



**Allocating the Burden of Proof
in Disability Cases
Under the Fair Housing Act**

FACT SHEET

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Overview

Federal law forbids housing discrimination against people with disabilities.¹ In addition, the Fair Housing Act (FHA) requires housing providers, local zoning authorities and others to make reasonable changes or “accommodations” in rules, policies, practices or services.² Accordingly, a person with a disability should have an equal opportunity to use and enjoy a dwelling unit and the common areas in a housing complex.

Most courts have held that there must be a link or “nexus” between the disability and the requested accommodation. Accommodations or modifications³ can be requested when someone is applying for housing, during tenancy or when challenging an eviction notice. In the request, a person with a disability must provide proof that he or she has a covered disability, but need not disclose a diagnosis or provide a full medical history to the landlord or zoning board.

This memo catalogs the fair housing cases from each circuit that specifically address the burdens of proof for “reasonable accommodation” claims.⁴ If a circuit has not addressed a particular burden, then an advocate may look to other circuits.

In enacting the anti-discrimination provisions of the Fair Housing Act, Congress relied on the standard of reasonable accommodations developed under section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794. *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 334 (2d Cir. 1995). The FHA reasonable accommodation standard protects people with disabilities by making it unlawful to “refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford... equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B).

The federal circuit courts have taken varying approaches to assigning burdens of proof. A person with a disability may face burden-of-proof issues in the following areas:

- (1) Documentation or medical opinion that the person with the disability has a physical or mental impairment. (Plaintiffs carry this burden throughout the circuits. Landlords complain if the disability is not apparent or if it seems mutable).⁵

- (2) Proof that the accommodation is necessary to cure or lessen some limitation experienced because of the disability. (This burden works with #1. Experts for the person with a disability should emphasize that the accommodation *will*, rather than “may,” help the person.)
- (3) Proof that the person with a disability asked for an accommodation.
- (4) Proof that a housing provider’s alternative accommodation is not effective because it does not cure the limitations experienced by the person with a disability.

The burden of proof appears to shift to the housing provider on the following issues:

- (1) Proof that the accommodation offered by the person with a disability is unreasonable; i.e., the accommodation would pose an “undue burden” on the landlord or result in a “fundamental alteration” of the landlord’s provision of housing.⁶
- (2) Proof that a reasonable, less intrusive alternative exists.
- (3) Proof that no accommodation will minimize the risk the disabled tenant poses to other tenants.

This memorandum is meant to serve as a convenient desk reference for advocates who need immediate answers to burden-of-proof questions, particularly in the case of a clients who faces imminent eviction. The following tables illustrate where the burden of proof falls in reasonable accommodation claims for the plaintiff and defendant, respectively.

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Plaintiff's (P) Burden of Proof for Reasonable Accommodations Claims in the Federal Circuits

Circuit	Disability	Nexus between disability & RA	Defendant's Refusal of RA	Proposal of Alternative Solution	Zoning Variances Issues	Direct Threat	Service Animal Issues
D.C. Cir.	No cases address burden of proof						
1st Cir.	P must prove disability & limitations w/o RA. ⁷	RA will cure limitations of disability. ⁸					
2nd Cir.	Physical condition deprives P of equal opportunity to enjoy dwelling. ⁹	P shows RA reasonable on its face and D then has burden to prove RA is unreasonable. ¹⁰ RA necessary to afford P equal opportunity to use and enjoy dwelling. ¹¹	P must show D refused request. ¹² P must show pain & humiliation caused by D's denial of RA. ¹³	P must show P offered alternative solution. ¹⁴ Court does not have to consider alternative D offered if P rejected it. ¹⁵	P must show complex not economically viable without variance. ¹⁶		
3rd Cir.	P does not need to prove if D does not challenge its existence. ¹⁷	P shows RA reasonable on its face and D then has burden to prove RA is unreasonable. ¹⁸ RA is necessary. ¹⁹ Causal nexus not necessary when challenging zoning provision. ²⁰			Developers must follow zoning ordinance requirements before litigating FHA RA claims. ²¹		P must show importance and utility of service animal as a RA. ²²
4th Cir.		P bears entire burden of reasonableness and necessity of RA. Strong nexus required. ²³					P must show animal is specially trained and may need to submit animal to doctor's exam. ²⁴
5th Cir.		P bears entire burden of reasonableness and necessity. ²⁵ P must demonstrate RA will not unduly burden D or cause fundamental alteration. ²⁶			P must prove compliance with regular process for securing variances prior to litigating RA claim. ²⁷		P must prove disability, necessity, and reasonableness of RA for service animal. ²⁸
6th Cir.	P must prove. ²⁹	P bears entire burden of proving reasonableness & necessity of RA. ³⁰	P must prove D knew about P's disability and D refused to make RA. ³²		P must show overall need for RA for housing providers as well as P's needs. ³³		

