

# FAIR HOUSING FOR PERSONS WITH DISABILITIES:

Understanding Reasonable Accommodation,  
Reasonable Modification & Helpful Resources



  
**Tennessee Housing**  
Development Agency

**WEST TENNESSEE**  
LEGAL  **SERVICES**

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Reasonable Modification & Helpful Resources

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West Tennessee Legal Services

Tennessee Housing Development Agency

  
**Tennessee Housing**  
Development Agency

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The document, along with some of the referenced material, is available on the Tennessee Housing Development Agency (THDA) website by visiting [www.thda.org](http://www.thda.org) and on the West Tennessee Legal Services (WTLS) site at [www.wtls.org](http://www.wtls.org).

*Disclaimer:*

*Although this booklet contains legal information as well as guidance for developing independent rules, policies and procedures, the booklet is intended only as a reference document and is not intended to serve as a substitute for independent legal advice. All information, content, and materials are for general information purposes only. All cases are different and need individual attention. Changes in the law or court rules could make this information wrong in the future.*

# FAIR HOUSING FOR PERSONS WITH DISABILITIES:

## TABLE OF CONTENTS

I. INTRODUCTION	4
II. FEDERAL & STATE LAWS	4
III. DEFINITION OF PERSON WITH DISABILITIES	5
IV. TYPES OF DISCRIMINATION & LIABILITY	6
V. PROHIBITED CONDUCT	7
VI. REASONABLE ACCOMMODATIONS & REASONABLE MODIFICATIONS	7
A. REASONABLE ACCOMMODATION	8
B. REASONABLE MODIFICATION	11
C. ADDITIONAL REQUIREMENTS FOR FEDERALLY FUNDED HOUSING	13
D. CONSEQUENCES FOR FAILING TO PROVIDE REASONABLE ACCOMMODATIONS AND/OR MODIFICATIONS	13
E. STATUTE OF LIMITATIONS	13
F. BEST PRACTICES FOR HOUSING PROVIDERS WHEN CONSIDERING REASONABLE ACCOMMODATION & MODIFICATION REQUESTS	14
FIGURE 1: FLOW CHART FOR DECISIONS REGARDING REASONABLE ACCOMMODATION & MODIFICATION	14
APPENDIX A: LEGAL ASSISTANCE AND FAIR HOUSING ORGANIZATIONS	16
APPENDIX B: STATE OF TENNESSEE AGENCIES OFFERING SERVICES FOR INDIVIDUALS WITH DISABILITIES	17
APPENDIX C: INFORMATION ON TELECOMMUNICATIONS RELAY SERVICE	19

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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## I. INTRODUCTION

Among the adult population in Tennessee, 15.4 percent has a disability. The majority of persons with disabilities are between ages 18 and 64. However, more than one-third of Tennesseans over the age of 65 and approximately five percent of children have some type of disability<sup>1</sup>. Disabled Tennesseans face a number of obstacles when searching for affordable and accessible housing options. Most households with a disabled member experience lower income levels and a higher rate of poverty than those without a disabled family member, making safe, decent housing more difficult to afford. Another barrier to suitable housing for disabled Tennesseans is a lack of available housing inventory with specific accessibility features<sup>2</sup>.

The most frequent complaints filed in Tennessee alleging that a housing provider has violated the Fair Housing Act relate to disability protections. The refusal to consider or approve a reasonable accommodation to a rule, policy, practice or service or a reasonable modification to allow equal access to a housing opportunity is one of the most commonly reported complaints in Tennessee by individuals claiming disability protections<sup>3</sup>.

The information presented in this Booklet is intended to improve understanding of the disability protections in federal and state non-discrimination laws and contribute to the alleviation of barriers to housing choice for persons with a disability.

## II. FEDERAL AND STATE LAWS

The Civil Rights Act of 1968, more commonly known as the Fair Housing Act, was passed to address the history of segregation and discrimination in housing markets throughout the United States. Its stated intent is to provide, within constitutional limitations, fair housing throughout the United States. Together with later amendments and additional laws, it provides protection from housing discrimination on the basis of a person's race, color, national origin, religion, sex,<sup>4</sup> familial status, and disability.

Three federal laws and one Tennessee state law specifically prohibit housing discrimination against rental applicants or tenants because of a disability. While other laws and local ordinances also may apply, this Guide is intended to inform readers of the rights provided to tenants with disabilities by these fair housing laws.

The federal laws are:

- The Fair Housing Act of 1968, as amended in 1988 ("Fair Housing Act"), prohibits discrimination based on race, color, religion, national origin, sex, familial status or disability. Requires all covered landlords to make reasonable modifications and accommodations for tenants with disabilities.
- The Americans with Disabilities Act, enacted in 1990, prohibits discrimination on the basis of disability in government-funding programs, including housing programs (Title II), as well as public accommodations (Title III). Under Title II certain federally funded housing providers, including federally funded homeless shelters, must provide reasonable accommodations and modifications. Under Title III, portions of private housing open to the public, such as rental or leasing offices and other on-site locations used by the public, must be accessible to person with disabilities.
- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in certain federally funded housing

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1 See THDA Issue Brief, Swanson and Anderson: Disparities in Housing Opportunity for those with Disabilities, January 2021

2 THDA Issue Brief, January 2021

3 THDA Issue Brief, January 2021. Also, note that Tennesseans may file a complaint alleging discrimination in housing with Dept. of Housing and Urban Dev. Fair Housing Enforcement Office (FHEO) or with the Tennessee Human Rights Commission, who serves as a Fair Housing Assistance Program (FHAP) for the state.

4 Under new guidance issued on February 11, 2021, sex discrimination now includes discrimination against a person due to an individual's sexual orientation or gender identity. HUD\_Memo\_EO13988.pdf [hereinafter: Worden Memorandum].



# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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programs and requires that covered landlords make reasonable accommodations for tenants with disabilities. The Tennessee state law:

- Tennessee Human Rights Act is substantially equivalent to the federal Fair Housing Act and prohibits discrimination on the basis of race, color, religion, national origin, sex, familial status and disabilities and also provides protection to the additional protected class of creed.

