

Reasonable Accommodations for N.C. Tenants with a Disability Suffering from Exposure to Drifting Tobacco Smoke

If you have a medical condition that meets the state or federal definition of “disabled,” and a neighbor’s drifting tobacco smoke is worsening your condition, state and federal law may be able to help you.

Disability Laws

Both the federal government and the state of North Carolina have disability laws that require a landlord or property owner to make reasonable exceptions to rules when requested by a tenant with a disability in order to allow the tenant an opportunity to enjoy and use the property as fully as non-disabled tenants.¹ For example, a landlord may be required to allow a tenant who is blind to keep a service dog, regardless of the property’s no-pets policy.

The laws apply to most privately and publicly owned housing. The few exceptions are detailed in the Joint Statement of the Department of Housing and Urban Development and the Department of Justice: *Reasonable Accommodations Under the Fair Housing*² and § 41A-6 of the State Fair Housing Act.³

¹ See Fair Housing Act (FHA), 42 U.S.C. § 3604(a)(3)(B); State Fair Housing Act, N.C. Gen. Stat. § 41A-4(f)(2) (2011).

² U.S. Dept. of Justice and U.S. Dept. of Housing and Urban Development. *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under The Fair Housing Act*. 2004 (“Joint Statement”). Available at: www.justice.gov/crt/about/hce/jointstatement_ra.php

³ N.C. Gen. Stat. § 41A-6.

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<http://changelabsolutions.org/publications/disability-laws-tobacco-smoke>

The information contained in this document does not constitute legal advice. Seek the advice of an attorney or other qualified professional regarding questions you may have about your particular situation.

What counts as a disability?

To request an accommodation under these laws, your medical condition must meet certain legal standards. Under the federal Fair Housing Act (FHA), a disability is a mental or physical impairment that substantially limits a major life activity like seeing, hearing, walking, or breathing, a record of having such an impairment, or being regarded as having such an impairment.⁴ Under North Carolina law, a disability is called a “handicapping condition,” but the definition of a handicapping condition remains the same.

The term “substantially limits” means the impairment must interfere with major life activities to a large degree.⁵ Examples of conditions that might be considered disabilities and that may be impacted by tobacco smoke include COPD, lung cancer, chemical sensitivity disorder, and emphysema. As ordinary allergies generally do not substantially impair major life activities, they are generally not regarded as a disability.⁶ However, if a tenant’s reaction to smoke exposure is severe enough to limit one or more of his or her daily life activities, it may be considered a disability under the FHA.

⁴ 42 U.S.C. § 3602(h).

⁵ Robert G. Schwemm, *Housing Discrimination Law and Litigation*, § 11D:2 (2012).

⁶ U.S. Department of Housing and Urban Development, Office of General Counsel. *MCS Disorder and Environmental Illness as Handicaps*. 1992. Available at: www.hud.gov/offices/adm/hudclips/lops/GME-0009LOPS.pdf

What is a reasonable accommodation?

A reasonable accommodation is a change in the “rules, policies, practices, or services [of a housing provider], when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.”⁷ If there is no identifiable relationship between the requested accommodation and the disability, a landlord will not be required to provide the accommodation. For example, a landlord would not be required to provide a nearby assigned parking spot to a tenant with multiple chemical sensitivity disorder, because it is unlikely that his impairment would substantially limit his ability to get from his apartment to his car.

For tenants suffering from exposure to drifting tobacco smoke, a request for an accommodation might include:

- Asking to be released from your lease early in order to move to another apartment complex
- Asking to be moved into a vacant unit that is not affected by secondhand smoke
- Asking your landlord to limit smoking in common areas

You may decide to request that your landlord implement a smoke-free policy for all of the units in your building to provide protection for you from smoke that travels between units. Although this is a more extensive request, smoke-free policies are becoming more common and also save property owners money. Therefore, this may be a change that your landlord would be willing to make. See www.smokefreehousingnc.com for information on smoke-free policies.

What is not a reasonable accommodation?

A request that would impose “an undue financial and administrative burden on the housing provider or . . . fundamentally alter the nature of the provider's operations”⁸ is not reasonable. For example, a tenant’s request that her property manager install an elevator in her building is not reasonable, because fulfilling that request would impose an undue financial burden on her housing provider. However, while a request can’t impose an *undue* financial burden on a housing provider, it may still require your landlord to bear *some* cost of fulfilling a reasonable request.

How do I ask for an accommodation?

You must ask for an accommodation before your landlord or housing provider is required to grant it. All you need to do to ask for an accommodation is make clear to your housing provider that you are requesting a specific exception or change to a rule because of your disability. Explain what exactly your request is. If the need for the accommodation isn’t obvious (for example, a cancer diagnosis), your landlord is permitted to ask you to explain how your request is related to your disability.

Even though you are not required to put any request in writing, doing so will help you to clearly communicate with your landlord or property manager, and keeping records will help you down the road if you think your reasonable accommodation request is improperly denied.

What if my request isn’t granted?

If your request is rejected, you have one year to file a complaint with the North Carolina Human Relations Commission or the U.S. Department of Housing and Urban Development, and two years to file a lawsuit.

⁷ 24 C.F.R. § 100.204 (2004).

⁸ See Joint Statement.

Additional Resources

N.C. Division of Public Health: www.smokefreehousingnc.com

North Carolina's "Smoke-Free Housing Website" has resources for tenants and management dealing with secondhand smoke issues, as well as links to finding smoke-free housing in N.C.

Legal Aid of N.C. (LANC): www.legalaidnc.org

If your income is limited, you may qualify for legal services from LANC. To find a local office, visit: www.legalaidnc.org/Public/Learn/Locations/default.aspx

LANC Fair Housing Project: www.fairhousingnc.org

The Fair Housing Project provides legal representation, advice, referrals, and information to individuals statewide who have experienced housing discrimination.

N.C. Lawyer Referral Service (LRS): www.ncbar.org/public-pro-bono/lawyer-referral-service

If you don't know of an attorney in your area, you can contact the LRS of the North Carolina Bar Association. The LRS keeps a list of attorneys in your area who will provide an initial consultation at a reduced cost.

N.C. Human Relations Commission: www.doa.nc.gov/hrc/default.aspx

The N.C. Human Relations Commission enforces the N.C. State Fair Housing Act.

U.S. Department of Housing and Urban Development (HUD): portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination

If you believe your request for accommodation has been improperly rejected, you can file your complaint online with HUD.

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