

Reasonable Accommodations
for Tenants in Hoarding Cases

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Reasonable Accommodations

- Any change in policy or procedure that enables a person with a disability to access or benefit from housing that is not
 - an undue burden (\$\$\$) or
 - a fundamental alteration.

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Reasonable Accommodation

Reasonable =not undue burden/hardship
=reasonably priced!
(But cannot charge tenant fees for RA)

Case by case determination--level of burden depends on the resources of the landlord.

Fundamental Alteration

- Ex. Cannot change an apartment into assisted living, require a doorman, etc.
- In the clutter context, not a cleaning service

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Direct Threat Exception

The Fair Housing Act Amendments' exception to the obligation to provide a reasonable accommodation is if

- the "tenancy would constitute a direct threat to the health or safety of other individuals or
- would result in substantial physical damage to the property of others."

But may not be based on speculation (i.e. whether the tenant will clean and maintain the unit.

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For a Direct Threat there must be

- a history of **overt acts** or **current conduct**.

"Generalized assumption, subjective fears, and speculation are insufficient to prove the requisite direct threat to others...."

- objective evidence which must be "**sufficiently recent as to be credible, and not from unsubstantiated inferences**"

The landlord may not infer that a recent history of a physical or mental illness or disability, or treatment for such illnesses or disabilities, constitutes proof that an applicant will be unable to fulfill his or her tenancy obligations....

H.R.Rep. No. 100-711, at 29-30, 1988 U.S.C.A.N. at 2190-2191.
Laffame v. New Horizons, Inc., 605 F. Supp. 2d 378, 388 (D. Conn. 2009)

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Failure to Grant a Reasonable Accommodation is Discrimination

- **Reasonable Accommodations** include an **interactive process**.
 - What is that? Cannot fail to respond, or just deny the request.
- **Failure to engage in the interactive process is discrimination**

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The Laws

- **Section 504 of the Rehabilitation Act of 1973** prohibits discrimination by programs which receive federal funds (**includes public housing that is federally funded**).
- **Fair Housing Act Amendments of 1988**
 - To end segregation of people with disabilities
 - To give people wider opportunities to choose where they live
 - To ensure that reasonable accommodations are made available
 - Provides for civil penalties at an administrative hearing, government representation if investigation finds a violation, punitive damages for violations.

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Americans with Disabilities Act (ADA) (1990)

Title II of the ADA prohibits discrimination by public entities:

- State and local government, departments, agencies, all activities, programs and services, including courts, police and fire departments, licensing and employment. **Includes Public Housing Agencies.**

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Title II prohibits discrimination by public **entities**.

- **Requires reasonable modifications** in policies practices and procedures that deny equal access to individual with disabilities unless such a modification would result in a fundamental alteration in the program.
- Olmstead decision (1999) U.S. Supreme Court **affirmed community integration mandate.**

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- **Title III of the ADA** prohibits discrimination by public accommodation
 - Expanded protection of Civil Rights Act of 1964 to people with disabilities.
 - Public accommodations include private commercial places offering goods, services or activities open to the public. In the housing context....
 - **Social service agencies.**
 - **Hotels, motels and shelters.**
 - **Specifically excludes long term housing covered by fair housing act.**
 - **Some residences may be covered by both laws (nursing homes?)**

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CT Fair Housing Law

Parallel to Federal FHA Amendments BUT BROADER COVERAGE :

Federal law exempts

- owner occupied housing with four or fewer units
- owners of 3 or fewer units who do not advertise and
- some clubs.

Connecticut exempts only

- **owner occupied two (or one) unit building.**

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Public vs. Private?

Is there a difference in application of these laws between public and private housing?
Not that matters here.

- The laws are applicable to all housing (except owner-occupied one or two family homes).
- Some (but not all) public housing entities are more familiar and aware of the laws.
- Section 504 only applies in federally funded housing, but other laws fill in. (You don't need to know that!)

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FAIR HOUSING LAWS SUMMARY

Most people with disabilities in Connecticut are protected by one or more of the fair housing laws, and therefore most are entitled to a reasonable accommodation.



