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## FAIR HOUSING OPTIONS FOR PERSONS AT RISK OF HOMELESSNESS

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FAIR HOUSING PROJECT  
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## FAIR HOUSING LAW OVERVIEW

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## FAIR HOUSING PRINCIPLES

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### Equality

- People should not be subjected to additional rules or requirements 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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## LAWS ADDRESSING FAIR HOUSING

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**Federal Fair Housing Act (FHA) (42 U.S.C. §3601, et seq.)**

**N.C. Fair Housing Act (N.C. Gen. Stat. §41A-1, et seq.)**

**Civil Rights Act of 1866 (42 U.S.C. §1981)**

**Title VI of Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.)**

**Americans with Disabilities Act (ADA) (42 U.S.C. §1201, et seq.)**

**Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794)**

**State and local building codes**

**Today's training focuses on the Fair Housing Act.**

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## FAIR HOUSING ACT: COVERED PROPERTIES

The FHA broadly applies to “dwellings,” which includes almost every residential rental unit (private and subsidized)

- Single and multi-family housing
  - houses, apartments & condos
- Group homes
- Shelters
- Migrant housing
- Assisted living housing
- Long-term transient lodging



### Limited Exceptions

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## WHO HAS TO COMPLY?

**Almost all people involved in selling, renting, and managing housing must comply with Fair Housing laws**

- Owner, landlord, management company, manager, maintenance workers, and other employees
- Real estate agencies, agents, sellers, banks, lending institutions, and insurance companies
- Homeowners Associations and Condo Boards

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## PROTECTED CLASSES

The FHA prohibits discriminatory conduct against persons based on:

- race
- color
- national origin
- religion
- sex (gender)
- familial status (families with children)
- handicap (disability)
- affordable housing (NC only)

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## THEORIES OF DISCRIMINATION

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### Discriminatory Intent (Disparate Treatment)

- Treating someone differently because of his/her membership in a particular group
- Example: Refusing to rent to someone because s/he is African American or Latinx or has a disability

### Discriminatory Effect (Disparate Impact)

- Facially neutral rule/practice that "actually or predictably results in a disparate impact on a group of persons ... because of" their membership in a protected class.
- Example: Policy of requiring employment income for all tenant applicants could discriminatorily affect people with disabilities, if PwD are less likely to have such income compared to those without disabilities

### Denial of Reasonable RA/RM, Discriminatory Statement

FHA prohibits BOTH intentional discrimination and practices having an unjustified discriminatory effect

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## DEFINITION OF A DISABILITY UNDER FHA

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- 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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blindness or other visual impairments	deafness or other auditory impairments	<b>EXAMPLES OF PROTECTED DISABILITIES</b>
mobility impairments	mental illness	
cognitive disabilities	AIDS or HIV+	
alcoholism	former drug abuse	

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## IS COVID A DISABILITY?

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- U.S. Department of Health and Human Services and Department of Justice issued guidance in July 2021 stating that long COVID can be a disability under the ADA and Section 504.
  - The definition of disability in those statutes mirrors the definition of disability of FHA.
- **Analysis:**
  - Disability definition: A physical or mental impairment that substantially limits one or more major life activities
  - People with long Covid may experience physiological or mental health conditions. Can be episodic.
  - Individualized assessment.

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## HOUSING SCENARIO

Marsha works full time and does not receive any disability payments or benefits. She has a mental health disability, and manages her symptoms with medication and therapy. When applying for an apartment, she asks the property manager about seeking an exception to the "no pets" rule because her doctor recommended that she have an emotional support animal.

The manager asks her what her diagnosis is and says he needs to know because this is a quiet neighborhood, and they don't need anyone causing problems at the complex. He notes that she said on her application that she works, and then asks whether she gets some kind of disability payments.

**Do you think the FHA has been violated? Why or why not?**

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### DISABILITY PROTECTIONS

#### Discrimination based on disability prohibited

- Includes denial of housing; imposing different terms/conditions; neutral rules that disparately impact person with disability
- 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 UNDER FHA

### Unlawful Statements & Advertising

- Indicating limitation based on disability
- Applies to all property
  - including single-family houses and other property exempt from other parts of the FHA

### Examples:

- “Have you ever been in a drug rehab. program?”
- “Can you live independently?”