Depending on when rental housing was built and whether its construction was funded from certain federal sources, some or all of the fair housing laws mentioned above may apply. Where all the above laws apply simultaneously, the law that provides the greatest protection will govern the situation.

## III. DEFINITION OF PERSONS WITH DISABILITIES

While this Guide refers to persons with disabilities, the fair housing laws use the term “handicap.” Cases interpreting fair housing laws make clear that the terms have the same meaning.

Non-discrimination laws relevant to housing activities define persons with disabilities to include those:

- With a physical or mental impairment that substantially limits one or more major life activity;
- With a record of having such an impairment; or
- Regarded as having such an impairment whether they have the impairment or not.<sup>5</sup>

Additionally, the Fair Housing Act makes clear that a difference in treatment because of the individual’s disability, the disability of another household member, or the disability of a person associated with the renter is disability discrimination actionable under the Fair Housing Act.

Important Note: The definition of disability in fair housing laws is much broader than the disability definition under other programs, including federal benefits laws. A common misconception by many housing providers is that a tenant must receive social security disability benefits to be considered disabled. Housing providers may violate fair housing laws when requiring a person with disabilities to provide proof of social security disability benefits in order to consider them a person with disabilities.

The following persons are not included in the definition of disability:

- Persons currently engaging in the illegal use of a controlled substance;
- Persons convicted of the illegal manufacture or distribution of a controlled substance;
- Persons whose sole basis for claiming to be disabled is that the person is a “transvestite;”
- Persons whose tenancy would constitute a “direct threat” to the health or safety of other individuals or whose tenancy would cause substantial physical damage to the property of others; and
- Juvenile offenders and sex offenders, by virtue of their status.

## ILLEGAL SUBSTANCES USE AND ALCOHOLISM

As stated above, individuals who currently use illegal drugs are explicitly excluded from protections under the federal and state Fair Housing Act. It is important to note, however, the distinction between those who are currently using illegal drugs and those who have a history of addiction and drug use.

Individuals who have a history of illegal drug use but who are not currently using are considered to be disabled and are protected by law from discriminatory conduct. This means these individuals will be entitled to the full protection allowed for persons with disabilities under the Fair Housing Act, including the right to reasonable accommodations.

In addition to past drug use, the definition of disability also covers those individuals who have a history of addiction

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5 For FHA: see 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201. For Section 504: see 29 U.S.C. § 705(9)(b); 24 C.R.F. § 8.3. For ADA: see 42 U.S.C. § 12102(1); 28 C.F.R. § 35.108

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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to alcohol. These individuals will also be provided the enhanced protections for individuals with disabilities under the Fair Housing Act.

## INDIVIDUALS THAT POSE A DIRECT THREAT

The law is clear that individuals who pose a direct threat to the health and safety of other individuals or whose tenancy would cause substantial physical damage to the property of others are not protected as persons with disabilities. However, it is very important that the determination of whether or not an individual is a “direct threat” is made properly and not used as an excuse to improperly discriminate against persons with disabilities.

Joint guidance issued by the Department of Housing and Urban Development (HUD) and Department of Justice (DOJ) states that if a direct threat can be eliminated or significantly reduced through a reasonable accommodation, that such accommodation should be granted. Furthermore, the guidance requires that an assessment that an individual is a direct threat must be an individualized assessment based on reliable objective evidence<sup>6</sup>. It is impermissible for housing providers to assume that a person will be a direct threat merely because they have a disability, a particular diagnosis, or require the use of any particular medical treatment.

In making a determination that an individual is a direct threat, the assessment should consider the following:

1. The nature, duration, and severity of the risk of injury;
2. The probability that such an injury will actually occur; and
3. Whether there is a reasonable accommodation(s) that will eliminate the direct threat.

*Example: A tenant who has an assistance animal cannot be considered a direct threat merely because of the breed or size of their animal. The animal itself must have demonstrated threatening behavior that cannot be controlled or that the tenant refused to control.*

## IV. TYPES OF DISCRIMINATION & LIABILITY

There are two types of discrimination, and providers may be found in violation of the state and federal laws if either type of discrimination is found to have occurred.

- **Intentional Discrimination.** This is discrimination based on a housing provider knowingly treating a person differently because of their membership in a protected class.

*Example: If a provider refused to rent to a person because they had AIDS, or if a provider charged a family a higher deposit because their child had a developmental disability, that would be intentional discrimination based on disability.*

- **Discriminatory Effect.** This discrimination based on a provider’s facially neutral rule or policy, which has a harsher impact on persons of a protected class regardless of the provider’s intent to treat any protected class differently. This type of discrimination is also known as “disparate impact” discrimination.

*Example: If a housing provider places a limit on the number of times an ambulance can be called to a property before they will consider the tenant to have caused a disturbance, this would have a greater impact on people with disabilities due to their increased likelihood of need for an ambulance.*

In addition to the two types of discrimination, there are also two types of liability that a provider can face for discriminatory actions.

- **Direct Liability.** A housing provider may be held liable for their own discriminatory actions and for failure to

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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take prompt action to correct and end a discriminatory housing practice by a third party when the provider knew or should have known about the conduct and had the power to correct it.

*Example: A provider will be directly liable if their tenant requests a reasonable accommodation or modification directly with the provider, and the provider denies this accommodation unlawfully.*

*Example: A provider will be directly liable for sexual harassment of a tenant by another tenant if the harassed tenant reported the harassment to the provider, and the provider failed to take the corrective action within their power, such as issuing lease violation notices to the offending tenant, to prevent the harassment from continuing.*

- Vicarious Liability. In certain circumstances, a housing provider may be held liable for discriminatory actions of a third party if that third party was the provider's agent or employee. This type of liability is also known as strict liability.

