEO-2013-01, SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS 3-4 (2013).

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

No, the housing provider may not ask for documentation that states that the dog is an assistance animal because the dog is serving a purpose that is easily identifiable.¹¹

Hypo 2

Keisha has a physical disability. She has lived in her apartment building for several years. Until recently, Keisha relied on a cane or walker to move about. However, her condition has worsened over time and she now uses a wheelchair. As such, she has great difficulty getting through the front entrance because it has a couple steps.

Question: What, if anything, can Keisha do?

Keisha may ask to be allowed to install a ramp as a reasonable modification under the FHA. Reasonable modifications are changes to the structure of a building, either in the common areas or in the individual's unit, that allow an individual equal access to the property.¹²

Question: Who should pay for the modification?

The cost of the modification is the responsibility of the resident, unless the building is federally subsidized.¹³

Question: Who should pay if the building receives federal financial assistance?

The cost of the modification is the responsibility of the resident, unless the building is federally subsidized.¹⁴ If the building is federally subsidized, then the housing provider covers the cost of the modification.

Question: Must Keisha submit any documents to management regarding the modification?

Management can insist that Keisha provide a reasonable description of the work and reasonable assurances that the work will be done in a professional manner, and demand that required building permits be obtained.¹⁵

Question: What happens if management moves slowly in approving the modification?

Once Keisha has made her request for a reasonable modification, it is the housing provider's responsibility to respond in a timely manner.¹⁶ A delay in

¹¹ *Id.* at 3-4.

¹² 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.204(a).

¹³ U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE: REASONABLE MODIFICATIONS UNDER THE FAIR HOUSING ACT 16 (2008); *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1416 n.1 (9th Cir. 1994); *Fagundes v. Charter Builders, Inc.*, 2008 U.S. Dist. LEXIS 9617 (N.D. Cal. Jan. 29, 2008).

¹⁴ *Id.*

¹⁵ 24 C.F.R. § 100.203(b).

the response to the request may be considered a denial, and hence discriminatory under the FHA.¹⁷

Question: Who is responsible for maintaining the modification?

If the modification is in the unit, maintenance and upkeep is the responsibility of the resident. If the modification is in a common area, maintenance and upkeep is the responsibility of the housing provider (e.g. snow removal from the ramp).¹⁸

Question: Can the building require that Keisha purchase liability insurance regarding the modification?

The housing provider may not require that special liability insurance be purchased.¹⁹

Question: Can the building require that Keisha remove the modification at her cost if/when she moves out?

The housing provider may require that a modification to a unit be removed once the resident moves out, unless it is unreasonable to do so.²⁰ For example, if the modification was widening a doorway for a wheelchair user to gain access to the bathroom, it would not be reasonable to ask that the resident restore the doorway to its original width.²¹ A housing provider may never require that a modification to a common area be removed.²²

Question: Would any answers change if Keisha was about to move into the building for the first time or had recently moved into the building?

No, a person with a disability can ask for a reasonable accommodation or reasonable modification at any time.²³ Also, if this is a new multi-family dwelling, defined as a dwelling with four or more units, then it must be designed and constructed to be accessible to people with physical disabilities.²⁴ Such buildings must have an accessible primary entrance on an accessible route, accessible common areas, usable doors, accessible routes into and through units, accessible controls (light switches, outlets, thermostats, etc.), reinforced bathroom walls (so a resident, if needed, can install grab bars), and useable kitchens and bathrooms.²⁵

¹⁶ U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, *supra* note 13, at 10.

¹⁷ *Id.*

¹⁸ *Id.* at 8-9.

¹⁹ *Id.* at 12; see 24 C.F.R. § 100.203(b).

²⁰ 42 U.S.C. § 3604(f)(3)(A).

²¹ 24 C.F.R. § 100.203(c)(2).

²² U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, *supra* note 13, at 13.

²³ *Id.* at 9.