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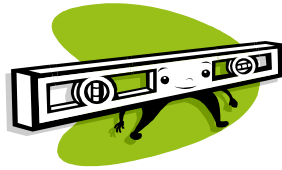


## DISABILITY PROTECTIONS

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**Housing providers also required to take affirmative steps to allow persons with disabilities an equal opportunity to live in the property:**

- Reasonable Accommodations
- Reasonable Modifications



*This is the law's way of leveling the playing field*

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## QUESTION

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**Property managers should not make exceptions to property rules.**

**True**

**False**

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## HOUSING SCENARIO

A social worker calls an apartment community and asks for the Property Manager to e-mail or mail her a copy of the rental application. The social worker explains that she is working with a client who has a housing voucher to cover the cost of her down payment and rent but needs help completing the application.

The Property Manager asks about the voucher, and the social worker explains that the voucher assists people with mental, developmental, or intellectual disabilities to secure housing.

The manager says she, unfortunately, cannot send the rental application. The owner requires that all applications be completed at the rental office (and deposit paid). The social worker offers to pick up the application and return it with her client (and deposit). The manager says she will ask the owner and call the social worker back. The manager never calls back.

**Has the PM violated the FHA?**

## ANSWER IN THE COMMENTS


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## REASONABLE ACCOMMODATIONS

<b>Definition</b>	<ul style="list-style-type: none"> <li>• A change in rules, policies or procedures</li> <li>• Necessary because of the person's disability</li> <li>• Provides full/equal use and enjoyment of housing</li> </ul>
<b>Can request at any time</b>	<ul style="list-style-type: none"> <li>• Before tenancy/when applying</li> <li>• During tenancy</li> <li>• When facing eviction, if RA could remove basis for eviction</li> </ul>
<b>Can be requested by</b>	<ul style="list-style-type: none"> <li>• Tenant, family member,</li> <li>• MD, social worker, therapist, or</li> <li>• Others</li> </ul>

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**WHEN CAN AN RA REQUEST BE DENIED?**

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**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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# ASSISTANCE ANIMALS

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## HOUSING SCENARIO

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Marsha rents at an apartment complex that allows pets and requires payment of a pet deposit and monthly pet rent. Iselda has a cat, Whiskers, which she adopted because her doctor recommended she get an animal to help Marsha manage her anxiety symptoms. Her landlord says she can have the cat, but she has to pay the pet deposit and rent because animals cause damage to residential properties.

Is this allowed?

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## PET POLICY RESTRICTIONS

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Landlords can have any restrictions they want regarding pets, including

- Prohibiting all pets
- Prohibiting certain types of pets
- Prohibiting certain breeds
- Prohibiting certain sizes of animals
- Extra security deposit for pets
- Extra monthly rent charge for pets

**But...**

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## **REASONABLE ACCOMMODATIONS FOR ASSISTANCE OR SERVICE ANIMALS**

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**If person needs a service or assistance animal for his/her disability, she can have it.**

### **Pet rules apply to pets**

- Service animals are not pets
- Assistance animals are not pets

### **Pet rules do not apply to service/assistance animals**

- Owner responsible for damage & behavior issues, but cannot be charged upfront deposits, fees, etc.

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## **TERMINOLOGY**

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**Service animals**

**Assistance animals**

**Therapy animals**

**Emotional support animals (ESAs)**

**Comfort animals**

**Support animals**

**“Unique” animals**

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## SERVICE ANIMALS

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### **Must be individually trained to work or perform specific task for benefit of person w/ disability**

- Trained to take specific action when needed to assist PwD
- Work/tasks must be directly related to person's disability
- Training does not have to be by professional trainer

### **Must be dog or miniature horse**

- But see assistance animal rules below



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## SERVICE ANIMALS

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### **Allowed in places of public accommodation**

- Allowed in all areas where members of public or participants in services or program, or invitees are allowed to go
- In housing this includes
  - Leasing/rental office
  - Public use & common areas open to public
- For tenant, it also includes
  - Their own unit
  - All places in the complex that tenants are allowed to go (public & common use areas)

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## ASSISTANCE ANIMALS UNDER FHA

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### An animal that:

- Performs tasks and/or
- Provides therapeutic or emotional support
- for individuals with disabilities