*Example: A provider will be liable if their rental agent refuses to grant a reasonable accommodation or modification even if the provider never knew of the request or would have granted the request if they had known one was made.*

## V. PROHIBITED CONDUCT

The Fair Housing Act and related laws prohibit the following actions in rental situations:

- Refusal to rent, sell, negotiate or otherwise making housing unavailable due to a person's protected class status
- Setting different terms, conditions, or privileges for sale or rental of a dwelling due to a person's protected class status
- Falsely denying that housing is available for inspection, sale, or rental due to a person's protected class status
- Making, printing, or publishing any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicated any preference, limitation, or discrimination against a person for their protected class status
- Coercion, intimidation, threats, or interference with any person in the exercise of any right granted or protected by the Fair Housing Act
- Refusal to make reasonable accommodations and/or modifications for disabled individuals

## VI. REASONABLE ACCOMMODATIONS & REASONABLE MODIFICATIONS

While the vast majority of the Fair Housing Act applies to all protected classes, there are two special rights for disabled individuals that do not apply to other protected classes: The right to request a reasonable accommodation and/or a reasonable modification to address a disability related need that affects the person's equal access to housing.

Requests for reasonable accommodations and reasonable modifications work similarly, but there are some key differences for each. For that reason, they will be discussed separately in this booklet. It is important to understand that a person may require either a reasonable accommodation or a reasonable modification or in some circumstances both. Each situation is unique and should be assessed individually.

HUD and the DOJ issued joint guidance or technical assistance on Reasonable Accommodation in May 2004 and on Reasonable Modification in March 2008 (hereinafter: 2004 Joint Statement or 2008 Joint Statement). While the guidance is not legally binding, it is a good starting point for housing providers and tenants to acquire practical information on the law and its application. Where relevant, the guidance is referenced throughout this booklet.

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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## A. REASONABLE ACCOMMODATIONS

A “reasonable accommodation” is a change to the rules, policies, or procedures of a housing provider that is needed by a person with a disability in order to fully use or enjoy the dwelling or common areas.

24 C.F.R § 100.204 states:

It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, 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.

The need for a reasonable accommodation may arise at any point in the relationship between the parties, including at the time of application, during tenancy, or post termination. It is the responsibility of the person with a disability, or someone acting on their behalf, to ask for a specific reasonable accommodation whenever one is needed.

The law does not establish any clear threshold for determining what is reasonable, but it does specify that a housing provider is not required to provide an accommodation if it would impose an “undue burden” or result in a “fundamental alteration” of the nature of the housing program.<sup>7</sup> An undue burden is an unreasonable financial or administrative cost, which is demonstrated by comparing the financial and administrative costs of regular operations, the overall financial resources available to the housing provider, and the costs of making the accommodation.<sup>8</sup> A fundamental alteration is an accommodation that would change the basic operation or nature of the service provided by significantly modifying, eliminating, or adding to the services that the housing provider offers.<sup>9</sup>

## REQUESTS FOR ACCOMMODATIONS

As previously stated, a tenant can make a request for a reasonable accommodation at any point in the tenancy. This request can be made in a variety of ways and a housing provider cannot dictate that the request be made in any particular manner.<sup>10</sup> Many requests will be made verbally and may or may not use the term reasonable accommodation. A housing provider has a duty to respond to the request once it is understood that a tenant or housing applicant is asking for a change, exception, or adjustment to a rule, policy, practice, or service because of a disability.<sup>11</sup>

Once a request for a reasonable accommodation has been received, the housing provider should consider taking the following three steps. If a housing provider denies a request for a reasonable accommodation, and the requesting individual files a complaint, the housing provider’s defense will rest upon proving that these steps were taken before the request was denied.

1. Determine if the requesting individual has disclosed that they have a disability. If the disability is obvious or otherwise known to the housing provider, no further inquiry should be made into the disability, and the person with a disability should not be required to obtain proof or verification of the disability. If the disability is not apparent, the housing provider may ask for verification that the tenant has a disability as defined by the Fair Housing Act.
2. Determine if the request establishes that the accommodation is necessary to enable the requesting individual to have equal opportunity to use and enjoy a dwelling unit, including the public and common use areas. If the initial request does not verify the need for the requested accommodation, the housing provider can request additional information, but the request should be very narrow and only ask for information necessary to evaluate the identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

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7 See *Southeastern Community College v. Davis*, 442 U.S. 397, 412-13 (1979).

8 *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2nd Cir. 1995).

9 See e.g., *U.S. v. California Mobile Home Park*, 29 F.3d 1413, 1416-17 (9th Cir. 1993).

10 2004 Joint Statement, Question 13

11 2004 Joint Statement, Question 14



# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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3. Determine if the requested accommodation is reasonable by evaluating if the implementation of the accommodation would impose an “undue burden” or result in a “fundamental alteration” of the nature of the housing program.

Once an accommodation request has met the three criteria set out above, the housing provider cannot – directly or indirectly- deny the request or impose the expense of providing the accommodation onto the tenant. For example, the housing provider cannot require a person who asks the housing provider to come to their rental unit to pick up their rental payments in person (as an accommodation) to pay for the gas or time spent fulfilling this request.

If a housing provider believes a request cannot be granted as made, they should engage in the interactive process with the tenant to discuss the request and any alternative accommodations that can be offered.<sup>12</sup> This process should be used where an accommodation cannot be granted and should not be used as a way to avoid an accommodation that is reasonable as made but that the housing provider just wishes not to grant. For example: If a disabled tenant cannot come to the leasing office to pay their rent as required by the housing provider, the tenant can request to have the housing provider come to the tenant to collect the rent. The housing provider can offer alternative means of paying their rent (such as online payment or mailing the payment) but cannot require the tenant to accept these alternative offers unless the housing provider absolutely cannot come to the tenant’s unit for some reason.

## VERIFICATION

Verification of the disability related need is an area where conflict between the tenant and housing provider often occur. Many housing providers want to impose conditions on the verification they will accept, ask unnecessary questions about the verification, or require the verification contain unnecessary medical information, such as a diagnosis, before the verification is accepted. As stated above, any request for verification must be narrowly tailored and can only ask for the information necessary to verify the requested accommodation will address a disability related need. Asking for more information can lead to fair housing violations and possible penalties.

