

# Fair Housing and the ADA

**“It’s Not An Option. It’s the Law.”**

**“Fair Housing”  
means free  
choice in  
housing without  
regard to  
disability**



# WHO MUST COMPLY

Property Manager

Property Owner

State/Municipality

Individual



# Americans With Disabilities Act Amendments Act of 2008

**Signed into law**

**September 25, 2008,**

**effective January 1, 2009.**

**Includes important changes to the  
definition of the term “disability”**

A common allegation in housing discrimination complaints filed with NEOC is

**Failure to Make Reasonable Accommodation**

**approximately 38%**

of the complaints filed were on the basis of disability.



## Definition of Disability

**Physical or Mental**

**impairment**

**which**

**“substantially limits” (broad coverage)**

**one or more**

**major life activities**

# Who is disabled?

- **Actual impairment**
- **Record of such impairment**
- **Regarded as having such an impairment**

**Decided on a case by case basis.**

*Actual or Record of*

An impairment that is **episodic**  
**or in remission**

*is* a disability if it would  
substantially limit a major life  
activity when active.

# Actual and Record of

Physiological disorder or condition

Cosmetic disfigurement

Anatomical loss

Mental or Psychological disorder or condition

Under Physiological, we have Neurological, Musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, endocrine. Under Mental we have mental retardation, organic brain syndrome, emotional illness, mental illness, specific learning disabilities.

# “Regarded as”

## Perceived Disability

***Treated* as if one has a disability covered under the Americans With Disabilities Act and complains of harm based on disability discrimination.**

This is done when:

- a. The buyer/renter has a medical condition that is not covered but the medical condition is regarded as being covered
- b. The buyer/renter treated in the manner because of attitudes

# “Regarded as”

An individual may allege that he or she has been subjected to an ADAAA adverse action because of an actual or perceived impairment

The ADAAA does not require a showing that the housing provider BELIEVED the impairment substantially limited a major life activity. **It is housing discrimination if the housing provider takes an adverse action because of a person’s actual, record of, or perceived impairment.**

## *“Regarded as”*

**(1)** shall not apply to impairments that are **transitory and minor**. Transitory means an impairment with an actual or expected duration of 6 months or less. Some impairments of less than 6 months may be substantially limiting.

**(2)** Are not entitled to consideration for reasonable accommodation under the ADA

# Other persons covered under the ADA

- Any **person associated** with the buyer or renter who has a disability
- Any **person residing in** or intending to reside in the dwelling along with a person with a disability

# Exclusions of some medical conditions are not changed under the ADAAA

- **Current illegal use of drugs**
- **Psychoactive substance use disorders from current illegal use of drugs**
- **Sexual Impairments**
- **Compulsive Behaviors**

# Major Life Activities include:

- Walking
- Speaking
- Breathing
- Seeing
- Hearing
- Learning
- Performing manual tasks
- Standing
- Thinking
- Caring for oneself
- Working
- Eating
- Sleeping
- Sitting
- Lifting
- Bending\*
- Reading\*
- Concentrating
- Communicating\*

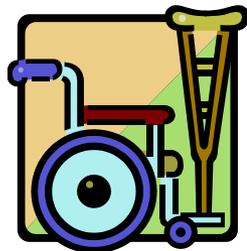
## **Major Bodily Functions include:**

1. Functions of the immune system
2. Normal cell growth
3. Digestive, bowel, bladder
4. Neurological, brain
5. Respiratory
6. Circulatory
7. Endocrine
8. Reproductive functions

# Examples of disabilities covered

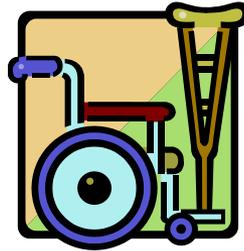
- Paralysis
- Significant lifting and bending restrictions
  - Vision impairments
  - Psychiatric disorders

***Other than ordinary eyeglasses or contact lenses whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures***



**Medical Aids**

- Medical supplies
- Equipment
- Appliances
- Prosthetics
- Oxygen therapy equipment and supplies
- Hearing aids and cochlear implants; other implantable hearing devices
- Mobility devices



