

Disability Verification

By Mary Ross,
Ross Business Development Inc.

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the Federal Fair Housing Laws. HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities.

On May 17, 2004, the agencies released a joint statement meant to clarify some of the issues pertaining to reasonable accommodation and modification. Of special consideration are questions #17 & #18.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability. However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that

- (1) is necessary to verify that the person meets the Act's definition of disability*
- (2) describes the needed accommodation, and*
- (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual).*

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 a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure)."

Customers that have contacted RBD have expressed some confusion about this instruction and some property managers have interpreted this instruction to mean that they should not verify the presence of disabilities (when obvious or known) for eligibility purposes. To date, the handbook reads as follows:

2-23 Definition of Persons with Disabilities for Civil Rights Protections versus Program Eligibility Purposes

A. Definitions with Respect to Civil Rights Protections

1. Section 504 establishes definitions for **“persons with disabilities”** and **“disability”** that differ from the definitions established in multifamily subsidized housing program regulations for purposes of determining program eligibility.
2. The complete Section 504 definition of these terms is included in the Glossary and identified as:
 - a. “Persons with disabilities;” and
 - b. “Disability.”
3. When the handbook uses these terms with respect to civil rights protections, it is usually in the context of nondiscrimination or accessibility requirements, such as a discussion of requests for reasonable accommodations by applicants or tenants. In this context, the civil rights-related definitions apply.

Note: A person who meets the definition of a person with disabilities as defined for civil rights protections may or may not meet the definition of a person with disabilities as defined for program eligibility purposes.”

Therefore, in our opinion, disability should always be verified for eligibility purposes, but different policies may be established in your Reasonable Modification and/or Accommodation policy.

A copy of the notice can be found on the HUD web site at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf> Or on the RBD web site at <http://www.rbdnow.com/noticesforms.htm>

We recommend that all management personnel and site staff review the guidance to ensure that they remain in compliance. During the 3-day Fair Housing Reviews, special attention is paid to the Reasonable Accommodation/Modification policy and staff’s practice of implementing such policy.

We hope this helps.

The 4350.3 Revision 1, Change 1 is available in a fully indexed, searchable CD. Why carry around a 20 pound book when all the information you need is on one CD? Order your copy now! <http://www.rbdnow.com/4350CDInfo.htm>

Join RBD for training in the following cities. For additional information about the classes or to register, visit our web site at <http://www.rbdnow.com/classes.htm> or call us at 770-424-1806.

CLASS NAME	CITY	DATE
TRACS Industry Update	Los Angeles, CA	January 27, 2005
TRACS Industry Update (PAHMA)	Warrendale, PA	February 17, 2005
TRACS Industry Update	Richmond, VA	February 22, 2005
TRACS Industry Update	Phoenix, AZ	March 8, 2005
TRACS Industry Update	Denver, CO	March 9, 2005
TRACS Industry Update	San Francisco, CA	March 24, 2004
CLASS NAME	CITY	DATE
Tenant Selection & Wait List Management	Indianapolis, IN	January 13, 2005
Tenant Selection & Wait List Management	Birmingham, AL	January 18, 2005
Tenant Selection & Wait List Management	Atlanta, GA	January 20, 2005
Tenant Selection & Wait List Management	Los Angeles, CA	January 26, 2005
Tenant Selection & Wait List Management	Louisville, KY	February 8, 2005
Tenant Selection & Wait List Management	Allentown, PA	February 15, 2005
Tenant Selection & Wait List Management	Denver, CO	March 10, 2005

Mary Ross is the President of Ross Business Development Inc. Prior to founding RBD, Mary was Vice President of Implementation and Training for RealPage, Inc. Mary is a nationally recognized expert in property management training and consulting services. www.rbdnow.com