Furthermore, verification can come from a wide variety of sources (any reliable third party) and does not have to come from a medical doctor. Nurse practitioners, peer support group counselors, social workers, and staff from other non-medical service agencies are all common sources of verification.

Additionally, online verifications have become routine. Online verifications are subject to the same level of scrutiny as any other verification and should not be rejected merely because they were obtained from an online source if they are otherwise reliable.

## EXAMPLES OF FREQUENTLY REQUESTED REASONABLE ACCOMMODATIONS

As stated previously, reasonable accommodations span a wide variety of issues and take many different forms. For that reason, this list contains only examples of some of the most frequently encountered requests.

- A designated parking space for a tenant who has difficulty walking long distances.
- Meeting with a tenant with mental impairments in person to complete or review important paperwork.
- Allowing a tenant with a newly developed physical impairment that makes their current unit difficult for them to access to terminate their lease early to move to a more accessible unit.
- Notifying a tenant with a chemical sensitivity in advance of any maintenance that may impact their disability and working with the tenant to lessen the impact of such work on their disability.
- Allowing a tenant with a mental disability that causes them to have issues with clutter additional time to prepare for a housekeeping inspection.
- Arranging for an alternative place of payment for a tenant who cannot physically travel to the leasing office to pay rent.
- Allowing a tenant who has violated the rules and regulations in some manner due to their disability additional time to show ability to comply with the rules and regulations.
- Using a telecommunication relay service (TRS) to communicate with tenants who are deaf, hard of hearing,

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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- deaf-blind, or speech impaired.
- Allowing an “assistance animal” in a unit or on a property where pets are not allowed.

## SPECIAL CONSIDERATION: ASSISTANCE ANIMALS

One of the most common reasonable accommodation requests is for approval of an assistance animal. The request by disabled individuals for an assistance animal is so common that HUD has released a memorandum to guide housing providers when assessing a person’s request to have an animal as a reasonable accommodation under the Fair Housing Act. Detailed guidance on requests for assistance animals and common issues may be found in HUD FHEO Notice 2020-01 (hereinafter: 2020 Assistance Animal Notice).

For purposes of the Fair Housing Act, HUD defines “assistance animals” as “animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.” There are two types of assistance animals: (1) service animals and (2) support animals.

As a general rule, a request for a reasonable accommodation for an assistance animal should be treated the same as any other request for a reasonable accommodation for any other reason. The housing provider should use the same three-step analysis detailed above when assessing these requests for accommodation.

Important Note: Assistance animals are not pets and a tenant cannot be:

- charged a pet fee
- charged pet rent
- prohibited from having the animal under a no pets policy
- subjected to breed or weight restrictions for pets
- restricted from having the animals in public or common use areas
- required to obtain special training or certifications before their animal will be approved.

## RELEVANT ACCOMMODATION CASES

1. The tenant moved to a rental unit with a “no pets” policy. The tenant notified management of her minor son’s need for an emotional support animal and presented medical verification. The manager denied the request and informed the tenant that previous tenant’s request for such animals had also been denied; that the doctor’s note did not mean anything, and that the owner had attorneys who win cases for them. The case was investigated by HUD and a cause finding was issued. The case was then set to be heard in federal court, but the parties settled prior to the court hearing. Settlement terms included \$32,500 to be paid to the tenants, and implementation of a reasonable accommodation policy, staff trainings, and reporting requirements to ensure future compliance.<sup>13</sup>
2. A disabled tenant with mobility impairments, which required the use of a walker and sometimes a wheelchair, requested an accommodation to the first come, first serve parking policy of the housing provider. The housing provider denied this accommodation request, and the tenant filed a HUD complaint. The case was investigated and a cause finding was issued. The case was set to be heard in federal court, but the parties settled prior to the court date.<sup>14</sup>
3. The tenant required a third bedroom to store medical equipment and made a request for a 3-bedroom voucher for this purpose. The voucher administrator initially granted the request, but upon re-certification, the voucher administrator refused to approve the 3-bedroom voucher again and instead issued the tenant a 2-bedroom voucher. The tenant filed a complaint with HUD. HUD investigated and issued a cause finding. The parties reached a settlement before the case could proceed to court, which included injunctive relief,

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13 Calvillo, et al. v. Baywood Equities, L.P., et al., settlement agreement can be accessed at <https://www.justice.gov/crt/case-document/settlement-agreement-calvillo-et-al-v-baywood-equities-lp-et-al>

14 United States v. 4 Anchorage Lane Owners, Inc. (E.D.N.Y.), settlement agreement can be accessed at <https://www.justice.gov/sites/default/files/crt/legacy/2011/07/12/anchorage-settle.pdf>

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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revision of policies, and additional training and reporting requirements.<sup>15</sup>

## B. REASONABLE MODIFICATIONS

A “reasonable modification” is a change in the physical structure of a dwelling that allows a person with a disability to fully use and enjoy the dwelling. The change can be to the interior of a housing unit or to common or other public spaces, including parking areas, of rental housing covered by the Fair Housing Act. The landlord must allow physical or structural modifications if they are “reasonable” and necessary for the tenant to use and enjoy the premises. Once a request for a reasonable modification has been received, the housing provider should consider taking the following three steps. If a housing provider denies a request for a reasonable modification and the requesting individual files a complaint, the housing provider’s defense will rest upon proving that these steps were taken before the request was denied.