Mitigating Measures

## **Medical Aids**

### **Use of assistive technology**

**Reasonable accommodations or auxiliary aids or services**

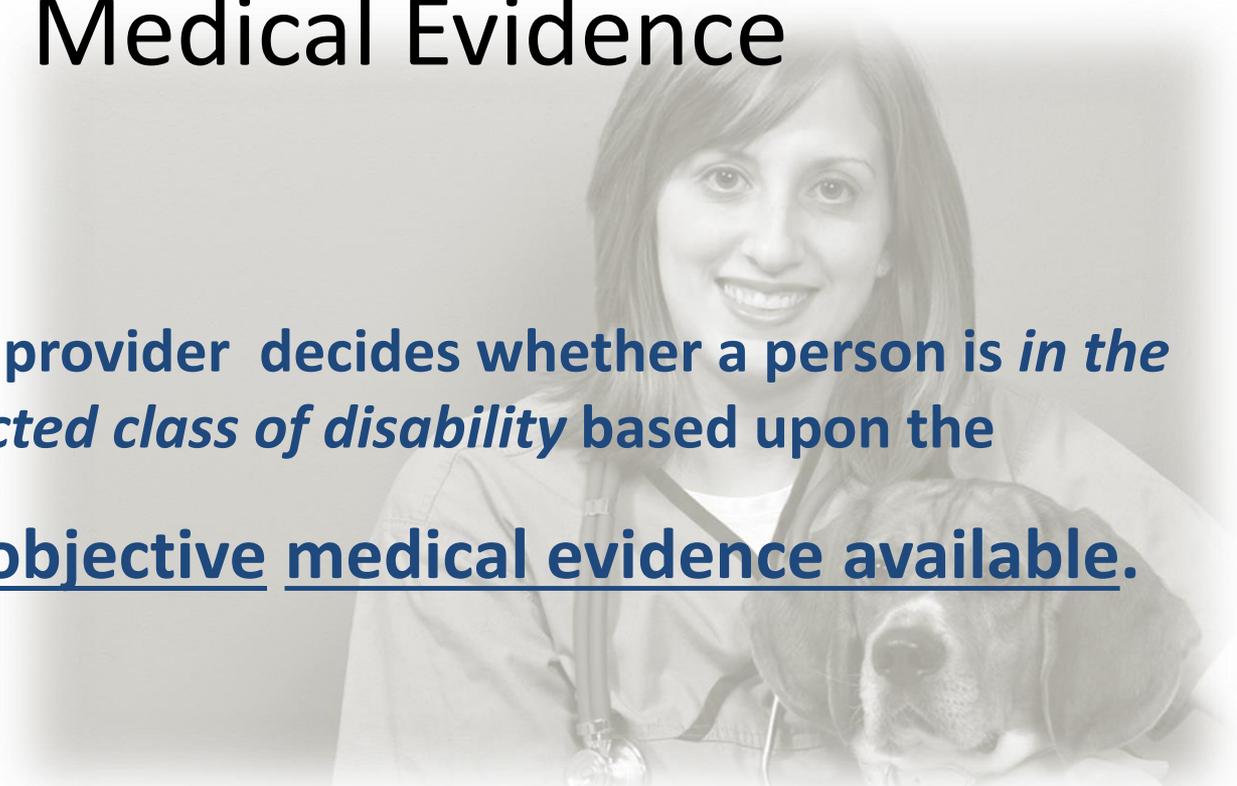
**Learned behavioral or adaptive neurological modifications**

# Remember...



- **Not all disabilities are visible**
- **The nature of a person's disability is a private manner**
- **A housing provider *is not* entitled to inquire for details**

# Medical Evidence



The medical provider decides whether a person is *in the protected class of disability* based upon the best and objective medical evidence available.

- **Treating physician familiar with impairments**
- **Physician aware of the person's limitations**
- **Vocational Rehabilitation Therapist**

# Remember..

People with learning disabilities may have trouble with understanding the rules and policies, or the application and procedures.

People of extreme size or weight may need special accommodations

People with hearing difficulties may not receive all oral communications.

# What is a Reasonable Accommodation?



Request for changes in the rules, policies, practices, or services necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

# When should a person request an accommodation?

1. A tenant/buyer or associate tells business that the person is having difficulty
2. A tenant/buyer or associate states he or she will need a larger unit or “accessible” unit

**BUT...If the need for the accommodation is obvious, no request is needed**

An accommodation is requested when...

1. A tenant/buyer states it is needed
2. A tenant/buyer submits a medical prescription which demonstrates there is a connection between the disability and the request for the accommodation
3. Someone acting on behalf of the person with a disability makes the request.

# What is Reasonable?

- Does not pose a \*financial hardship
- Does not create a \*safety/health threat to the tenant or other persons
- Is \*not disruptive to the peaceful enjoyment of other tenants
- Does not pose substantial \*physical damage to the property
- Does not impose a fundamental alteration in the nature of the housing provider's program.

