

**Reasonable Accommodations**  
**PENDEL AHMA CONFERENCE**

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**Disability**

In 1988, the House Judiciary Committee explained that "disability" needed to be added as a protected class to the Fair Housing Act in part to ensure that individuals with disabilities have equal opportunities to live independently and "to end the unnecessary exclusion of persons with handicaps from the American mainstream."

**What is a Reasonable Accommodation?**

- In the *housing* context, a reasonable accommodation is a "change, exception or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces."

**Who Is a "Person with a Disability?"**

- An individual with a physical or mental impairment that substantially (significantly) limits one or more major life activities – *e.g.*, breathing, hearing, walking, seeing, learning, speaking, caring for self, *etc.*

**Who Is Entitled To a Reasonable Accommodation?**

- A person with a disability:
  - Who *requests* a reasonable accommodation (unless the need for the accommodation is obvious)
  - That is *reasonable*
  - And *related* to the person's disability (nexus).

**Fair Housing Act**  
makes it unlawful to refuse

to make reasonable accommodations in rules, policies, practices, or services, when such accommodations **may be necessary** to afford a disabled person **an equal opportunity** to use and enjoy his/her dwelling.

42 U.S.C. § 3604(f)(3)(B).

**NEXUS between *Disability* and *Need for Accommodation***

Will the accommodation affirmatively enhance a disabled person's quality of life by ameliorating the effects of the disability?

Smith & Lee Assoc., Inc. v. City of Taylor, Michigan, 102 F.3d 781 (6th Cir. 1996) (quoting Bronk v. Ineichen, 54 F.3d 425, 429 (7th Cir. 1995))

**Reasonable Accommodation "Defenses"**

- Accommodation not reasonable
- Accommodation would impose an undue financial and administrative burden on the housing provider
- Accommodation would fundamentally alter the nature of the provider's operations

**Interactive Process**

If a housing provider is unable or unwilling to provide an accommodation, that does NOT end the process. The provider should attempt to engage the person requesting the accommodation in an interactive process.

**Interactive Process**

The housing provider and the requester should discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations. However, a person with a disability usually knows what accommodation will best ameliorate the effects of her disability.

**Relevant Federal Statutes**

- Rehabilitation Act of 1973, 29 U.S.C. § 705, et seq.

Prohibits discrimination against qualified individuals with disabilities in programs conducted by federal agencies:

- § 503 - Federal contractors
- § 504 - recipients of federal financial assistance

**Federal Statutes - continued**

- The Fair Housing Act (FHA)  
42 U.S.C. §§ 3601-3631

Amended to protect against disability discrimination in housing in 1988

## Federal Statutes - continued

- The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, *et seq.*
- Title I – Employment
- Title II – Public Transportation
- Title III – Places of Public Accommodation, Private Transportation

## Delaware Fair Housing Act

6 Del.C. § 4600 *et seq.*

Prohibits discrimination on the bases of:

Race	Color
national origin	Religion
Creed	Sex
Marital status	Familial status
Age	Sexual orientation
Disability	

## Pennsylvania Human Relations Act 43 P.S. §§ 951-961

- Prohibits discrimination in employment, housing and commercial property, public accommodations and education. It protects handlers and trainers of support animals, as well as disabled individuals. By also covering handlers & trainers, the PHRA ensures that support animals in training have the opportunity to visit public accommodations, etc., during their training period.

## DISABILITY CASES ARE FACT SPECIFIC!

**There's no easy fix or  
*one size fits all* standard.  
Each case must be  
evaluated based on the  
facts...**

## Proving a Reasonable Accommodation Case

- Plaintiff is disabled.
- Plaintiff requests a *reasonable* accommodation because of her disability.
- Nexus between accommodation and disability (Accommodation will ameliorate the effects of the disability/Equal Opportunity to use dwelling in housing context)
- Accommodation is denied.

## Parking Space as a Reasonable Accommodation

The Court of Appeals held that:

(1) the building manager failed to adequately determine whether the tenant was actually disabled before denying request; (2) increasing the number of disabled parking spaces at the building from two to four was not a reasonable accommodation to the tenant; and (3) the managing partner and the corporation were liable.

*Jankowski Lee & Associates v. Cisneros*, 91 F.3d 891  
(7<sup>th</sup> Cir.1996)

## Assistance Animal Cases

- Service animals are animals that are *trained* to work, provide assistance and perform tasks for the benefit of a person with a disability.
- Assistance animals provide emotional support that alleviates one or more of the symptoms or effects of a person's disability.

## Assistance Animals are NOT PETS!!!

- Not all assistance animals are service animals.
  - Many assistance animals have no training but provide assistance (*e.g.*, emotional support, comfort, *etc.*).
  - A service animal is trained.
  - PET RULES DO NOT APPLY!

## ADA – “Service Animal”

- Any guide dog, signal dog, *or other animal* individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.  
28 CFR § 36.104

## Assistance Animals Include:

- Guide Dogs
- Hearing or Signal Dogs
- Ssig Dogs (trained to assist person with autism)
- Seizure Response Dogs
- Therapy Animals
- Psychiatric Service Dogs
- Emotional Support/Companion Animals

## Reasons Why Accommodation Denied

- Insufficient evidence to justify claims of emotional dependence – Durkee v. Staszak (NY)
- Court skeptical of nexus between tenant's disability and need for cat – Nason v. Stone Hill Realty Assoc. (Mass.)

## Reasons Why Accommodation Denied - continued

- Plaintiff's service dog permitted. However, District Court stated: “[P]laintiff fails to state a claim [for additional dogs] because her desire to have extra dogs in her apartment does not aid her in living her disability.” Proffer v. Columbia Tower (Cal.)

## Federal Case – punitive damages

- Jury returned a verdict of \$314,209
- \$14,209 in compensatory damages and
  - \$300,000 in punitive damages
  - Defendants violated the Fair Housing Act by refusing to waive a no-pets rule to allow the complainant to keep an emotional support dog in her unit.
  - Fair housing case originally investigated and charged by HUD
  - U.S. Attorney's Office filed complaint and tried case before jury
  - Appealed to 6<sup>th</sup> Cir. and was settled for \$280,000

United States & Joyce Grad v. Royalwood Cooperative Apts., Inc., et al. (E.D. Mich.) [See [USDOJ.gov](http://USDOJ.gov) website]

## Issues of Concern

- Reasonable accommodation request
- Evidence of disability
- Need for accommodation
- Nexus between disability and accommodation
- Interactive dialogue

## Issues of Concern - continued

- Direct threat defense
- Denial of accommodation
- Pet fees or “accommodation” fees
- Reasonable health and safety lease provisions apply

## Tips for Housing Providers:

- Reasonable Accommodation requests need NOT be on *your* form.
- Develop and post a written Reasonable Accommodation policy that is consistent with the Joint Statements HUD/DOJ issued.
- Consistently follow a written Accommodation process.

## Tips for Housing Providers:

(continued)

- Do not ask for private information to which you are not entitled (e.g., medical records)
- If a person's disability is obvious and the need for the accommodation, don't ask for evidence of the disability or need for the accommodation!
- Be flexible!!