1. Determine if the requesting individual has disclosed that they have a disability. If the disability is obvious or otherwise known to the housing provider, no further inquiry should be made into the disability, and the person with a disability should not be required to obtain proof or verification of the disability. If the disability is not apparent, the housing provider may ask for verification that the tenant has a disability as defined by the Fair Housing Act.
2. Determine if the request establishes that the modification is necessary to enable the requesting individual to have equal opportunity to use and enjoy a dwelling unit, including the public and common use areas. If the initial request does not verify the need for the requested modification, the housing provider can request additional information, but that request should be very narrow and only ask for the information that is necessary to evaluate if the accommodation is needed because of a disability.
3. Determine if the requested modification is reasonable by evaluating if the modification is structurally possible and will not damage the property or unreasonably interfere with other tenants’ use of the building or features. Once a modification request has met the three criteria set out above, the housing provider cannot – directly or indirectly- deny the request. If a housing provider believes a request cannot be granted as made, they should engage in the interactive process with the tenant to discuss the request and any alternative modifications that can be offered.<sup>16</sup> This process should be used where a modification cannot be granted and should not be used as a way to avoid a modification that is reasonable as made but that the housing provider just wishes not to grant. For example: If a disabled tenant cannot enter their current unit without a ramp, they can request to install a ramp for that unit. The housing provider can offer alternatives, such as moving a tenant to a unit that does not require a ramp but cannot require the tenant accept these alternative offers unless the housing provider absolutely cannot place a ramp on the current unit for some reason.

## VERIFICATIONS

The same general rules regarding verification for accommodations also apply for modifications. Housing providers should use caution when asking for additional information before approving a modification request and make sure the additional information is necessary to evaluate the need for the modification.

## WHO PAYS FOR THE MODIFICATION?

To determine who pays for the modification, the housing provider must answer the following three questions:

1. If the property was developed, even in part, with certain types of federal funds (read Special Considerations for Federally Funded Housing section below), the housing provider must pay for the modifications unless doing so

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<sup>15</sup> United States v. Alaska Housing Finance Corp., (D Alaska), settlement agreement can be accessed at <https://www.justice.gov/sites/default/files/crt/legacy/2012/05/21/ahfcsettle.pdf>

<sup>16</sup> 2008 Joint Statement, Question 31

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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would impose an undue financial or administrative burden on the operation of the housing facility.<sup>17</sup>

2. If a multifamily (four or more units) building was designed for first occupancy after March 13, 1991, it was required to meet certain accessibility requirements under the Fair Housing Act. If the modification requested is necessary because the building is out of compliance with the Fair Housing Act, the owners are financially responsible for all expenses necessary to bring the property into compliance with the law.<sup>18</sup>

Important Note: The fact that a building was approved by a local building inspector and received a Certificate of Occupancy does not prove that it meets Fair Housing Act accessibility requirements.<sup>19</sup>

3. If the property does not receive federal financial assistance and meets the minimum accessibility requirements, then the tenant may be required to pay for the modification to the unit.

## SPECIAL CONSIDERATION: QUALITY OR STANDARDS OF MODIFICATIONS

When a tenant is responsible to pay for a modification, the landlord still may require a certain quality or standard of modification is completed and that any modification comply with applicable building codes. For modifications made by a tenant, the landlord also may require that the unit be restored to its original condition at the end of the tenancy, but only if the modification will interfere with a future tenant's use of the unit. Simple modifications, such as grab bars or widened doorways, are unlikely to interfere with a future tenant's use.<sup>20</sup>

## RELEVANT MODIFICATION CASES

1. The resident was disabled and confined to a wheelchair. The resident was injured while being assisted into her trailer, which required entrance by way of five steps. The owners rejected the resident's plan for a ramp that led to the front door of her trailer. The owners offered an alternative ramp design that was rejected by the resident as unsuitable to her needs. Thereafter, the Government filed the motion for an injunction. The court granted the motion. The court stated that the Government established a prima facie case of discrimination under the Act because there was no dispute that the resident was disabled and that the owners refused to allow her to install a wheelchair ramp at her home. The court determined that the owners failed to show that the resident's proposed modification imposed on them an undue financial or administrative burden. The court found that the Government showed irreparable harm to the resident because, without a wheelchair ramp, she was essentially a prisoner in her own home. The court concluded that the Government clearly demonstrated as possibility of success on the merits of its claim; therefore, the resident was entitled to injunctive relief.<sup>21</sup>
2. Tenant moved to a newly constructed unit that had an accessible entrance for the resident through the unit's garage. There was no accessible route to the unit in the public and common use portion of the complex. The complex argued it did not have to provide an accessible route in the public and common use portion of the complex and the garage entrance was sufficient under the Fair Housing Act. The court found that the failure to provide "unimpeded access" to the front door to persons who use wheelchairs, including not just those who live in the unit but also a "neighbor, friend, or family member, a political candidate, or a repairman," is "in effect, to send them away as if unwelcome," and "precisely the discrimination the FHA forbids" and entered a decision in favor of the tenant.<sup>22</sup>

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17 24 C.F.R. § 8.23(b)(1)

18 2008 Joint Statement, Question 12

19 42 U.S.C. § 3604(f)(3)(C)

20 For further guidance, see the 2008 Joint Statement

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

22 *Ability Ctr. of Greater Toledo v. James E. Moline Builders Inc.*, 478 F. Supp. 3d 606, N.D. Ohio 2020) U.S. Dist. LEXIS 147371

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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## C. ADDITIONAL REQUIREMENTS FOR FEDERALLY FUNDED HOUSING

Some common sources of Federal Financial Assistance are:

- HOME
- National Housing Trust Fund
- Community Development Block Grants (including Section 108 loans)
- Section 202 and 811 Supportive Housing for the Elderly or Persons with Disabilities
- McKinney-Vento Supportive Housing (permanent or transitional)
- USDA Rural Development Section 514, 515, and 538
- Public Housing Capital Fund & Annual Contributions Contract
- Privately owned developments with federal project-based rental assistance (i.e. HUD Section 8, USDA Rural Development)

Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. Section 504 and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability, and obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. Most sources of direct or indirect federal funding trigger Section 504. However, tenant based rental assistance programs, such as Housing Choice Vouchers (Section 8) and Shelter Plus Care Assistance do not, on their own, trigger Section 504 applicability.

## D. CONSEQUENCES FOR FAILING TO PROVIDE REASONABLE ACCOMMODATIONS AND/OR MODIFICATIONS

Failure to abide by the reasonable accommodation and/or modification provisions of the Fair Housing Act is a violation of both state and federal law. A person who believes they have experienced a discriminatory denial of a reasonable accommodation and/or modification request has the following options:

1. They can file a fair housing complaint either with the Department of Housing and Urban Development (HUD) or with the state's Fair Housing Assistance Program (FHAP). In Tennessee, the state FHAP is the Tennessee Human Rights Commission (THRC).
2. They can file a lawsuit directly in either state or federal court.