# UNDUE HARDSHIP

Excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the program/services





# “Direct Threat”

## What is it?

The accommodation poses a health or safety issue to his/herself or others, and such threat cannot be removed by reasonable accommodation

1. Duration of the risk
2. Nature and severity of the potential harm
3. Likelihood that the potential harm will occur
4. Imminence of the potential harm

## Some Suggestions for Accommodations

- 1. No charge for additional paperwork associated with making an accommodation (or allowing a modification)**
- 2. No charge for a tenant moving from a non-accessible unit to an accessible one**
- 1. Allow the prospective tenant/buyer assistance for completing application material**

# Service/Companion Animals and Reasonable Accommodation



# What is a service animal?

- Any animal individually trained to perform tasks for the benefit of a person with a disability
- No national standard regarding the training or performance of a service animal, including guide dogs



# What is a companion animal?

- Also referred to as assistive or therapeutic animals
- Typically for persons with mental or emotional disabilities
- Assist with depression or anxiety
- Provide emotional support
- There is no national standard regarding the training or performance of a companion animal.



# Why must one allow an animal when there is a “no pets” policy?

- Under Federal and State Fair Housing laws, tenants may ask their housing provider to make *reasonable accommodation* in the “no pets” policy
- Once the need for the animal is verified by a qualified professional (such as a doctor) the exception must generally be made

# What information may one request from tenants regarding service animals?

- One may ask the tenant to provide documentation from a qualified professional regarding the need for a service animal or companion animal
- One **may not ask** the tenant to provide any details regarding the nature of the disability, medical records, proof of training, or insurance coverage for the animal

*Remember, anyone with an actual disability or a record of a disability is entitled to a reasonable accommodation if needed to provide them with equal enjoyment of their dwelling.*

# What about a pet deposit?

**NO**, but...

1. Tenant is responsible for the actions of the service animal
2. Tenant can be held accountable for any damage to property
3. Tenant must comply with established policies regarding maintenance and cleaning, or leash policies and noise guidelines

What if other tenants complain about an exception being made to the pet policy?

**State: The owner/manager complies with fair housing laws.**

**No information about the disabled tenant's situation.  
One may also refer the inquiring party to the Fair Housing laws.**



## **What is the tenant's responsibility regarding the service/companion animal?**

**Require the tenant to supervise and maintain control of the animal at all times**

**Require the tenant to immediately remove animal waste from common areas**



**Where must one allow the animal on the property?**

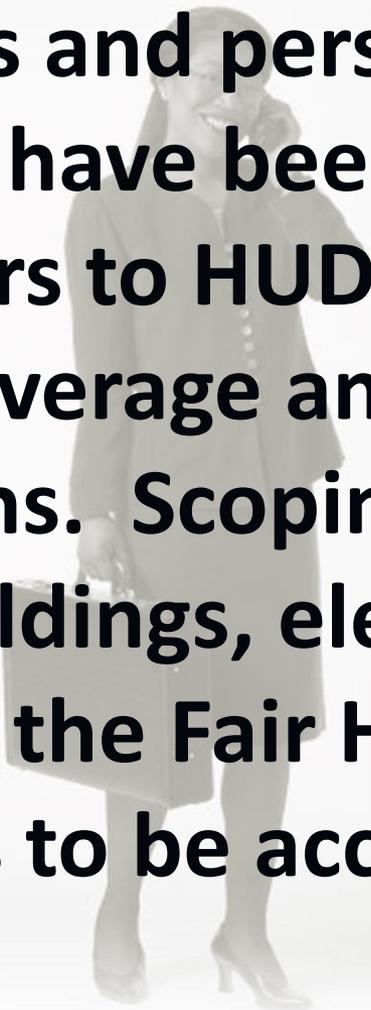
**The service/companion animal must be allowed to accompany the tenant at all times, and everywhere on the property except where animals are specifically prohibited**

**Areas where animals may pose significant health or safety hazards, such as swimming pools, may be designated as off-limits to service/companion animals (but such designations may not interfere with the disabled person's right to fully enjoy the amenities)**



# Reasonable Modifications

## Seven Technical Requirements



**Architects and persons with disabilities have been the most frequent callers to HUD on the topics of scoping/coverage and reasonable modifications. Scoping/coverage refers to buildings, elements, and spaces that the Fair Housing Act requires to be accessible.**

**Covered multifamily dwellings:  
Designed and Constructed for first occupancy  
after  
March 13, 1991**

- Buildings consisting of four or more units if such buildings have one or more elevators
- Ground floor units in other buildings consisting of four or more units
- If the building permit or renewal of a building permit was issued on or before June 15, 1990, it is not covered.

# Accessible Entrance on an Accessible Route





# Accessible Public and Common Use Areas

# Usable Doors

All doors wide enough to allow passage of a person in a wheelchair.