The only obvious limit is in an owner occupied two family house.

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Who is Protected by Fair Housing Laws?

- any person who has a physical or mental disability that substantially limits one or more major life activities; or
- has a record of such an impairment;
- or is regarded as having such an impairment*

* **But**, being *regarded as* having an impairment does not entitle you to a reasonable accommodation.

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Who is Protected by Fair Housing Laws? (cont.)

What is a physical or mental disability that substantially limits one or more major life activities?

If a person is in danger of eviction because of hoarding behavior, the same evidence of the hoarding behavior is evidence of a disability that substantially limits a major life activity (self care, home making....).

Major life activities include, but are not limited to working, hearing, seeing, walking, communication, learning, sexual activity, recreation, driving, any other ideas???

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Who is Protected by Fair Housing Laws? (cont.)

- Everyone who receives SSI or SSDI is a person with a disability protected by anti discrimination and fair housing laws.
- **BUT**, everyone who is protected by Fair Housing Laws does not receive SSI or SSDI.
 - SSI and SSDI have a very high bar for disability-- inability to have any substantial gainful employment, which is also very specific.
 - One can be disabled for the purposes of the protections of the law and entitlement to a reasonable accommodation and still be able to work.

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Who is **Not** Protected by Fair Housing Laws

Person who is :

- Currently using illegal, controlled substances,
- Convicted for illegal manufacture or distribution of a controlled substance,
- Has been **direct threat** to the health or safety of others, based upon current and recent behavior --overt act (This does not include being a danger to oneself),
- Would cause substantial damage to property of others (need recent objective evidence of such).

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Landlord Tenant Law

- Can Request a Reasonable Accommodation or a Reasonable Modification at any stage of the eviction process.
 - Kappa Notice
 - Notice to Quit
 - In court.
- Our advice is **the sooner the better.**
Best before eviction process if possible!

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What can tenant ask for as a RA?

- Not limited to examples in HUD guidance!!
- More time (Usually more time is not enough.)
 - Waiver of any overly stringent housekeeping rules (not Martha Stewart)
 - Paths, safety
 - Issues re inspections, notices, etc.
 - More time with a plan
 - Plan should show enough detail to reassure landlord re: who what when where
 - Monthly photographs showing progress
 - OTHER IDEAS???
 - QUESTIONS???

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What can the landlord ask?

- If disability is not obvious: some proof of disability.
 - That a person receives SSI or SSDI is sufficient proof of disability. However, one can be a qualified individual with a disability and not be receiving disability benefits.
 - Letter from a clinician will usually do it.
- How requested accommodation is related to the disability, if not obvious.
- **Landlord cannot ask for** access to medical records, doctor, diagnosis etc.

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How to request

- Legally, not required to be in writing BUT
 - If it is not in writing, you cannot prove it was ever made. **So put it in writing!**
- Must
 - disclose that one has a disability and
 - show that the accommodation is necessary to maintain the housing.
 - **Need not disclose diagnosis.**
- Must show “nexus” or connection of the accommodation to the disability.
- **Resource** at CT Fair Housing website:
Interactive self-help guide drafts a request letter <https://www.ctfairhousing.org/raletters/> 22

Responses and Remedies

Complaints to CHRO
Also results in a federal complaint. CHRO does federal investigations.
Punitive damages
Attorney fees
Other court actions in state and federal courts
petition for injunction or
civil action for damages

Landlords should take request for RA seriously.

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SUMMARY

1. People with disabilities are protected against discrimination based on those disabilities.
2. Prohibited housing discrimination includes screening, source of income, additional security deposits or other conditions, requesting medical information **and failure to grant a reasonable accommodation.**
3. Connecticut fair housing laws apply to all housing except landlord occupied two family houses.

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Summary, continued

5. People with disabilities may request and must receive **reasonable accommodations** in order to have equal access to housing.
6. Requests for reasonable accommodations can be made **at any time**, including at the time of trial in housing court.
7. The **interactive process** is a requirement and a very valuable tool!
8. **Refusal to grant a reasonable accommodation is discrimination.**
9. **THINK OUTSIDE THE BOX !**

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