Additionally, for housing providers participating in the Housing Choice Voucher Program, all Housing Assistance Payments (HAP) contracts contain a provision prohibiting discrimination by the housing provider. A housing provider who has been found to discriminate against a tenant in any way, including through the denial of a reasonable accommodation and/or modification, can face consequences with the agency administering the voucher pursuant to the HAP contract. Possible consequences can be found in the HAP contract.

## E. STATUTE OF LIMITATIONS

If a person believes they have experienced discrimination, they must act within the statute of limitations for bringing a fair housing complaint. The statute of limitations varies based on which type of action the individual decides to bring.

The applicable statute of limitations are as follows:

1. An individual has 1-year from the date of the last discriminatory act to file a HUD complaint. The complaint will then be investigated by HUD and/or a FHAP acting on behalf of HUD. During the investigation, the statute of limitations for filing a federal lawsuit does not run.
2. An individual has 180 days from the date of the last discriminatory act to file a complaint with THRC.



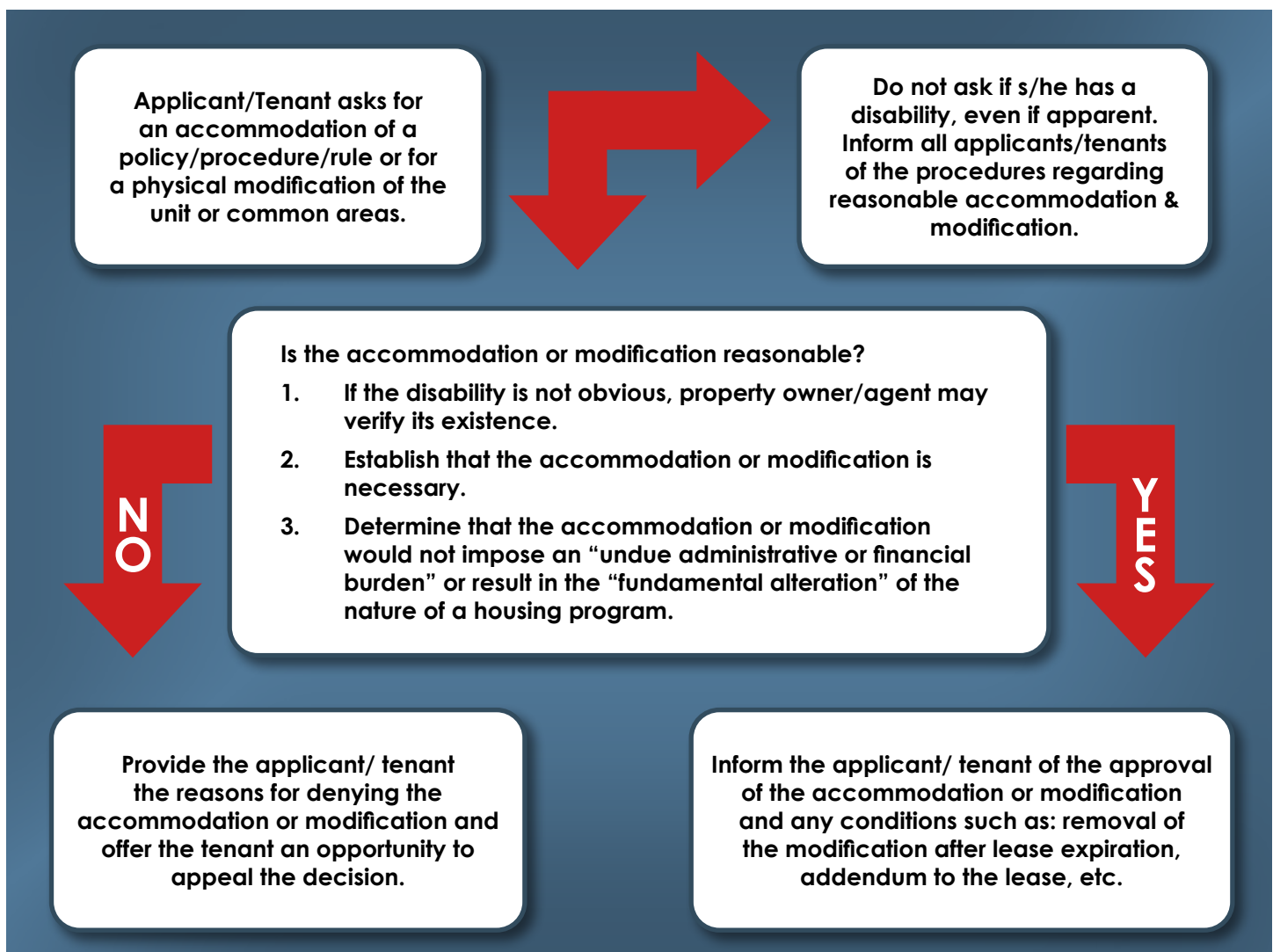
# FAIR HOUSING FOR PERSONS WITH DISABILITIES

3. An individual has 1-year from the date of the last discriminatory act to file a state lawsuit in Tennessee.
4. An individual has 2-years from the date of the last discriminatory act to file a federal lawsuit. Note: if a HUD complaint was filed first, the time from the complaint being filed with HUD to HUD closing the case does not count towards the two-year time frame to file a federal lawsuit. Due to this, federal lawsuits can be filed many years after a discriminatory act.

## F. BEST PRACTICES FOR HOUSING PROVIDERS WHEN CONSIDERING REASONABLE ACCOMMODATION & MODIFICATION REQUESTS

1. Establish a process for managing requests (preferably written) and ensure that all employees are familiar with the process.
2. Each request should be considered on a case-by-case basis, based upon the individual circumstances and facts.
3. Senior management personnel or the property owner typically should review denials of accommodation or modification requests before the denial is communicated to the tenant.
4. Never discuss a tenant's disability with other tenants or third parties without the tenant's specific written permission (such as through a written reasonable accommodation or modification request).