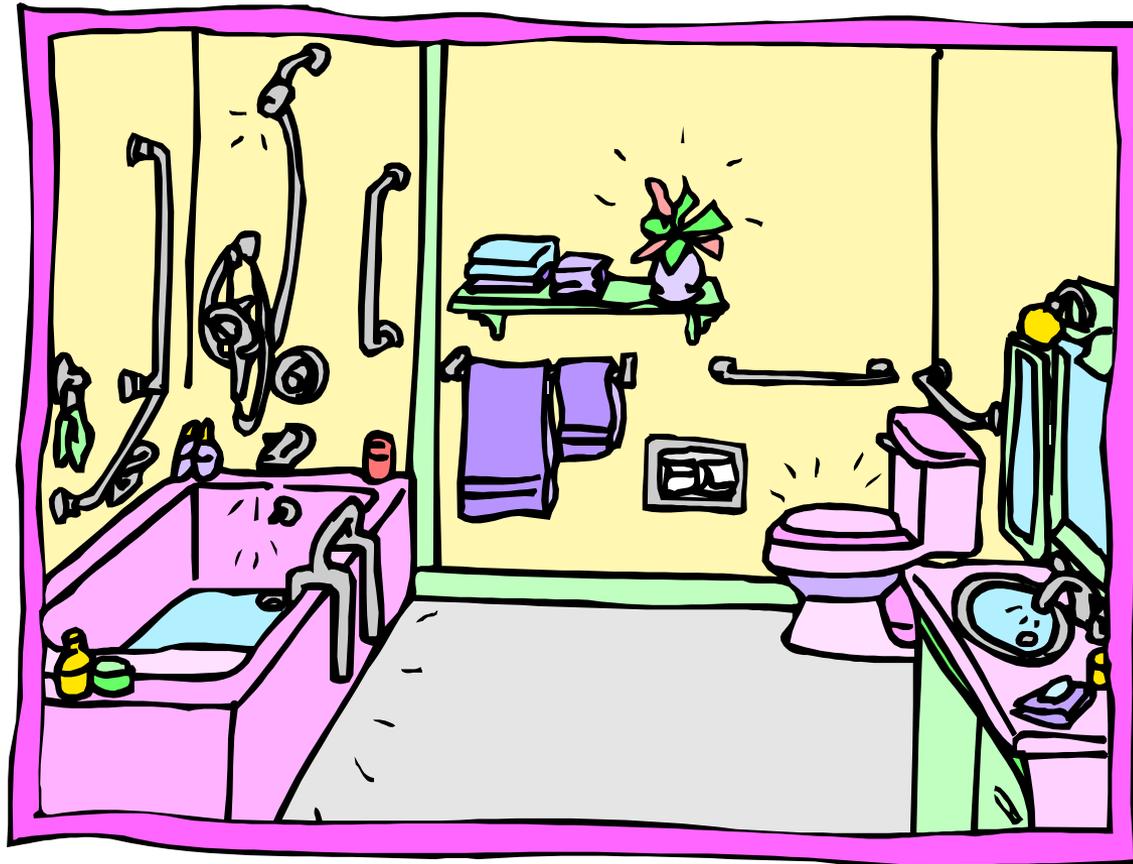
# Accessible Routes Into and Through the Dwelling Unit



# Accessible Light Switches, Electrical Outlets, and Environmental Controls



# Reinforced Walls in Bathroom



# Usable Kitchens and Bathrooms



# Reasonable Modifications

## What may be modified:

**Interior of the unit/house**

**Lobbies**

**Main entrances**

**Public and common use areas**

Reasonable Modification: It is unlawful to refuse to permit reasonable modification of existing premises occupied or to be occupied by a person with a disability if such modification may be necessary to afford full enjoyment of the premises.

## Tenants with Disabilities:

- 1. Pay for the work themselves**
- 2. Seek advance approval from the housing provider.**
- 3. Obtain any building permits and meet building standards**
- 4. Restore interior of unit upon ending the lease**

# 24 C.F.R. § 100.203 (Code of Federal Regulations)

**“The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost or restoration. The interest on any such account shall accrue to the benefit of the tenant.”**

# Some Resources

1. Fair Housing Act Design Manual revised April 1998
2. Fair Housing Act Accessibility
3. ANSI A117.1
4. International Building Code (ICC)
5. Nebraska Fair Housing Act
6. Joint statement of the Department of Justice and the Department of Housing and Urban Development (Reasonable Accommodations and Reasonable Modifications)

# Can YOU answer these questions?

- Who is entitled to accommodation/modification?
- What is disability by association?
- What medical information is needed and who provides it?
- What are reasons a housing provider may deny the requested accommodation?