6th Cir. (cont.)		Nexus b/tw disability and poor financial situation not enough to require RA of third-party guarantor for rent. ³¹					
7th Cir.	P must present comprehensible medical evidence as proof of disability. ³⁴	P shows RA reasonable on its face and D then has burden to prove RA is unreasonable. ³⁵ P must show RA will affirmatively enhance her quality of life by reducing effects of her disability. ³⁶ Close link required b/tw RA and disability. ³⁷					
8th Cir.		P shows RA reasonable on its face and D then has burden to prove RA is unreasonable. ³⁸					
9th Cir.		P shows RA reasonable on its face and D then has burden to prove RA is unreasonable. ³⁹ Causal link b/tw refusal of RA and limitations experienced due to disability. ⁴⁰ RA must be related to disability rather than economic concern of housing provider. ⁴¹					Service animal is individually trained and helps person with disabilities in household. ⁴²
10th Cir.		P shows RA reasonable on its face and D then has burden to prove RA is unreasonable. ⁴³ P must show RA satisfies safety interests of landlord. ⁴⁴					
11th Cir.			P must show she requested and was denied RA. ⁴⁵			P must show they meet definition to qualify for zoning variance. ⁴⁶	

Defendant's (D) Burden of Proof for Reasonable Accommodations Claims in the Federal Circuits

Circuit	Denial of RA	Alternative Accommodation/ Modification	Direct Threat Exception	Zoning Issues	Service Animal	Miscellaneous
D.C. Cir.	No Cases	No Cases	No Cases	No Cases	No Cases	No Cases
1st Cir.			D show no RA eliminates risk of tenant posing threat to health/ safety of other tenants. ⁴⁷	Zoning board must show granting RA fundamentally alters purpose of zoning ordinance. ⁴⁸		D landlord must show RAs were identified and implemented prior to eviction, even if not requested by tenant. ⁴⁹
2nd Cir.	RA unreasonable or gives tenant inappropriate advantage compared to other tenants. ⁵⁰	D must show modification is unreasonable before requiring P to use alternative modification. ⁵¹		D must show how neighborhood's character would be fundamentally transformed by allowing group home. ⁵²		Scope of RA: D not required to retrofit building to provide full accessibility. ⁵³
3rd Cir.	RA is unreasonable. ⁵⁴			D must show granting variance would pose undue burden or fundamentally alter town's zoning scheme. ⁵⁵	D must show service animal creates threat or disturbance to other residents. ⁵⁶	
4th Cir.	No Cases					
5th Cir.	No Cases					
6th Cir.		City does not need to explain dismissal of P's proposed RA if court finds alternative effective and reasonable. ⁵⁷				D landlord has an affirmative duty to provide an RA. ⁵⁸
7th Cir.	D must show RA unreasonable or would pose undue hardship in particular circumstance. ⁵⁹		D must prove P is a direct threat if denying RA b/c views P as direct threat. ⁶⁰			D landlord must show she requested additional documentation of disability if using defense that disability was not apparent. ⁶¹
8th Cir.	D must show RA is unreasonable. ⁶²					