### Does not need to be individually trained



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## TYPES OF ANIMALS ALLOWED

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### Animals commonly kept in households

- Generally allowed
- Breed & size limits do not apply
- Examples:
  - Dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, other small, domesticated animal that is traditionally kept in the home for pleasure rather than commercial purposes

### “Unique” animals not traditionally kept in household

- Greater proof of need required of tenant
- Examples:
  - Reptiles (other than turtles), barnyard/farm animals, monkeys, kangaroos, other non-domesticated animals

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## **“UNIQUE” ANIMALS**

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**Requestor has “substantial burden” of showing disability-related need for the specific animal or type of animal**

**Can be allowed in “unique” circumstances**

- Animal is individually trained to do work/perform tasks that cannot be performed by a dog
- Information from health care provider confirms
  - Allergies prevent person from using a dog or
  - Without the animal, the symptoms or effects of the person's disability will be significantly increased
- The individual seeks to keep the animal outdoors at a house with a fenced yard where it can be appropriately maintained
- Person seeks RA to land use/zoning law, HOA rule, or condo/co-op rule

**Example: capuchin monkey trained to perform tasks for person w/ paralysis caused by spinal cord injury**

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## **RESPONSIBILITIES OF SERVICE/ ASSISTANCE ANIMAL OWNERS**

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**Maintain control of animal**

- No aggression
- Keep animal on leash/harness/tether
  - Sometimes OK w/o if voice/hand/other control
- No excessive noise (barking, etc.)
- No damage to unit

**Pick up after animal**

- Waste
- Smells

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## INTERNET DOCUMENTATION

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Documentation obtained based on answering questions or participating in short interview for a fee **“is not, by itself, sufficient** to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal”

Guidance distinguishes remote provision of health care, including over the internet

**Recommendation: If verification is required, obtain from a treating healthcare provider**

See HUD Assistance Animal Guidance, Guidance, p. 11

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## MULTIPLE ASSISTANCE ANIMALS

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### Multiple animals allowed if

- Person has disability-related need for both (e.g., one animal assists with mobility impairment and a second assists with mental disability) *or*
- Two people living together each have disability-related need for separate animal

See HUD Assistance Animal Guidance, Guidance, p. 3, 4, 14, 16-17

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## THE KEY QUESTIONS

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Has the individual requested a reasonable accommodation — that is, asked to get or keep an animal in connection with a physical or mental impairment or disability?

Does the person have an observable disability or does the housing provider already have information giving them reason to believe that the person has a disability?

Has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?

Has the person requesting the accommodation provided information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability?

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## REASONABLE ACCOMMODATIONS IN EVICTIONS

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## HOUSING SCENARIO

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Marsha was discouraged when her landlord said she had to pay the pet deposit and additional rent so she gave Whiskers to her cousin. Marsha's therapist noticed a significant increase in Marsha's anxiety symptoms and suggested she talk to the landlord again about having the cat in the apartment. Marsha didn't want to have a confrontation with the landlord, and ended up bringing Whiskers to her apartment.

A maintenance man noticed she had a cat when changing the filters and reported it to the landlord.

The landlord sent Marsha an eviction notice. What can she do?

## ANSWER IN THE COMMENTS

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## REASONABLE ACCOMMODATIONS IN EVICTIONS

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### Analysis:

- (1) Did the tenant breach the lease that could lead to an eviction?
- (2) If so, does the reason for the breach relate to the person's disability? Is the disability playing a role?
- (3) If so, is there an RA that could eliminate or minimize the risk of it happening again?
  - -- Is the disability obvious or known? If not, can tenant/advocate obtain verification of disability
  - -- Is the disability-related need for the accommodation obvious or known? If not, can tenant/advocate get verification of disability-related need

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## REASONABLE ACCOMMODATIONS IN EVICTIONS

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**Need to be sure granting RA request will allow person to meet tenant obligations:**

- Pay rent on time
- Keep unit clean and safe
- Comply with (lawful) lease requirements
- Not disturb other residents
- Not damage property

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## 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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## HOUSING SCENARIO

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Monty is the father of two teenaged children with mental disabilities. One summer, things were particularly difficult for the family. His daughter, who is diagnosed with bipolar disorder showed neighbors her self-inflicted cuts. His son is diagnosed with autism and was heard threatening to jump off a second story balcony. Neighbors reported hearing yelling at all hours and banging on the wall "as if a body was being thrown against it."

