

# West Valley Housing Authority Policy For Reasonable Accommodation

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## Introduction

West Valley Housing Authority (WVHA) complies with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988), Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Titles II and III of the Americans with Disabilities Act. WVHA will comply with any legislation and implementing rules and regulations, protecting the individual rights of residents, applicants, or staff that may subsequently be enacted.

Section 504 stipulates that "*no otherwise qualified individual with handicaps in the United States... shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.*" The Fair Housing Amendments Act regulations state "*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 private use areas.*" Title II of the Americans with Disabilities Act and the regulations implementing that title extend the protection of Section 504 to all activities of "*public entities*", state and local governments, regardless of whether they receive federal funding.

The definition of a person with disabilities for purposes of nondiscrimination is a person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities;
2. Has a record of such impairment; or
3. Is regarded (by WVHA) as having such impairment.

The physical or mental impairment includes practically any condition, disease, illness, disfigurement or disorder (e.g., alcoholism, AIDS, emotional disorder, drug addiction, mental retardation, cerebral palsy, cancer, deafness, or HIV infection) if the impairment substantially limits one or more major life activities. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning and working. This is not an exhaustive list; other life activities can also be major.

The requirement to provide reasonable accommodation is intended to provide, for persons with disabilities, equal opportunity to participate in housing programs through modification of policies, procedures, or structures. This policy is not intended to provide

greater program benefits to persons with disabilities than to non-disabled residents or applicants. It may mean, however, that persons with disabilities will sometimes be treated differently, in order to ensure equal access to programs and services.

WVHA is committed to providing reasonable accommodations to qualified persons with disabilities so that the choice of living arrangements is, as a whole, comparable to other persons eligible for housing assistance under the same program. The policies and procedures outlined here apply to all properties owned and managed by WVHA (including Low Rent Public Housing and other locally-owned housing units) and the Section 8 Housing Choice Voucher Program. The terms "applicant" and/or "resident" applies to applicants and participants in all these programs.

WVHA will work with the applicant/resident to make a reasonable accommodation, giving priority to those methods that offer programs and activities to qualified individuals with disabilities in the most appropriate integrated setting. Accommodations, administrative and/or structural, are intended to afford the disabled person equal opportunity to use and enjoy the dwelling unit, including public and common use areas; or to provide the qualified individual with disabilities an opportunity to participate in, or benefit from the housing, aid, benefit, or service that is equal to that afforded to others, provided that the accommodation is reasonable (i.e., does not cause undue financial burdens or cause a fundamental alteration in the nature of the housing program).

Some resource materials used by WVHA, as guidance, in developing a policy and responding to reasonable accommodation requests and issues include, but are not limited to:

- *The Public and Assisted Housing Occupancy Task Force to the Department of Housing and Urban Development;*
- *Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities;*
- *Handbook on the Rights and Responsibilities of Tenants with Certain Disabilities: Psychiatric, Alcohol or Drug Addiction and HIV/AIDS;*
- *Americans With Disabilities Act, Title II Technical Assistance Manual;*
- *Uniform Federal Accessibility Standards.*

Information regarding the availability of reasonable accommodations will be provided to applicants and residents during the application and occupancy cycle: specifically, at the time of application; with any notice of termination; with any notice of lease violation or lease termination and with any notice of an initial determination of ineligibility. This type of information will also be provided at other times WVHA deems appropriate and will include educational opportunities for staff and residents. Forms and other documents used for applicants and residents will, as much as is feasible, be written in plain, intelligible language. WVHA will present documents in alternative formats, provide

auxiliary aids, or communicate with a third party designated by the applicant or resident, if so requested.

Reasonable accommodations are made in response to individual requests from a qualified person with disabilities. Generally, the request for an accommodation will be made in the form of completing a standard Request for Reasonable Accommodation form, which is available at any WVHA office. However, the request may be made in any manner that is convenient for the person with disabilities. WVHA does realize that what works for one person may not work for another in the same situation.

WVHA cannot provide supportive services, e.g., counseling, medical, or social services, which fall outside the scope of services, offered to applicants or residents. Further, WVHA will make modifications in order to enable a qualified applicant/resident with a disability to live in assisted housing, but is not required to offer housing of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant/resident can live in the housing that WVHA offers; not whether the applicant/resident could benefit from some other type of housing that WVHA does not offer.