9th Cir.	D must show RA is unreasonable. ⁶³			D landlord must show animal imposes undue burden or constitutes fundamental alteration of services. ⁶⁴	
10th Cir.	D must show RA is unreasonable. ⁶⁵		D landlord must show that no RA would eliminate or acceptably minimize the tenant's potential threat to the health and safety of others. ⁶⁶		
11th Cir.	No cases				

Notes

¹ 42 U.S.C. § 3601 (Fair Housing Act); 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973); 42 U.S.C. § 12131 (Americans with Disabilities Act).

² 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.

³ Reasonable modifications are similar to reasonable accommodations. Generally, a landlord or zoning board must allow a tenant or home owner the ability to make reasonable modifications to a house, dwelling unit or the common area in a complex. However, a landlord can condition approval on the assurance that the modification complies with building codes and that the tenant leaves the unit in a condition acceptable to someone who will not need the modification. Thus, a tenant in a wheelchair should replace the cabinet she removed below her bathroom sink but does not have to narrow the doorways she widened.

⁴ The only Fair Housing Act (FHA) case concerning disability to reach the United States Supreme Court, *City of Edmonds v. Oxford House*, 514 U.S. 725 (1995), did not explicitly deal with issues of burden of proof. Instead, the case established the rule that zoning ordinances are subject to FHA challenges.

⁵ The argument that people with mutable disabilities should not benefit from ADA protection may influence FHA reasonable accommodation claims. Lisa E. Key, *Voluntary Disabilities and the ADA: A Reasonable Interpretation of "Reasonable Accommodations"*, 48 HASTINGS L.J. 75, 76 (1996). In *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), two plaintiffs claimed discrimination under the ADA after being refused positions as commercial pilots due to their extreme myopia. The Supreme Court upheld the Tenth Circuit's dismissal of the claim because the two plaintiffs were not disabled within the meaning of the ADA.

⁶ 24 C.F.R. § 100.204

⁷ Two women who had difficulty walking due to cerebral palsy requested a zoning variance to construct a convenient parking spot in front of their home. The court granted the plaintiffs summary judgment on their ADA and Rehabilitation Act claims. *Trovato v. City of Manchester*, 992 F. Supp. 493 (D.N.H. 1997).

⁸ *Id.*

⁹ Applicant-plaintiff raised discrimination and reasonable accommodation claims after being rejected by a transitional housing program for women who were working or enrolled in school. The court agreed that the applicant was not discriminated against because she admitted to receiving SSDI benefits. It held the defendants need not accommodate the plaintiff because her physical condition is not what deprived her of equal opportunity to use and enjoy a dwelling. *United States v. Salvation Army*, 1999 U.S. Dist. LEXIS 14861, at *28 (N.Y.D.C. Sept. 14, 1999).

¹⁰ *Jackan v. New York State Dep't of Labor*, 205 F.3d 562, 566 (2d Cir. 2000), cert. denied, 531 U.S. 931 (2000).

¹¹ Applicants with disabilities unsuccessfully challenged the refusal of apartment providers to rent to them because of their status as Section 8 voucher holders. The court held that the housing providers voluntarily participate in Section 8 housing and cannot be forced to participate through reasonable accommodation claims. *Salute v. Stratford Greens Garden Apt.*, 136 F.3d 293 (2d Cir. 1998), aff'g 918 F. Supp. 660 (E.D.N.Y. 1996).

¹² Plaintiffs unsuccessfully contested their eviction as they could not prove that mental illness caused them to put belongings in the common areas. 2000 U.S. Dist. LEXIS 12000 (S.D.N.Y. Aug. 22, 2000).

¹³ A tenant with multiple sclerosis requested a parking space but the landlord refused because of a "first-come/first-serve" policy. The court found for the tenant as the parking space was a reasonable accommodation requiring modest costs to the landlord. *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2d Cir. 1995).