FIGURE 1: FLOW CHART FOR DECISIONS REGARDING REASONABLE ACCOMMODATION & MODIFICATION



# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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## USEFUL RESOURCES & DOCUMENTS CITED

U.S. Department of Justice and U.S. Department of Housing and Urban Development. (May 17, 2004). Joint Statement on Reasonable Accommodations under the Fair Housing Act.

<https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>

U.S. Department of Justice and U.S. Department of Housing and Urban Development. (March 5, 2008). Joint Statement on Reasonable Modifications under the Fair Housing Act.

[https://www.hud.gov/sites/documents/reasonable\\_modifications\\_mar08.pdf](https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf)

U.S. Department of Housing and Urban Development. (January 28, 2020). FHEO-2020-01. Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act.

<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

U.S. Department of Housing and Urban Development, Fact Sheet on HUD's Assistance Animals Notice can be accessed at <https://www.hud.gov/sites/dfiles/PA/documents/AsstAnimalsGuidFS1-24-20.pdf>

Tennessee Housing Development Agency. (January 2021). Issue Brief: Disparities in Housing Opportunity for those with Disabilities. [https://thda.org/pdf/RP\\_DisparitiesinHousingOpportunityDisabilities\\_Final.pdf](https://thda.org/pdf/RP_DisparitiesinHousingOpportunityDisabilities_Final.pdf)

General information on Reasonable Accommodation & Modification (in addition to the above resources) can be accessed at

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/reasonable\\_accommodations\\_and\\_modifications](https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications)

General information on Section 504 (HUD FAQ) can be accessed at

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504faq](https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq)

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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## APPENDIX A: LEGAL ASSISTANCE AND FAIR HOUSING ORGANIZATIONS

### TENNESSEE FAIR HOUSING COUNCIL

<https://tennfairhousing.org/>

Phone: 615-874-2344

107 Music City Circle, Suite 318, Nashville, TN 37214

Provides legal assistance to the people of Cheatham, Davidson, Dickson, Montgomery, Rutherford, Sumner, Williamson, and Wilson counties who are experiencing housing issues because of their race, color, national origin, religion, sexual orientation, gender identity, creed, disability, or familial status.

### TENNESSEE ALLIANCE FOR LEGAL SERVICES

<https://www.tals.org/>

Phone: 615-627-0956

50 Vantage Way, Suite 250, Nashville, Tennessee 37228

Connects vulnerable Tennesseans with civil legal help.

### MEMPHIS AREA LEGAL SERVICES

<https://malsi.org/>

Phone: (901) 523-8822 or (866) 361-9001; Covington office: (888) 207-6386

Fair Housing Center: (901) 432-4663

Provides civil legal services free of charge for qualifying individuals (typically low income) in the western Tennessee counties of Shelby, Fayette, Tipton and Lauderdale in areas such as consumer, housing, benefits, and family law.

### WEST TENNESSEE LEGAL SERVICES

<https://wtls.org/>

Email: [wtls@wtls.org](mailto:wtls@wtls.org)

Phone: 731-423-0616 ext. 1250; 800.372.8346 (central intake for all counties)

210 West Main Street, Jackson, Tennessee

Provides civil legal services free of charge for qualifying individuals in 17 West Tennessee counties (offices in Jackson, Dyersburg, Huntingdon, and Selmer) in areas such as consumer, housing, benefits, and family law.

### LEGAL AID SOCIETY OF MIDDLE TENNESSEE AND THE CUMBERLANDS

<https://las.org/>

Phone: 800-238-1443 (inquiries from all counties)

1321 Murfreesboro Pike, Suite 400, Nashville, TN 37217

Provides civil legal services free of charge for qualifying individuals in 48 counties in Middle Tennessee and the Cumberlandlands (offices in Clarksville, Columbia, Cookeville, Gallatin, Murfreesboro, Nashville, Oak Ridge, Tullahoma) in areas such as consumer, employment, family and domestic violence, health, income, education and housing.

### LEGAL AID OF EAST TENNESSEE

<https://www.laet.org/>

Knoxville Office Phone: (865) 637-0484; Chattanooga Office: (800) 572-7457; Johnson City Office: (800) 821-1312;

Cleveland Office: (800) 572-7457; Maryville Office: (865) 981-1818; Morristown Office: (800) 821-1309

Provides civil legal services free of charge for qualifying individuals in 26 East Tennessee counties (from Chattanooga to the Tri-cities) in areas such as consumer, housing, family, public benefits, and a range of other miscellaneous matters

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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## APPENDIX B: STATE OF TENNESSEE AGENCIES OFFERING SERVICES FOR INDIVIDUALS WITH DISABILITIES

### DEPARTMENT OF DEVELOPMENT AND INTELLECTUAL DISABILITIES

<https://www.tn.gov/didd.html>

Main (Nashville) Office Phone: 615-532-6530; Middle TN Office: 615-231-5047; West TN Office: 901-745-7200; East TN Office: 865-588-0508

Responsible for administering services and support to Tennesseans with intellectual and developmental disabilities through several programs/activities, including Medicaid waiver Home and Community Based Services (HCBS), state-operated ICF/IIDs, and the Family Support Program. DIDD administers services directly or through contracts with community providers.

### DEPARTMENT OF HUMAN SERVICES (DHS), DISABILITY SERVICES

<https://www.tn.gov/humanservices/disability-services.html>

Blind and Visually Impaired Services: 1-800-628-7818 (in Tennessee Only)

Deaf and Hard of Hearing Services: TDD – TTY# 1-800-270-1349 (in Tennessee Only)

Disability Determination Services: 1-800-342-1117; TTY# 1-877-210-0008

Tennessee Technology Access Program: 1-800-732-5059; TTY# (615) 313-5695

Vocational Rehabilitation Services: (615) 313-4891, TTY# (615) 313-5695 or TTY# (long distance) 1-800-270-1349

DHS provides a variety of disability services, including processing claims for Social Security and Supplemental Security Income disability and providing assistance to individuals with disabilities through Vocational Rehabilitation (VR) Services program, including blind and visually impaired services and deaf, deaf-blind and hard of hearing specialized services.