²⁴ 42 U.S.C. § 3604(f)(3)(C).

²⁵ *Id.*

Hypo 3

Maria has an autoimmune disability. To treat her condition, Maria takes medication. She lives in an apartment building. One of Maria's medications makes her sleepy. Recently, due to this medication, Maria fell asleep while cooking something in her oven, which caused a small fire. Maria woke up in time to call the fire department, which put out the fire. However, the oven needs to be replaced and there is smoke damage on the walls and ceiling of the kitchen. Due to this incident, management sent a notice to Maria that states it intends to evict her for breach of the lease.

Question: What are your thoughts?

Under the FHA, if Maria's behavior is attributable to her disability, then before filing an action to evict, the housing provider must work with Maria in an attempt to resolve the conflict.²⁶ This is called "engaging in the interactive process."²⁷ If Maria's behavior becomes so problematic that the housing provider considers her a "direct threat" to the health or safety of others or to property, it still has an obligation to work with Maria on an accommodation that will eliminate the risk.²⁸ If no such accommodation is possible, then the housing provider can file to evict.²⁹

Question: How might this situation be resolved?

Maria could agree to have the oven removed or have its power cut off, agree to hire an aide to cook for her, or agree to replace the medication that makes her sleepy.

Hypo 4

Leticia has a physical disability. She lives in an apartment building. She usually relies on a cane or walker to move about, but sometimes uses a wheelchair. The apartment building has a parking lot for residents, which includes three accessible spaces. Residents are assigned parking spaces. Leticia needs an accessible parking space, but her assigned space is not accessible. Two of the accessible spaces are used by residents who use a wheelchair and the remaining accessible space is reserved for guests who have a disability.

²⁶ U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING & URBAN DEVELOPMENT, *supra* note 13, at 4.

²⁷ *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 895 (7th Cir. 1996).

²⁸ 42 U.S.C. § 3604(f)(9); 24 C.F.R. § 100.202(d); *Chevron U.S.A. v. Echazabel*, 536 U.S. 73, 86 (2002)(citing 29 C.F.R. § 1630.2(r)); *Cromwell & Taylor LLP v. Moore*, 2000 Minn. App. LEXIS 1317 (Dec. 22, 2000); *Roe v. Sugar River Mills Assocs.*, 820 F.Supp. 636, 640 (D.N.H. 1993); *Roe v. Hous. Auth.*, 909 F.Supp. 814, 822-23 (D. Colo. 1995).

²⁹ *Habitat Co. v. McClure*, 301 Ill.App.3d 425, 441 (1st Dist. 1998).

Question: What are your thoughts?

Leticia has the right to ask for an assigned accessible space as a reasonable accommodation under the FHA.³⁰ The housing provider would be required to assign the accessible guest space to Leticia.³¹

Question: Assume same scenario, except there are only two accessible spaces in the lot and both are used by residents who use wheelchairs. Any ideas?

If there were only two accessible spaces already assigned to other residents with disabilities, it would be the responsibility of the housing provider to “engage in the interactive process” and attempt to come up with a solution,³² such as restriping or rearranging existing spaces in a manner that creates an accessible space and/or moving dumpsters or equipment to free up an area to create an accessible space. If creating an additional space is unreasonable, the housing provider may deny the request, but only after an effort has been made to come up with an alternative solution that solves the problem.³³

Question: Assume same scenario, except that the building is a condominium building and spaces are deeded to residents, including three accessible spaces that are owned by residents who do not have disabilities. Any ideas?

It would be the responsibility of the housing provider to “engage in the interactive process” and attempt to come up with a solution.³⁴ Possible solutions the housing provider might employ include: (a) asking the residents who own the accessible spaces to switch spaces with Leticia, either through a formal transaction or some type of lease or license agreement; (b) moving dumpsters or equipment or otherwise modifying the parking area to create an accessible space; or (c) purchasing the next accessible space that goes on the market and leasing or licensing that space to Leticia, while at the same time Leticia gives the housing provider the right to lease or license her deeded space.