¹⁴ Plaintiffs unsuccessfully contested their eviction as they could not prove that mental illness caused them to put belongings in the common areas. *Wiesner v. 321 West 16th St. Assocs.*, 2000 U.S. Dist. LEXIS 12000 (S.D.N.Y. Aug. 22, 2000).

¹⁵ *United States v. Freer*, 864 F. Supp. 324 (W.D.N.Y. 1994).

¹⁶ Operator of a vacation home for people with disabilities unsuccessfully challenged a local zoning code. *Advocacy & Resource Ctr. (ARC) v. Town of Chazy*, 52 F. Supp. 2d 686 (N.D.N.Y. 1999).

¹⁷ Condo owner successfully challenged his association's refusal to grant him exclusive use of a parking space to accommodate his disability. The court stated the association was responsible for enforcing the FHA even though the association argued that parking spaces are common elements for the non-exclusive ownership of any one tenant. *Gittleman v. Woodhaven Condo. Ass'n*, 972 F. Supp. 894 (D.N.J. 1997).

¹⁸ *Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment*, 284 F.3d 442, 457 (3d Cir. 2002).

¹⁹ Bringing a claim under the FHA, the appellant-development firm unsuccessfully challenged the town's zoning board's denial of the firm's application for variances and site plan approval to build an elderly care facility. *Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment*, 284 F.3d 442 (3d Cir. 2002).

²⁰ A housing provider for chronically homeless people with mental illness successfully challenged a zoning requirement. *United States v. City of Philadelphia*, 838 F. Supp. 223 (E.D. Pa. 1993).

²¹ A developer of a multi-unit senior assisted-living facility brought suit against the zoning commission after being told not to pursue an amendment to the zoning code. The court dismissed the developer's reasonable accommodation claim because he had submitted neither a preliminary nor a final plan as required by the ordinance. *Marriott Senior Living Servs. v. Springfield Twp.*, 78 F. Supp. 2d 376 (E.D. Pa. 1999).

²² A condo owner with multiple sclerosis and depression acquired a dog against her association's rules. The dog had received over one year of training, performed numerous tasks for the owner and was a certified and registered therapy dog. The owner successfully challenged her association's attempt to make her give up the dog through fines. *Fulciniti v. Village of Shadyside Condo Assoc.*, No. 96-1825 (W.D. Pa. Nov. 20, 1998), available at "unreported cases" link on <http://www.bazelon.org/housing.html>.

²³ Elderly housing provider failed in his challenge to increase the county code from eight to fifteen occupants (as a reasonable accommodation) because the court said that people with disabilities deserved an equal opportunity rather than a financial advantage. Also, the court found that the accommodation was unnecessary under the Fair Housing Act because numerous other group homes existed in Columbia, Maryland, having between 18 to 23 percent vacancy rates. *Bryant Woods Inn v. Howard County*, 124 F.3d 597 (4th Cir. 1997), aff'g 911 F. Supp. 918 (D.Md. 1996).

²⁴ A couple with physical disabilities and depression requested a reasonable accommodation of a service animal from a coop. The coop denied the request because the couple could not prove the service animal had specialized training. The couple had presented a statement from their physician about the medical necessity of the service animal. The West Virginia Supreme Court agreed with the lower court that the coop's requirement that a service animal receive specific training was consistent with the FHA and state law. *In re: McKenna Homes Cooperative Corp.*, 210 W.Va. 380, 557 S.E.2d 787 (W.Va. 2001).

²⁵ *Elderhaven, Inc. v. City of Lubbock*, 98 F.3d 175 (5th Cir. 1996).

