

HOT TOPICS:  
VAWA  
&  
REASONABLE  
ACCOMMODATIONS





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Sara A. McCue is an attorney whose practice focuses on employment, the Americans with Disabilities Act, and fair housing law. She represents and counsels housing providers, property management companies, educational institutions, and the affordable housing industry.

Sara has provided training on such fair housing topics as criminal background checks, requests for reasonable accommodations and modifications, assistance animals, and harassment issues in both housing and the workplace.

Sara received her Juris Doctor, with distinction, from the University of Nebraska College of Law in 2014, where she was the Editor in Chief of the Nebraska Law Review and President of the Multicultural Legal Society and Black Law Students Association. She graduated from the University of Nebraska-Lincoln with a Bachelor of Journalism in News-Editorial and Broadcasting, with highest distinction, in 2010.



## Violence Against Women Act

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What is the Violence Against Women Act (“VAWA”)?

It states that “(a)n applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.”



What are the covered housing providers?

- Section 202 Supportive Housing for the Elderly
- Section 811 Supportive Housing for Persons with Disabilities
- Housing Opportunities for Persons With AIDS (HOPWA) program
- HOME Investment Partnerships (HOME) program
- Homeless programs under Title IV of the McKinney-Vento Homeless Assistance Act
- Certain multifamily rental housing under Section 221(d)(3) of the National Housing Act
- Multifamily rental housing under Section 236 of the National Housing Act
- HUD programs assisted under United States Housing Act of 1937 public housing under Section 6 of the 1937 Act
- Tenant-based and project-based rental assistance under Section 8 of the 1937 Act, and
- Section 8 Moderate Rehabilitation Single Room Occupancy
- The Housing Trust Fund



Emergency transfers allow victims of domestic violence, dating violence, sexual assault or stalking (whether they are men or women) to relocate to another unit either at the same property (internal) or to another property location (external). For external transfers, the tenant must meet the eligibility requirements and complete the application for the new property.

Who is eligible for a transfer? Any resident that expressly requests a transfer and reasonably believes there is a threat of imminent harm or the assault occurred recently is eligible.

The term “safe unit” refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe. HUD’s Model Plan allows the victim to determine what is a safe unit for the purposes of the transfer, ensuring that the victim has control over their own safety planning. “If a tenant reasonably believes that a proposed transfer unit would not be safe, the tenant may request a transfer to a different unit.”

Internal Transfer Plans must contain details regarding the priority of the transfer and describe the policies for assisting the tenant.

External Transfer Plans must describe the efforts to assist the tenant with external transfers when a safe unit is not available. You should include policies for assisting a tenant who will be transferring out of a provider’s program or project as well as policies for any tenant that is transferring into a provider’s program or project.



All transfer requests must be kept confidential. Locations must not be disclosed. Document all emergency transfer requests as well as the outcome. Report this information to HUD annually.

## Reasonable Accommodations and Modifications

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“Reasonable Accommodation” under the Fair Housing Act:

- Providing an exception to an equally applicable rule, policy, practice, or service that everyone must follow.
- Examples of “equally applicable” policies, etc.:
  - Unassigned parking
  - Pet policies
    - » No pets
    - » Limit on number of pets
    - » Limit on where tenants may take pets
  - Mail delivery
  - Rental payment
    - » All tenants must drop off rent at the rental office

### ***United States v. Fairfax Manor Group, LLC***

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The complaint alleged that Fairfax Manor Group denied the complainants’ requests for a reasonable modification to remove a concrete parking bumper and a reasonable accommodation of two assigned parking spaces. The complaint also alleged that the defendants retaliated by issuing a notice to vacate and by filing an eviction action after complainants filed a fair housing complaint. The settlement agreement requires the defendants to pay \$52,500 in damages to the complainants, participate in Fair Housing Act training, adopt a reasonable modification and accommodation policy, and engage in reporting and record keeping for four years.