³⁰ 42 U.S.C. § 3604(f)(3)(B).

³¹ 24 C.F.R. § 100.204(b)(2); *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 891-96 (7th Cir. 1996); *Shapiro v. Cadman Towers*, 51 F.3d 328, 335 (2d Cir. 1994).

³² U.S. DEP’T OF JUSTICE AND U.S. DEP’T OF HOUSING & URBAN DEVELOPMENT, *supra* note 13, at 7.

³³ *Id.*

³⁴ *Id.*

Hypo 5

Mr. and Mrs. Page live in an apartment building with their three year old son, Thomas. They own a unit on the third floor. The rules for the building require that units on upper floors have wall-to-wall carpeting, except in the kitchen and bathrooms. The couple recently learned that Thomas has severe asthma and is highly allergic to dust, mold, and other allergens. Because carpeting accumulates a lot of allergens and is known to exacerbate asthmatic symptoms, Thomas' physician instructs the couple to replace the carpet with hard flooring. Mr. and Mrs. Page explain their situation to management and ask for permission to install hard flooring. Management is concerned that the absence of carpeting will make it very noisy for the tenants who live in the unit below the couple, and therefore denies the request.

Question: Can you think of any resolution?

Instead of wall-to-wall carpeting, and as a reasonable accommodation, the couple could ask management to allow them to: place large area rugs on the floor in lieu of carpeting and, as necessary, clean the rugs; install cork flooring or another type of sound-absorbent flooring; and/or install other sound proofing remedies.

Hypo 6

Danielle has a psychiatric disability. Because of her disability, Danielle, at times, is easily agitated and reacts aggressively to events perceived as negative. Management is aware of Danielle's psychiatric disability. She has been living in her apartment for seven years. Every couple months, Danielle storms into the management office to complain about the cleanliness of the building, security, cable service, needed building improvements, and/or certain neighbors. She demands immediately to see the property manager, and yells objections if the property manager is not available. She repeats this scenario every few hours until the property manager is available. When she meets with the property manager, she threatens to sue her if the problem is not fixed right away and complains bitterly about how she is treated by management. Also, three or four times per year, other residents complain that Danielle has yelled at them. Management is thinking about trying to evict Danielle from the building.

Question: What are your thoughts?

Question: What, if anything, should/can management do?

Under the FHA, if Danielle's behavior is attributable to her disability, then before penalizing Danielle, the housing provider must work with Danielle in an attempt to resolve the conflict. This is called "engaging in the interactive process." The housing provider may, for example, set boundaries with Danielle by explaining she may only report an issue once, and must do so in a respectful manner. If Danielle's behavior becomes so problematic that the housing provider considers her a "direct threat" to the health or safety of others or to property, it still has an obligation to work with Danielle on an

accommodation that will eliminate the risk. If no such accommodation is possible, then the housing provider can file to evict.

Hypo 7

Franklin, who is Deaf, recently moved into an apartment building. He relies on sign language to communicate. Management has planned a “welcome to the building” party for new residents. Franklin plans to attend. He asks management to provide a sign language interpreter for the party.

Question: What are your thoughts?

The FHA requires the housing provider, as a reasonable accommodation and at its own expense, to provide a sign language interpreter for Franklin if necessary to ensure he is afforded “equal enjoyment” of the building’s party.³⁵ The same would be true for future building meetings or parties.

Question: Assume that months later, management plans to conduct an annual inspection of Franklin’s unit. Franklin asks management to provide a sign language interpreter during the inspection. What are your thoughts?

In this instance, if Franklin and staff can communicate effectively by the passing of notes between them, and/or by Franklin reading lips, then management would not be obliged to provide a sign language interpreter. In other words, management’s reliance on the notes and/or lip-reading would be reasonable.

