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## **Fair Housing for Working with Landlords – Overview of Reasonable Accommodation**

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# Fair Housing Principles

- Equality  
People should not be subjected to add'l rules or req'ts based on groups they belong to
- Integration  
People entitled to live & participate in the community
- Choice  
People can choose where to live
- Individuality  
Respect unique needs & circumstances



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## Types of Property Covered

- ❖ The FHA broadly applies to “dwellings,” which includes almost every residential rental unit.
  - Single and multi-family housing houses, apartments & condos
  - Group homes
  - Shelters
  - Migrant housing
  - Assisted living housing
  - Long-term transient lodging



# Protected Classes

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- ❖ The FHA prohibits discriminatory conduct against persons based on:
  1. race
  2. color
  3. national origin
  4. religion
  5. sex (gender)
  6. familial status (families with children)
  7. handicap (disability)
  8. affordable housing (NC only)



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# Discrimination Based on Disability

- ❖ Definition of “disability” –
  - A physical or mental impairment that substantially limits one or more major life activities;
  - Having a history of such an impairment; or
  - Being perceived as having such an impairment (whether person is impaired or not)
- ❖ Includes people associating/residing w/ person with disability



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# Disability Protections Under the FHA

- ❖ Discrimination based on disability prohibited
  - Includes disability of buyer/tenant, people residing in unit, and people associated with buyer/renter
  
- ❖ Inquiries into nature/existence of disability also prohibited
  - Exception for questions asked of all applicants to determine eligibility for specific disability program (e.g. HOPWA)
    - Still cannot exclude for additional disabilities



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# Disability: Protections, cont'd.

- ❖ Housing providers also req'd to take affirmative steps to allow persons with disabilities an equal opportunity to live in the property:
  - Reasonable Accommodations
  - Reasonable Modifications
  - Follow post-1991 Building Requirements



# Reasonable Accommodations

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## ❖ Definition

- A change in rules, policies or procedures
- Necessary because of the person's disability
- Provides full/equal use and enjoyment of housing

## ❖ Can request at any time

- Before tenancy/when applying
- During tenancy
- When facing eviction, if RA could remove basis for eviction

## ❖ Can be requested by: tenant, family member, MD, social worker, therapist, or others





# When Can an RA Be Denied?

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- ❖ The person does not have a disability
  
- ❖ There is no disability-related need for the accommodation
  
- ❖ The request is not reasonable because:
  - the request would require a “fundamental alteration” in the nature of the services, program or activity, or
  - the request creates an undue financial and administrative burden.



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# Examples of reasonable Accommodation

- Help prospective tenant w/ cognitive disabilities fill out application
- Change rent due date to accommodate receipt of SSI or other disability payment
- Allowing automatic direct deposit or a representative payee to pay rent, where tenant's disability prevents him/her from paying on time
- Allow live-in aide to be added to lease
- Allowing a tenant to terminate lease early when based on the tenant's disability (e.g., emergency hospitalization, or conditions at unit exacerbates disability)
- Allow tenant add'l time to comply with lease req'ts, e.g. removing excessive clutter
- Allow service or assistive animal despite "No Pets" policy



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# Reasonable Modifications

- ❖ Definition:
  - Physical change in premises to allow a person with a disability to fully use & enjoy dwelling  
Includes common areas & interior of unit
  
- ❖ May be req'd to return interior of unit to original condition on termination of residency.
  - Reasonable escrow req't OK to pay for returning to original condition



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# Who Pays for Reasonable Modifications

- ❖ In private housing
  - Modification is made at tenant's own expense
  - Private housing includes tenant-based "Section 8" vouchers & LIHTC properties
    - Note: If LIHTC property also receives other federal funds (e.g. project-based Sec. 8), provider may be req'd to pay
  
- ❖ In federally-funded public housing
  - housing provider/landlord is required to pay for modification unless it will cause significant financial or administrative hardship



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# Examples of Reasonable Modifications

- Installing a grab bar in a bathroom
- Widening a doorway
- Installing a wheelchair ramp
- Installing a light switch or thermostat in an accessible location
- Installing a flashing smoke detector or doorbell
- Installing lever door handles



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# What is Required to Make an RA or RM Request?

- ❖ Does not have to include any specific “magic words”  
Person does not need to say “reasonable accommodation” or “reasonable modification”
- ❖ Can be oral or written
- ❖ Do not have to use specific forms of landlord or property manager
- ❖ However...



