

Kimball, Tirey & St. John LLP

Reasonable Modifications for Disabled Residents

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“I have a resident who wants grab bars installed in her shower. Are we required to install them for her?”

“Our property was built in the 1970s. Today, one of our residents came in to the office and said that he needs a ramp built over some steps in the common areas and that the ADA requires us to build the ramp. Is he right?”

“I have an applicant who uses a wheelchair and wants to rent an apartment from me. My apartments were built back in 1958 and they aren’t wheelchair accessible. Do I have to make the apartment wheelchair accessible?”

If any of these questions sound familiar to you, you’re not alone. Questions regarding disability-related modifications are common, and it is important to know how to properly handle a resident or applicant’s request.

The Federal Law

Let’s start by taking a look at the history of disability rights with regard to rental housing and the various laws that do (and do not) apply to modification requests. In 1988, Congress passed the Fair Housing Amendments Act (FHAA), which, among other things, added handicap as a specific protected class under federal law. (California law refers to the protected category as “disability,” and there are some important differences between the California definition of “disability” and the federal definition of “handicap.”)

Prior to the passage of the FHAA, disabled people had few, if any, choices about where they could live. Housing providers were not required to modify an apartment or build properties that were accessible to people with disabilities. Nor were landlords required to allow a disabled resident to make physical changes to a rental unit to make it accessible. Individuals with disabilities were frequently forced to live in nursing homes or other care facilities or to live with family members who owned their homes and could modify them to accommodate the disabled person’s needs.

New Protections

The FHAA added several important protections for people with disabilities to ensure that they would have the same equal opportunities as non-disabled individuals to live in housing of their choice:

- First, it required that all housing built for first occupancy on or after March 13, 1991, be designed and constructed with certain accessibility features in place.
- Second, it gave disabled residents the right to make physical changes to their units or the common areas of a rental property to make the property usable for them. These are known as reasonable modifications.

Some common examples of modifications are widening the doorways on an older property to accommodate a resident's wheelchair; installing grab bars in the bathroom; lowering sinks, counter tops and cabinetry so that a resident in a wheelchair can easily access them; removing a tub and installing a roll-in shower; or installing a ramp into a resident's unit, into the amenities, or in the common areas on an older property.

Responsibility for Making the Modifications

In most cases, the modifications are done at the resident's expense and the resident is responsible for finding someone to do the work.¹ The law states that if permits are required, the resident is generally responsible for obtaining and paying for the permits. It also provides that the modifications be done in a "workmanlike manner." It does not say that the resident must use a contractor; however, there may be circumstances where it is reasonable to require this. For instance, under the California Business & Professions Code, any construction or remodeling work that costs over \$500 is supposed to be done or supervised by a licensed contractor. So, the cost and nature of the proposed modification may dictate whether it is reasonable to require that a licensed contractor be involved. If a contractor is involved, one could argue that requiring that the contractor be insured and post a notice of non-responsibility (for mechanic's lien purposes) is part of the analysis of the "reasonableness" of the disabled person's request.

Upgrading the modification

If you agree to the modification but want more expensive materials or design used, you may pay for the upgrade, and the disabled resident would pay for the cost of the originally planned modification.

Escrow Accounts

You cannot charge an extra security deposit, increase the normal security deposit or require that the resident purchase insurance as a condition of the resident making the modifications. In some circumstances, however, you may be able to require that the resident establish an interest-bearing escrow account and pay money into it over time to cover the cost of the restoration. According to the HUD/DOJ Guidelines issued in March of 2008, the decision to require an escrow account "should be based on the following factors: 1) the extent and nature of the proposed modification; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored." It is recommended that you obtain legal advice from our fair housing department before making a decision to require the establishment of an escrow account.

Maintaining the Modification

If the modification is used only by the resident and guests, such as a ramp to the front door, the resident is responsible for maintaining the ramp. If the modification is used by other residents as

¹ In project-based, HUD-subsidized housing, the landlord must make and pay for any disability-related modifications to the property unless the requested modifications would pose an undue financial or administrative burden on the property. The only other time that the housing provider could be required to make and pay for modifications is if the property was built for first occupancy on or after 3/13/91 and it wasn't designed and constructed in compliance with the accessibility requirements of the FHAA.

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well, such as a ramp into the laundry facilities, then the landlord is responsible for its maintenance.

Reasonable or Unreasonable

What happens when a resident requests a modification that you think is unreasonable? First, you should be aware that modifications are considered to be reasonable unless they pose an **undue** financial or administrative burden on the landlord. A modification that involved moving (or removing) a load-bearing wall or a ramp that could not be built to code because of the slope or location are examples of modifications that could be argued to pose an undue financial or administrative burden.

Interactive Process

In cases where the requested modification is deemed to be unreasonable, you are expected to enter into an “interactive process” with the resident with the goal of finding another solution that meets the resident’s disability-related needs. You may want to meet with the resident, explain why the proposed modification is not reasonable and invite him or her to make reasonable suggestions for alternative modifications.

If there are no alternative modifications that would address your concerns and meet the resident’s needs, you should explore whether there is some accommodation that would allow the resident’s disability-related needs to be met. (An accommodation is a change to your normal rules, policies, practices or services.) For instance, if the slope or location of the resident’s apartment prohibits the construction of a ramp, is there another apartment that the resident could transfer to where a ramp could be constructed (or where there are no steps so that construction of a ramp is not necessary)? Or, if you simply cannot meet the resident’s needs, you may need to offer to let the resident out of the lease (without penalty) so that the resident can find housing that does meet his or her disability-related needs. Be sure to document all conversations with (and offers made to) the resident.

Restoring the Modification

There may be instances where you can require the resident to restore the modifications made to the interior of the resident’s unit to their original condition upon move-out, barring normal wear and tear. For example, if a resident had lowered all of the sinks, cabinetry and counter tops in the unit, you may be able to require restoration at the end of the tenancy because these types of modifications would be a problem for the next non-disabled resident, making the unit difficult or impossible to rent. On the other hand, if a resident had widened the doorways so that a wheelchair could fit through them, the modification would not require restoration because it wouldn’t be a problem for the next potential non-disabled resident.

Conclusion

Requests for modifications can be complicated, and a denial of a request can be the basis for a fair housing complaint. Accordingly, it is recommended that you seek legal advice from our fair housing department before denying a resident’s request.

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Our new on-line Fair Housing Training Seminar, “Fair Housing Fundamentals” is now available through our website: www.kts-law.com. The course covers all aspects of fair housing including pre-tenancy, the leasing process, issues during the tenancy, termination of tenancy, and the all-important topic of handling requests for disability-related accommodations and modifications. The class is for new personnel or as a refresher for existing personnel.

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