The landlord issued several warnings. Monty tried speaking with the landlord, to try to explain that the family was going through a particularly difficult time, due to having to change doctors for his daughter's mental health disability, and that his son, who has autism, was struggling at school. After several warnings, Monty's landlord filed to evict the family, alleging breach of lease.

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## REASONABLE MODIFICATIONS

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## HOUSING SCENARIO

Louisa is hearing impaired. She rents an apartment from a private landlord and has a housing choice voucher (also known as a Section 8 voucher).

Because of her hearing impairment, she can't hear the doorbell, or the smoke alarm.

**What are her options?**

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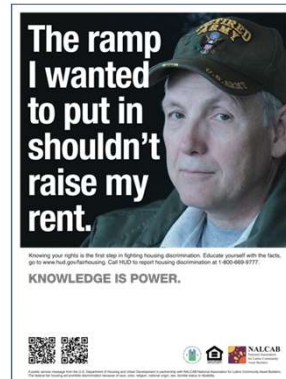
## REASONABLE MODIFICATIONS

### 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 requested to return interior of unit to original condition on termination of residency.

- Reasonable escrow requirement OK to pay for returning to original condition



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## EXAMPLES OF REASONABLE MODIFICATIONS

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**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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## WHO PAYS FOR REASONABLE MODIFICATIONS?

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### **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 an undue financial and administrative burden

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## **WHO PAYS FOR THE MODIFICATION? FHA'S DESIGN AND CONSTRUCTION**

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### **In multi-family private or federally funding housing, with 4 or more units, built after March, 1991**

- If the RM requested by a tenant are features that should have been completed when constructed, then the HP may be responsible for providing and paying for those requested structural changes.
- If the RM requested are not features that should have already existed in the building pursuant to the FHA's design and construction requirements, then the T is responsible for paying for the cost as an RM.

### **Although the FHA's D&C provisions only apply to certain multifamily housing built since 1991, a T may request an RM to housing built prior to that date.**

- HP must allow the RMs, and the tenant is responsible for paying

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**“HOUSING PROVIDERS SHOULD BE AWARE THAT PERSONS WITH DISABILITIES TYPICALLY HAVE THE MOST ACCURATE KNOWLEDGE REGARDING THE FUNCTIONAL LIMITATIONS POSED BY THEIR DISABILITY.”**

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HUD-DOJ JOINT STATEMENT ON REASONABLE MODIFICATIONS

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## **CAN A HOUSING PROVIDER SUGGEST AN ALTERNATIVE MODIFICATION?**

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**Generally, housing providers cannot suggest alternative modifications or alternative designs. However, if the factors below are met, then the modification should be done in accordance with the housing provider's design.**

- (1) the modification is to a common area *or* an area of the interior that would **not** need to be restored to its original condition

**and**

- (2) the housing provider's proposed design imposes no additional costs

**and**

- (3) The housing provider's proposed design still meets the tenant's needs

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## **IS IT AN ACCOMMODATION OR A MODIFICATION**

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**A person with a disability who uses a walker due to mobility issues requests permission for a reserved parking space close to the entrance of the unit. This will require scheduling maintenance to purchase materials and install the "reserved parking" sign.**

**Is it an RA or an RM?**

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## IS IT AN ACCOMMODATION OR A MODIFICATION

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A person with a disability who uses a wheelchair requests removing the carpet in the unit, because her wheelchair does not move well across carpeting.

Is it a reasonable accommodation or a modification?