### ***United States v. Housing Authority of the City of Bridgeport***

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The complaint alleged that the Housing Authority discriminated on the basis of disability by mishandling and failing to fulfill requests for reasonable accommodations. It also alleged that the Housing Authority failed to meet its community’s need for accessible units many years after federal regulations and a voluntary compliance agreement with HUD required it to do so. The consent order requires the Housing Authority to institute broad reforms to safeguard the rights of individuals with disabilities, including revising its policies and processes for handling

reasonable accommodation requests and developing an inventory of accessible units for tenants with mobility, vision, and hearing-related disabilities. The settlement also requires HACB to pay \$1,500,000 to those hurt by its discriminatory practices and a \$25,000 civil penalty to the United States.

“Reasonable Modification” under the Fair Housing Act:

- Allowing a tenant to make a change to an existing building at his/her own expense that is necessary because of the tenant’s disability.
- Examples of modifications:
  - Grab bars
  - Shower seat
  - Roll-in shower
  - Installing a ramp
  - Widening a bathroom door
  - Adding a lower peephole



Reasonable Accommodation Process:

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1. Identify the request
2. Engage in the interactive process to determine if the accommodation is necessary
3. Evaluate if the requested accommodation is unreasonable
4. Discuss alternatives
5. Make the decision

### Step One: Identify the Request

The person with a disability must request a reasonable accommodation.

HUD/DOJ Joint Statement:

- “The person with a disability must make “clear to the housing provider that she is requesting an exception, change, or adjustment to the rule, policy, practice, or service because of her disability”; and
- “If the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability”
- Request can be written, verbal, or other means
- Request can come from applicant, tenant, or their representative

Consider creating request forms:

- Identify specific reasonable accommodation being requested
- Identify disability
- Identify why you believe the accommodation is necessary because of your disability
- Identify a reliable third party that can provide verification
- Include statement that if assistance is needed in completing the form to contact the manager
- Include signature line to acknowledge the information is accurate

Every request is eventually documented in some manner on the form.

### Step Two: The Interactive Process

Primary Considerations for the Interactive Process

- Does the person have a “**disability**”?
- Is the accommodation **necessary** to provide the person an equal opportunity to use and enjoy the housing?
- Is the accommodation **reasonable**?

Does the person have a “disability”?

- Buyer or renter with a disability
- A person with a disability who is residing in or intending to reside in the housing after it is sold or rented
- A person with a disability who is “associated” with the buyer or renter

### “Associated with”

FHA prohibits “not only discrimination against the primary purchaser or named lessee, but also prohibits denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”



### “Obvious” Disability

- » If the disability and the need for the accommodation are obvious, a housing provider cannot request a verification.
- » If the disability and the need for the accommodation are obvious, only evaluate the reasonableness.
- » If reasonable, grant the accommodation.
- » If not, explore alternatives.

### Not “Obvious”

- » If a housing provider has a reasonable question as to whether the applicant/tenant has a disability or need for the accommodation, it may request certification.

### Verification

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#### What do we need to know?

- Does the person requesting the accommodation have a “disability”?
- Does the person requesting the accommodation need the accommodation because of the disability?

#### Joint Statement:

“A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability may also provide verification of a disability. In most cases, an individual’s medical records or detailed information about the nature of the person’s disability is not necessary for this inquiry.”

### “Illegal Inquiry”

- *Wilson v. Seattle Hsg. Auth., Case No. 2:09-0226-MJP (W.D. Wash.) (Filing No. 77)*
- » *Bhogaita v. Altamonte Heights Condominium Assoc., Inc., No. 6:11-cv-1637-Orl-31DAB, 2012 WL 10511, at \* 4 (M.D.Fla. Jan. 3, 2012) (the FHA does not provide a separate cause of action based on a defendant's requests for additional information to verify a request for reasonable accommodation).*

### Verifying Necessity

- » Person requesting the accommodation must establish that the accommodation is necessary because of their disability to provide him or her an equal opportunity to use and enjoy the housing.