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# Best Practices for Making an RA or RM Request

- ❖ Make request in writing
- ❖ Explicitly state that it is an RA (or RM) request
- ❖ Depending on disability & requested accommodation or modification, may need to submit 2 documents:
  - RA/RM Request Letter
  - RA/RM Verification Letter



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# Format for RA/RM *Request Letter*

- ❖ Consider how third party (judge) will view letter
- ❖ Put on letterhead
- ❖ Ask for a response by a certain date
  - Landlord/manager must respond w/in reasonable (or “prompt”) time
  - Failure to respond = denial





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# What to Include in RA/RM *Request Letter*

- ❖ Clear statement that person has covered disability (if not obvious)
  - Do not have to disclose specific diagnosis/disability, but provider can ask for some disability-related information
  
- ❖ Clear statement of accommodation or modification requested
  
- ❖ Clear statement of the nexus, i.e., how the RA/RM will help w/ this disability (if not obvious)



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# What to Include in RA/RM *Verification Letter*

1. Provider should explain relationship to the client/patient
  - If treating him/her; length of time
2. Explain that person has physical or mental disability that substantially limits 1 or more major life activities
  - Examples of major life activities: seeing, walking, reaching, lifting, hearing, speaking, caring for self, interacting w/ others, learning, concentrating
  - **Do not have to give full diagnosis**
    - Talk to tenant and provider regarding how much to disclose
  - **Example:**
    - “Mary has a disability that makes it difficult to walk and leaves her unable to carry items such as a bag of groceries or a basket of laundry more than 20 feet”



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# What to Include in RA/RM *Verification Letter, cont'd.*

3. What accommodation/modification is needed and that RA/RM is “necessary” to allow person to fully use/enjoy dwelling
  - Example: “My opinion as Jim’s mental health therapist is that he requires an assistance animal to keep him company and provide the emotional and psychological support he needs in order to live by himself in an apartment”
4. Relationship between disability & RA/RM
  - Need only include if not obvious
5. State willingness to give add’l info, if needed



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# What Can LL Request When Evaluating RA/RM Request?

- ❖ Proof of disability
  - But *only* if disability is not obvious or otherwise known
  - Not entitled to medical history or even diagnosis
  
- ❖ Information of how RA/RM will help w/ this disability (the “nexus”)
  - But only if not readily apparent or known



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# Example of RA Verification Letter

07/18/2011

Regarding:

[REDACTED]

DOB:

[REDACTED]

To Whom It May Concern:

[REDACTED] is a patient of mine that would benefit from having a companion dog. There is no medical reason for her to have a dog, but there is a possibility of decline in healthy and increase chance of depression. Please take this into consideration.

If you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

[REDACTED] MD



# Sample RA Verification Letter

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Dear [Apartment Manager/Housing Authority/Landlord]:

[Full name of patient] is my patient, and has been in my care since [date]. I am thoroughly familiar with his/her medical history and with the substantial functional limitations of his/her disability.

Due to mental illness, [Mr./Ms. and patient's last name] has certain limitations regarding [social interaction/coping with stress/anxiety]. In order to help alleviate these difficulties, and to enhance his/her ability to live independently and to fully use and enjoy the rental unit you own and/or administer, I am prescribing an assistance animal that will assist [patient's full name] in coping with his/her disability.

Sincerely,

[Professional's Signature]

[Name of Professional]



# Exceptions

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- ❖ **Direct Threat.** FHA does not require a tenancy that would be a “direct threat” to the health or safety of others or result in substantial damage to the property of others unless an RA could eliminate the threat
  - Determination must be based on an individualized assessment
  - Unlawful to exclude people b/c of fear, speculation or stereotypes
- ❖ **Drug use.** Current use of illegal drugs is excluded from the definition of disability.



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# Tenant Selection & Criminal History Screening

- ❖ NC Housing Finance Agency 2/8/16 Guidance & Model policy for LIHTC Properties \*NEW\*
- ❖ HUD's 4/4/16 Guidance re FHA and Use of Criminal Records by Housing Providers \*NEW\*
- ❖ Possible Fair Housing Act violations for refusal to rent:
  - based solely on prior arrest not resulting in conviction;
  - based on blanket criminal history prohibitions w/o specific factors;
  - based on policy that is too restrictive





# NCHFA Model Policy

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- Automatic Exclusion v. Individualized Assessment v. No Exclusion
- Based on type of conviction
- Period begins at date of conviction or, if applicable, release from prison
- Violent misdemeanor & violent felony convictions have automatic exclusion periods of 2 and 5 years; violent convictions may be considered indefinitely w/ an individualized assessment.
- An arrest (w/o conviction) & expunged conviction will not be considered. Pending charge may be the basis of denial upon completion of an individualized assessment.

Type of Conviction	Automatic Exclusion Period	Individualized Assessment Period	No Exclusion
Nonviolent Misdemeanor (Classes 1-3)	NOT APPLICABLE	0 - 5 years	> 5 years
Nonviolent Felony (Classes H-I)	NOT APPLICABLE	0 - 7 years	> 7 years
Violent Misdemeanor (Class A1 & sex offenses)	0 - 2 years	> 2 years	NOT APPLICABLE
Violent Felony (Classes A-G & sex offenses)	0 - 5 years	> 5 years	NOT APPLICABLE
Felony Involving Sale or Manufacture of a Controlled Substance	0 - 5 years	5 - 10 years	> 10 years



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# Questions or Comments?

## Contact Information:

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