- Reasonable Accommodation
- Reasonable Modification

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**DISABILITY  
PROTECTIONS  
UNDER FHA**

**&**

**PHYSICAL  
ACCESSIBILITY**

### **Design & Construction Requirements for New Accessible Housing**

- Multi-family dwellings (4 or more units)
- Designed for first occupancy after 3/13/1991
- Must have accessible features for individual units and public and common areas
  - If elevator in building, all units must comply
  - If no elevator, all ground floor units must comply

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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 RA/RM REQUESTS

Make request in writing

Explicitly state that it is an RA (or RM) request

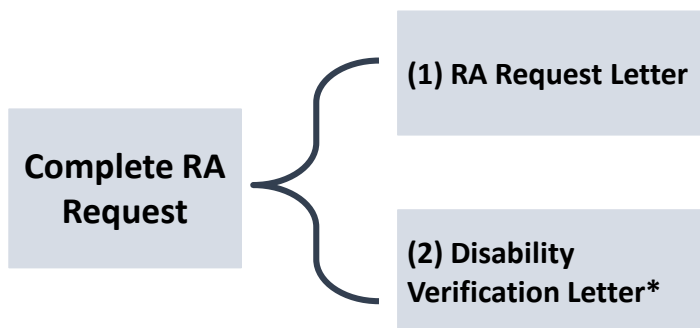
Depending on disability & requested accommodation or modification, may need to submit 2 documents:

- RA (or RM) Request Letter
- Disability Verification Letter

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## 2 PARTS OF A COMPLETE RA REQUEST



*\*While verification letter is not required for obvious disabilities (e.g. a person with a mobility disability who uses a walker or wheelchair), it is a best practice to include it.*

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## RA REQUEST LETTER CHECKLIST: *CONTENT*

- ❑ Explain relationship to person w/ disability
- ❑ State that the person has a disability
  - ❑ Focus on substantial limitations of major life activity
  - ❑ Do not have to disclose specific diagnosis/disability, but housing provider can ask for some disability-related information
- ❑ Clearly state RA requested
- ❑ Explain how RA is necessary & related to disability
  - ❑ How it will help w/ this disability (if not obvious)
- ❑ 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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## DISABILITY VERIFICATION LETTER: *FORMAT*

- ❑ Use office letterhead
- ❑ Include:
  - ❑ Date
  - ❑ Signer's full name, contact info. & credentials/degrees (MD, MSW, PhD, etc.)
- ❑ Advocate can help draft as long as provider reviews fully & agrees w/ all statements

Model Letter #1: Recommendation for an assistance animal from a service provider/professional

[Name of professional (therapist, physician, psychologist)]  
[Address]  
[City, State, Zip Code] [Date of the letter]

[Name of Apartment Manager/Housing Authority/Landlord]  
[Address]  
[City, State, Zip Code]

Dear [Apartment Manager/Housing Authority/Landlord]:

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

Due to mental illness, [illness], and patient's [condition], in order to help mitigate 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]

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# **CRIMINAL BACKGROUND SCREENING**

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## **CRIMINAL BACKGROUND SCREENING AND FAIR HOUSING**

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**The Fair Housing Act does NOT prohibit landlords from conducting criminal background screening**

**HUD has issued guidance to show how the FHA applies to the use of criminal background screening because of disparities in the criminal justice system that impact persons in certain protected classes.**

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## WHO DO CRIMINAL BACKGROUND POLICIES AFFECT?

**Criminal background screening widely used & easily accessible**

**Nearly one-third of adult population has criminal record**

**US prison population (2019) = 1.38 million**

**650,000 released annually since 2004**

**95% current inmates will be released at some point**

**Access to safe, secure and affordable housing is critical to successful reentry to society**

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## WHO DO CRIMINAL BACKGROUND POLICIES AFFECT?

**Whites & African Americans commit most crimes at about same rate**

**African Americans were two times more likely to be arrested than the general population**

**Across all age groups, the imprisonment rates for African American males is almost six times greater than for White males and 1.3 times greater for Hispanic individuals than non-Hispanic White individuals.**

United States (2019)	US Population	Prison Population
White	60%	31%
Black	13%	33%
Latino	18%	23%

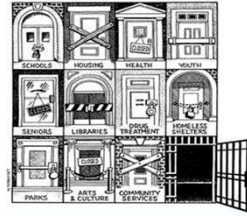
Source: HUD Guidance; E. Ann Carson, PhD, Bureau of Justice Statistics, US Department of Justice, Prisoners in 2019 (Oct. 2020) [Prisoners in 2019 \(ojp.gov\)](https://www.ojp.gov/prisoners)

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## HUD GUIDANCE ON CRIMINAL BACKGROUND SCREENING

(April 2016)  
(April 2022)  
(June 2022)



