

Accommodating The Physically Challenged

The 1988 Fair Housing Amendments Act states landlords must make rental housing more accessible to physically challenged residents in the following two situations:

- Tenants must be allowed, at their expense, to make any reasonable modifications necessary for their full enjoyment of the premises.
- Landlords must make reasonable accommodations in rules, policies, practices, or services, which are necessary to afford physically challenged residents "equal opportunity to use and enjoy a dwelling."

If the landlord either refuses to permit modifications or make the required accommodations, he or she is in violation of fair housing law.

Modifications that landlords must allow include those to the interior of the resident's unit. Examples include widening doorways to make various rooms more accessible, placing grab bars in the bathrooms and lowering cabinets in the kitchen area so the height is acceptable for a person in a wheelchair.

Other changes may include lobbies, main entrances and other public or common areas of a rental property.

These modifications can be made at any time during the tenant's residency so it is not necessary to have the changes in place the day the tenancy begins. It must be emphasized that such modifications are to be "at the expense of the physically challenged person."

It also is necessary that the resident seek the landlord's approval before such modifications are made. While the landlord does not have an absolute right to reject alterations and/or to select and approve the contractor, the owner may require that adequate protection be provided to prevent improper modifications and/or faulty workmanship.

According to the law, "a landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modification as well as reasonable assurances that the work will be done a workmanlike manner and that any required building permits will be obtained."

Moreover, the landlord may require that the resident agree to restore the interior of the rental unit to its condition prior to the person moving in. However, the resident is permitted reasonable wear and tear for the modifications.

If such changes were made to the public or common areas, the landlord can only require the restoration of the premises if "it is reasonable to do so." For example, if the doors were widened, it would be unreasonable to require that they be made narrower. But if the kitchen cabinets were lowered, it probably would be reasonable to require that they be restored to their original height.

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A question arises as to whether the landlord may require an additional security deposit to insure restoration at [he end of the tenancy. The statute itself does not answer this question, but Department of Housing and Urban Development (HUD) regulations indicate that this is not permissible. According to HUD, "The landlord may not increase for handicapped persons any customarily required security deposit.

However, HUD regulations do recognize that, in some circumstances, it may be permissible to require that the resilient pay into an interest-bearing escrow account to insure the necessary restoration work after the person vacates the apartment.

As for "reasonable accommodations," the law only requires feasible and practicable modification, not extreme, infeasible alterations. One ruling stated, "An accommodation, which permits handicapped tenants to experience the full benefit of tenancy, must be made unless the accommodation imposes an undue financial or administrative burden on a landlord or requires a fundamental alteration in the nature of its program."

Examples of reasonable accommodations include:

- Permitting a blind resident to have a seeing eye dog when the apartment community has a "no pet" policy.
- Reserving a parking space for a physically challenged resident closer to his or her unit than what other tenants would be entitled to.
- Waiving community rules to allow a non-resident friend of a handicapped tenant to use the property's clothes washer and dryer to do the residents' laundry.

The law even recognizes giving physically challenged residents special privileges that the other tenants do not receive.

Since the issue of what can or must be done to accommodate physically challenged residents is a complex one, a landlord should consult with his or her legal advisor to insure compliance with fair housing law.

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