²⁶ A group home operator successfully challenged the city's refusal to make a reasonable accommodation under the FHA. The group home operator wanted to convert a residential property to a facility for women with Alzheimer's disease. The court relied on the fact that the plaintiff was able to show that the city council had made multiple exceptions to the zoning ordinance for businesses that were more intrusive and disruptive than the group home she requested. *United States v. City of Jackson*, FH-FL Rptr. ¶ 16,230 (S.D. Miss. October 14, 1997).

²⁷ A homeowner with a physical disability built a carport without a permit in violation of the zoning ordinance. After unsuccessfully seeking a variance, he filed suit claiming the variance was a reasonable accommodation as defined by the FHAA and ADA. He lost because the court said he held an arbitrary and uncompromising position about the carport and had converted an existing two-car garage into living space. The court declared that the FHAA requires a reasonable accommodation rather than the best possible accommodation. The court reasoned that the concept of "reasonable accommodation" requires a balancing of the individual's and municipality's respective interests based on the facts of each case. *Robinson v. City of Friendswood*, 890 F. Supp. 616, 622-623 (S.D. Tex. 1995).

²⁸ A tenant with mental disabilities appealed the district court summary judgment decision. The circuit appellate court reversed and remanded the district court's decision enforcing the housing authority's "no pets" rule. The appellate court stated that "[e]ven if the 'no pet' rule is itself imminently reasonable, nothing in the record rebuts the reasonable inference that the [Housing] Authority could easily make a limited exception for that narrow group of persons who are handicapped and whose handicap requires... the companionship of a [service animal]." *Majors v. Housing Authority of De Kalb*, 652 F.2d 454, 454 (5th Cir. 1981).

²⁹ Housing applicant unsuccessfully challenged the refusal of a landlord to reasonably accommodate an applicant with a mental disability by allowing a guarantor rather than a blood relative to co-sign. Court discounted applicant's parallel examples as this was an economic rather than a zoning accommodation. *Schanz v. Village Apis*, 998 F. Supp. 784 (E.D. Mich. 1998).

³⁰ Plaintiff-tenant's disability caused him to make loud noises that disturbed his neighbor and apartment complex began eviction proceedings. Plaintiff failed to show the requested accommodations to inform therapist when he had an outburst, soundproof his apartment, or move him to another apartment were reasonable. *Groner v. Golden Gate Apartments*, 250 F.3d 1039 (6th Cir. 2001).

³¹ *Schanz v. Village Apts.*, 998 F. Supp. 784.

³² *Id.*

³³ An owner of a home for adults with Alzheimer's failed in getting a city to allow a variance. The court found that the City of Taylor faced no significant financial or administrative burdens in accommodating Smith & Lee. It also found that such an accommodation would not fundamentally alter the residential nature of areas zoned for single family use because the residents lived as a family. Appellate Court reversed and remanded district court's decision for Smith. *Smith & Lee Assocs. v. City of Taylor, Michigan*, 102 F.3d 781 (6th Cir. 1996).

³⁴ A public housing tenant's FHA claim failed because he did not present sufficient medical evidence. He had a long and acrimonious relationship with his PHA as it had repeatedly tried to evict him. *Grubbs v. Housing Auth. of Joliet*, 1997 U.S. Dist. LEXIS 7294 (N.D.Ill. May 20, 1997).

³⁵ *Oconomowac Res. Programs, Inc. v. City of Milwaukee*, 300 F.3d 775 (7th Cir. 2002).

³⁶ The Seventh Circuit remanded the suit by two deaf women against their landlord who refused to let them keep their dog in their rented townhouse. Improper jury instructions had conflated local, state and federal laws. *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995).

³⁷ Court refused to recognize economic necessity as a reasonable accommodation to a builder who sought a special-use permit and rezoning that would allow him to build more units and create more affordable housing for people with disabilities. *Hemisphere Building Co., Inc. v. Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999), *aff'g* 1998 WL 100291 (N.D. Ill. Feb. 12, 1998)

³⁸ *Fjellestad v. Pizza Hut of America, Inc.*, 188 F.3d 944, 950 (8th Cir. 1999).