HUD OFFICE OF GENERAL COUNSEL, GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS (APRIL 4, 2016)

HUD MEMO, IMPLEMENTATION OF THE OFFICE OF GENERAL COUNSEL'S GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTION (JUNE 10, 2022)

HUD MEMO, ELIMINATING BARRIERS THAT MAY UNNECESSARILY PREVENT INDIVIDUALS WITH CRIMINAL HISTORIES FROM PARTICIPATING IN HUD PROGRAMS (APRIL 12, 2022)

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## HUD OFFICE OF GENERAL COUNSEL GUIDANCE

**HUD acknowledges statistical disparities based on race & national origin**

**Criminal background screening may constitute discriminatory effect**

**Based on EEOC guidance for employment**

**To justify policy, housing provider must**

- Provide a "substantial, legitimate, nondiscriminatory interest" supporting the policy, and
- show that the policy actually achieves this interest
  - Possible interests: Resident safety or Protecting property

**Fact-specific & case-specific inquiry**

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## **HUD GUIDANCE: EXCLUSIONS BASED ON ARREST**

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### **Arrest records not proof of past misconduct**

- Only shows someone probably suspected another of an offense
- Possible exception: pending charges/Deferred w/ guilt
- Arrest records often incomplete
- Not reliable basis to assess potential risk to safety or property

**A provider “cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest”**

**THEREFORE... Do not make decisions based solely on an arrest**

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## **HUD GUIDANCE: EXCLUSIONS BASED ON CONVICTION**

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**Conviction record generally sufficient evidence to prove person engaged in criminal conduct**

- Unless error in record, outdated record, etc.

**Provider still must prove policy is necessary to achieve “substantial, legitimate, nondiscriminatory interest”**

**“Blanket prohibition on any person with any conviction record ... will be unable to meet this burden”**

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## HUD GUIDANCE: EXCLUSION BASED ON CONVICTION

Blanket prohibition based on conviction not permissible



Tailored policy that excludes people with certain types of convictions may be permissible if it considers:

Nature of offense	Severity of offense	Amount of time that has passed since conduct
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## INDIVIDUALIZED ASSESSMENT

Screening based on an individualized assessment is a less discriminatory alternative to overly broad exclusion policies

- Private landlords should allow for an individualized assessment.
- Required for Low Income Housing Tax Credit housing properties, as well as subsidized housing

The apartment could consider the individual circumstances, such as:

- the length of time since the offense
- age at the time of the offense
- the seriousness of the criminal offense
- whether the offense affects the safety and security of residents, staff or property
- evidence of rehabilitation, such as having a job or participating in a job training program, education, participation in a drug or alcohol treatment program

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## INDIVIDUALIZED ASSESSMENT

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**This is the opportunity to explain to the apartment that the person will be a good tenant.**

**Letters of support may be helpful.**

- Letters could be from a parole or probation officer, employer, teacher, social worker, treatment program, current or prior landlord, or community leader.
- The apartment may not give much credit to letters from a friend or family member.

**The applicant could also show the landlord that they are or will be receiving support or other assistance from a non-profit organization or government agency.**

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## HUD GUIDANCE: EXCLUSION BASED ON CONVICTION

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If PM/LL screens, must screen everyone

- Screening only African Americans or people who “look suspicious” is a FH violation

If screens, must screen everyone equally

- If Latino tenant w/ conviction for X offense is excluded, white applicant w/ same history should also be excluded

Using criminal history as pretext = violation

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## **HUD GUIDANCE: EXCLUSIONS BASED ON CONVICTION**

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### **FH Act Exemption**

- “Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of illegal manufacture or distribution of controlled substance as defined in section 802 of title 21.”
- 42 U.S.C. §3607(b)(4)
- Applies to all housing (public & private)
- Requires actual conviction
- Only for manufacture or distribution (not just possession)

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## **MANDATORY BANS FOR PUBLIC HOUSING**

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### **PHAs & owners of Project-Based Section 8 housing are required to reject applicants with a household member who:**

- Has been convicted of manufacture or production of methamphetamine on the premises of “federally assisted housing”
- Is subject to lifetime registration req’t under state sex offender program
- Has been evicted from “federally assisted housing” for drug-related criminal activity in the past 3 years unless person
  - Successfully completed rehab program *or*
  - Circumstances have changed

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## PENDING CHARGES, & EXPUNGED OR SEALED CONVICTIONS

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**Pending Charges: If an applicant has an arrest with pending charges, the landlord may consider charges as part of the individualized assessment.**

- If the landlord cannot determine the details of the pending charges, it may delay the decision or deny admission until the charges are resolved.
- If the landlord can identify the details of the pending charges, they should approve your rental application if a later conviction would not change the decision to rent.