Hypo 8

Over the past few years, several residents who use wheelchairs (both manual and motorized) and live in an apartment building have scuffed up the walls of common areas. As a result, management plans to charge residents who use wheelchairs an annual “maintenance and service” fee.

Question: Can management charge this fee?

No. Management cannot charge a fee that applies only to people with disabilities.³⁶ Doing so would constitute a “penalty” for the privilege of living in the building. However, management can charge a resident (including a resident with a disability) for repair costs if he/she caused damage to a unit or common area that is beyond regular wear and tear. Scuffed up walls would likely be considered regular wear and tear, but holes in the walls would likely be considered beyond regular wear and tear.

³⁵ 42 U.S.C. § 3604(f)(3)(B).

³⁶ *Id.* at § 3604(f)(2)(A).

Hypo 9

Amber, who is blind, is interested in renting a third floor apartment that does not have an elevator. When Amber shows up to view the unit, the landlord notices Amber's disability. The landlord is concerned that Amber may hurt herself walking up or down three flights of stairs or be unable to exit quickly in an emergency. The landlord is also worried that she may be liable if Amber gets injured. Therefore, the landlord refuses to rent the apartment to Amber.

Question: What are your thoughts?

It is illegal for a landlord to deny housing to a person solely because that person has a disability, which is what occurred here.³⁷ Even if the landlord "means well," she does not get to decide where Amber can or should live. Amber has the right to make that decision, free from paternalistic and discriminatory attitudes.

Also, in general, a landlord's fear of potential liability is not a basis to deny housing to a person with a disability. In any event, it is unlikely the landlord would be held responsible if Amber were injured due to navigating the stairs (assuming the stairs are in good repair).

Hypo 10

Milton visits the office of a housing counselor to receive help with his search for an affordable apartment. He is a veteran. Due to injuries in combat, Milton has very limited use of his arms and hands and impaired vision. He also states that his short term memory is poor.

Question: What types of reasonable accommodations might Milton need from the housing counselor?

Milton might need assistance filling out forms, materials in large print, and reminders about appointments or tasks he must complete.

Under a myriad of federal, state, and local laws, housing counselors must provide reasonable accommodations to people with disabilities to ensure they have an equal opportunity to utilize counseling services. The following is a non-exhaustive list of reasonable accommodations a consumer with a disability may need from a housing counselor. If a cost is involved (such as the provision of a sign language interpreter), the housing counseling office will in most instances be required to cover the cost.

For consumers who are Deaf or hard of hearing -

- Provide a sign language interpreter (do not force the consumer to bring his/her own interpreter, such as a family member)**

³⁷ Id. at § 3604(f)(1)(A).

- **Permit the consumer to read lips**
- **Write and exchange hand-written notes**
- **Communicate by email rather than by phone**
- **Provide CART services (a service that provides real-time captioning of conversations)**

For consumers who have a visual disability -

- **Provide materials in Braille**
- **Provide materials in large print**
- **Provide electronic versions of documents**
- **Read documents out loud**
- **Provide audio taped versions of materials**
- **Permit a guide dog in the office**

For consumers who have a movement-related/mobility disability –

- **Ensure an accessible meeting space**
- **Meet consumer outside the office or at consumer’s home**
- **Assist consumer with completion of forms (e.g. typing information while consumer speaks)**

For consumers who have a cognitive disability –

- **Provide materials and/or forms with simple language**
- **Assist consumer with completion of forms**
- **Spend additional time with consumer to explain things**
- **Allow additional time to complete tasks**
- **Divide tasks into steps**
- **Provide reminders about meetings and appointments**

For consumers who have a psychiatric disability –

- **Spend additional time with consumer to explain things**
- **Allow additional time to complete tasks**
- **Divide tasks into steps**
- **Accommodate behaviors related to consumer’s disability**
- **Be flexible about appointments and meetings and reschedule them as needed**
- **Permit an emotional support animal in the office**

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