The Tennessee Technology Access Program (TTAP) is a statewide program designed to increase access to, and acquisition of, assistive technology devices and services.

### DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

<https://www.tn.gov/behavioral-health.html>

Email: [OCA.TDMHSAS@tn.gov](mailto:OCA.TDMHSAS@tn.gov)

Phone: Non-Emergency Helpline, 800-560-5767; Mental Health Emergency, 855-274-7471

The state's mental health and substance abuse authority is responsible for planning, setting policy and quality standards, system monitoring and evaluation, and advocating for persons of all ages who have mental illness, serious emotional disturbance, or substance abuse disorders.

### DIVISION OF TENNCARE

<https://www.tn.gov/tenncare.html>

Email: [Tenn.Care@tn.gov](mailto:Tenn.Care@tn.gov)

Phone: 800-342-3145

TennCare is the state of Tennessee's managed Medicaid agency. The agency's programs serve low-income individuals and older adults and adults with disabilities.

### STATE OF TENNESSEE COUNCIL ON DEVELOPMENTAL DISABILITIES

<https://www.tn.gov/cdd.html>

Email: [tnddc@tn.gov](mailto:tnddc@tn.gov)

Phone: (615) 532-6615

An independent agency within state government whose work is informed by a diverse group of citizens directly experiencing disability, appointed by the governor as Council representatives from every region of the state.

Policymakers from state agencies that oversee Tennessee's disability programs and other partner agencies also serve on the Council.

# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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## TENNESSEE DISABILITY PATHFINDER

<https://www.tnpathfinder.org/>

Helpline: 1-800-640-4636

The Council on Developmental Disabilities, in partnership with the Vanderbilt Kennedy Center, supports the “Pathfinder” to help people with disabilities, their family members, educators, and other professionals find and access resources, support, and services available to meet their needs through a directory of services, community calendar and trainings.

## STATE OF TENNESSEE, COMMISSION ON AGING AND DISABILITY (TCAD)

<https://www.tn.gov/aging.html>

Email: [tn.aging@tn.gov](mailto:tn.aging@tn.gov)

Phone (Local Area Agency): 1-866-836-6678

The Commission administers state funds to support multipurpose senior center programs, public guardianship, and a home- and community-based service program, OPTIONS for Community Living, for older adults and other adults with disabilities who do not qualify for Medicaid long-term care services (homemaker, personal care and home-delivered meals). The OPTIONS program is operated by the nine Area Agencies on Aging and Disability (AAADs). The first point of contact for TCAD programs should be the local Area Agency on Aging and Disability (AAAD). Each area agency functions as a single point of entry to link individuals with available services through a district-wide information and referral, intake, screening, assessment, service authorization, and case management system. Call 1-866-836-6678 from anywhere in the state to be automatically directed to your nearest Area Agency.



# FAIR HOUSING FOR PERSONS WITH DISABILITIES

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## APPENDIX C: INFORMATION ON TELECOMMUNICATIONS RELAY SERVICE

### STATE OF TENNESSEE, PUBLIC UTILITIES COMMISSION

Information excerpted from [https://www.tn.gov/tpuc/relay-center-services.html#:~:text=Follow%20these%20steps%20to%20communicate,\(800\)%20848%20299](https://www.tn.gov/tpuc/relay-center-services.html#:~:text=Follow%20these%20steps%20to%20communicate,(800)%20848%20299)

As a service to Tennessee's deaf, deaf-blind, hard-of-hearing, and hearing and speech-impaired community, the Tennessee Relay Service (TNRS) provides free, statewide assisted telephone service to those with speech, hearing, and visual impairments. Operated under contract by Sprint and regulated by the Tennessee Public Utility Commission, relay service links conversations between people who use text telephones (TTY's) or tele-braille (TB) devices and people who use standard tele-phones.

### HOW A RELAY SERVICE WORKS

A person using a TTY or TB device (TTY or TB machines are optional for deaf-blind persons) types his or her conversation. The typed message is relayed by a Relay Center specialist, called a Communications Assistant (CA), who reads the message to the person using a standard telephone. The CA communicates the hearing person's spoken words by typing them back to the TTY user. All calls are confidential.

### USING A TTY FOR A RELAY CALL

1. Dial the Tennessee Relay Service at 1 (800) 848-0298.
2. The Relay Center will send this message: "TN RELAY CA 2345F NBR CALLING PLS GA." This stands for: Tennessee Relay Service. Number calling, please. Go ahead. The gender of the CA is also displayed.
3. Type the area code and number along with any additional calling instructions. Then type "GA."
4. The CA will type back the number requested which indicated the number is being dialed. Then type the response of the called party. "Ringing #, Hello (F) GA." The letter (F) indicates the gender of the person that answered the phone.
5. To make another relay call when finished, do not hang up. The CA will be ready to place your next call.

### USING A VOICE TELEPHONE FOR A RELAY CALL

Follow these steps to communicate with a person who uses a TTY or TB device.

1. Call the Tennessee Relay Service at 1 (800) 848-0299.
2. Listen for the greeting: "Tennessee Relay Service. CA#. May I have the number you are calling?"
3. Give the CA the number you are calling. (You are now ready to talk).
4. Begin speaking as you would during a regular telephone conversation. The CA will relay your conversation.
5. Each time you finish speaking, say, "Go ahead" to inform the CA that you are ready to receive the TTY user's response.
6. If you want to make another call when you are finished, do not hang up. The CA will be ready to place your call.

### RELAY SERVICE PHONE NUMBERS

Tennessee Relay Services can be reached by simply dialing one of the following telephone numbers:

Statewide Access	711
TTY/PC Users	800-848-0298
Voice Users	800-848-0299
Espanol	866-503-0263
Speech-to-Speech	866-503-0264
Customer Service	866-503-0262 (Voice, TTY, ASCII, STS)

Sprint is the statewide provider of Relay service.