**Expunged or Sealed Convictions: The apartment should not reject an application because of expunged or sealed convictions.**

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## CASES

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**Fortune Society v. Sandcastle Towers Housing Development Fund Corp., et al.**

- Non-profit organization that assisted in providing housing to formerly incarcerated individuals sued landlord in 2014 in federal court in New York for refusing to rent apartments to individuals served by the non-profit due to their criminal background policy. Case settled in 2019 with Sandcastle's owners agreeing to pay \$1,187,500.

**Savannah Chatham Fair Housing Council, Inc. et al. v. CHG Westgate LLC, et al.**

- Landlords and property management company implemented a rule banning any resident who had any felony conviction within previous 99 years and attempted to evict some existing tenants on that basis. Landlords also enlisted police department of Garden City, Georgia in making decisions on who to evict. Tenants and non-profit sued landlords, property management, and city in 2015 in federal court in Georgia. Case settled in 2017; Landlords, property management, and city paid \$112,500.00 in damages plus attorney's fees to tenants and non-profit.

**Housing Opportunities Made Equal of Virginia, Inc. V. Wisely Properties, LLC**

- Landlord was sued in 2019 for blanket ban on any person with a felony conviction from living at property. Case quickly settled; Landlord paid \$15,000 in damages plus attorney's fees.

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## MORE CASES

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### **Clark v. Dyersburg Apartments, LTD and MACO Management Company, LLC**

- Landlord enforced ban on residents with felony conviction against Clark, a black tenant, but not against white tenants. Clark filed a complaint with HUD in 2013. HUD issued a charge of discrimination in 2018, and US Department of Justice filed suit against landlord in federal district court in Tennessee. Case settled in 2019; landlord required to pay \$42,250.00 to Clark.

### **Connecticut Fair Housing Center v. CoreLogic Rental Property Solutions, LLC**

- Ongoing case against third-party provider of background screening to landlords/property management.

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## CRIMINAL HISTORY & RA

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### **May have to make reasonable accommodation & waive criminal history if**

- Applicant/tenant has disability
- Criminal history is related to disability

### **Follow normal RA procedures & requirements**

### **More difficult than w/ credit history**

### **Violent offenses vs. non-violent offenses**

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## IF THE LANDLORD REJECTS THE APPLICATION

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The landlord should have sent a letter explaining that they are going to reject the application because of the results of the criminal background search. The letter should have included the name, address and phone number of the agency that completed the criminal report.

Applicant has a right to a free copy of the report from the agency.

If the letter gives an opportunity to challenge the accuracy of the record or present mitigating circumstances, applicant should follow the instructions in the letter.

Request appeal/individualized assessment. Don't delay!

Put all communications w/ LL in writing (texts, emails, US mail).

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## STATUTE OF LIMITATIONS

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### Federal Act:

- 1 year from date of last act to file a HUD complaint
- 2 years from date of last act to file a lawsuit
- Filing a complaint with HUD stops the running of the time to file a lawsuit under the federal Fair Housing Act

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## RESOURCES

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Visit NC Fair Housing Project's website for more information:

<https://www.fairhousingnc.org>

NC Homeless Youth Handbook

<https://www.homelessyouth.org/en/us/north-carolina>

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## QUESTIONS AND ASSISTANCE

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**Fair Housing Project**

**Legal Aid of NC**

[www.fairhousingnc.org](http://www.fairhousingnc.org)

1-855-797-FAIR

**Legal Aid of NC Helpline**

1-866-219-5262

8:30 AM - 4:30 PM, Monday - Friday

5:30 PM - 8:30 PM, Monday & Thursday

[www.legalaidnc.org](http://www.legalaidnc.org)

The material in this presentation is for information and educational purposes only and does not constitute legal advice.

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