### Consider creating a verification form

- Include definition of disability
- Include request to identify the impairment and how it substantially limits the person in a major life activity
- Include request to explain how the accommodation is necessary for the individual to use and enjoy housing as compared to a person without a disability
- Consider requesting whether there is another accommodation available that is equally effective



Follow Up: If applicant/tenant is not providing sufficient information or if the verification is reasonably suspicious, call the verifier to clear up any questions.

### “Reasonable”

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Even if the person has a disability and the requested accommodation is necessary because of his or her disability, the accommodation must be reasonable.

Three factors to consider:



Undue Financial and  
Administrative Burden



Fundamental Alteration



Direct Threat

## Hoarding

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### ***Blatch v. Hernandez***

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Tenants with various mental health issues brought a class action suit against the New York City Housing Authority. One tenant suffered from chronic paranoid schizophrenia and engaged in hoarding activity. Tenant made reasonable accommodation request, but it was denied because the tenant refused to consent to clean up his apartment. The court stated that it could not force the reasonable accommodation on the housing authority given the tenant's resistance.

### ***Douglas v. Kriegsfeld Corp.***

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Landlord sought to evict a tenant with a mental disability who failed to keep the apartment in a safe and sanitary condition. The tenant requested a brief stay of the eviction as an accommodation. The court held that the accommodation request was reasonable because it gave adequate assurance that the tenant's apartment would be cleaned and thereafter would remain in a sanitary condition. The tenant was receiving treatment, retained a governmental organization to do the cleaning, and agreed that the eviction would be warranted if the apartment returned to its prior unsanitary conditions.

### ***Rutland Court Owners, Inc. v. Taylor.***

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Landlord for an apartment cooperative filed suit for possession against a tenant. Court held landlord did not provide the tenant a reasonable accommodation for his mental impairments. The tenant's mental impairments resulted in hoarding behavior and a bedbug infestation. Tenant had requested additional time and assistance in cleaning the apartment. Landlord denied due to frustration.

## Payment of Rent

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### ***Fair Housing Rights Center in Southeastern Pennsylvania v. Morgan Properties Management Company, LLC***

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A housing rights advocacy center alleged the property management company violated the FHA through its policy of refusing to adjust the rental due date of its apartments

for Social Security Disability Insurance (SSDI) recipients. The timing of the disbursement of benefits did not correspond with the management company's first of the month rental due date. The court found genuine dispute of material fact as to whether housing center's requested rental due date accommodation was unreasonable, given that many other tenants had their late fees reversed without penalty.

## Marijuana

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Medical marijuana use is not an allowable reasonable accommodation in any federally subsidized housing. Regardless of any applicable state laws, the Federal Controlled Substances Act takes precedence.



# ACCESSIBILITY INFORMATION PRODUCTS

## ➔ UFAS POCKET EDITION



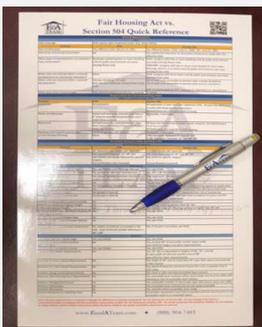
This is a great resource for

- Property Managers
- Site Managers
- Compliance Officials
- Maintenance Personnel
- Complex Offices
- Architects
- Contractors

Features:

- For Federally Funded Buildings and common areas (HUD, USDA-RD, HOME)
- 212 pages of text and diagrams; spiral bound
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## ➔ FAIR HOUSING ACT VS. SECTION 504 QUICK REFERENCE GUIDE



This handy guide shows which elements of multifamily housing fall under the regulations of the Fair Housing Act and which ones fall under the regulations of Section 504 of the Rehabilitation Act — and which ones are covered by BOTH!

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## ➔ FAIR HOUSING ACT DESIGN MANUAL MADE EZ EBOOK



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