### **Auxiliary Aids and Services**

To facilitate communication with persons with disabilities, WVHA shall furnish appropriate auxiliary aids. Auxiliary aids means services or devices that enable persons with impaired sensory, manual or speaking skills to have an equal opportunity to participate in, and to enjoy the benefits of programs and activities. However, WVHA is not required to provide individually prescribed devices, such as readers for personal use or study, or other devices of a personal nature. In determining what auxiliary aids are necessary, WVHA shall give primary consideration to the request(s) of the individual with disabilities.

Types of auxiliary aids and accommodations that WVHA readily supplies to applicants and residents include:

1. Providing additional explanation of program rules and requirements.
2. Offering information in accessible formats (e.g., large type) and in plain language.
3. Permitting rent payments and required communications to be mailed rather than delivered in person.
4. Providing auxiliary aids, such as pencil and paper for those with speech difficulties, use of the Oregon Relay Service for telecommunication for the deaf, Assisted Listening Device (ALD), a sign language interpreter, or a reader.

5. Sending mail or making phone calls to a person designated, by the individual with disabilities, as a contact person.
6. Allowing the use of service animals.
7. Considering the impact of "mitigating circumstances" regarding the rejection of an applicant for housing or when terminating the lease or terminating housing assistance to a resident, when the applicant/resident has asked for such consideration. (In applying this concept, WVHA will ask the applicant/resident to verify (a) that the applicant/resident does have a disability; (b) that the specific problem(s) is (are) caused by or occurred because of the disability or that the disability substantially contributes to the specific problem(s); and (c) that the present treatment, plan, or circumstances can reasonably be expected to prevent the recurrence of the problem(s).)
8. Reinstating applications of persons with disabilities, if the reason they did not respond in the required time was reasonably related to their disability.

Aids, benefits, and services, to be equally effective, are not required to produce identical results for individuals with disabilities and non-disabled persons, but to afford individuals with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

### **Fundamental Changes to the Program or Undue Financial or Administrative Burden**

WVHA will deny reasonable accommodation requests, which would require a fundamental change in the nature of the program or which represent an undue financial and/or administrative burden. Determining a requested accommodation to be a fundamental change does not eliminate WVHA's compliance responsibilities. If an action would result in a fundamental change, WVHA may take any action that would not result in a fundamental change but would nevertheless ensure that persons with disabilities have an equal opportunity to receive the program benefits and services. WVHA's determinations with respect to fundamental alterations will be made on a case-by-case basis.

### Essential Obligations of Tenancy

To help identify fundamental operations in the programs, five essential obligations of tenancy are listed below:

1. To pay rent and other charges under the lease in a timely manner;

2. To care for and avoid damaging the unit and common areas; to use facilities and equipment in a reasonable way; to create no health or safety hazards and to report maintenance needs;
3. Not to interfere with the rights and enjoyment of others and not to damage the property of others;
4. Not to engage in criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents or staff; not to engage in drug-related criminal activity on or off the premises (for Public Housing or the Section 8 Housing Choice Voucher Program); not to engage in drug-related criminal activity on or near the premises (for any of WVHA's other owned or managed properties); and,
5. To comply with necessary HUD and WVHA reasonable rules and program requirements and to comply with health and safety codes.

#### Types of Actions Considered to Be a Fundamental Change

Types of activities that **would** be considered to be a fundamental alteration to the program include but are not limited to:

1. Actions that require substantial modifications to, or elimination of, essential lease provisions or program eligibility or screening requirements based on the obligations of tenancy (e.g., admission of an unqualified family);
2. Actions that require WVHA to add supportive services; e.g., counseling, medical, or social services, that fall outside the scope of existing services offered by housing providers to applicants/residents in the program;
3. Actions that require WVHA to offer housing or benefits of a fundamentally different nature from the type of housing or benefits that WVHA does offer;
4. Actions that substantially impair WVHA's ability to meet its essential obligations as a landlord, as defined in the WVHA Lease Agreement. WVHA's obligations under the Lease Agreement include management, administration, maintenance, or other services required for the operation of the program or upkeep of the property.

## **Reasonable Accommodation Process**

### **Notification to Applicants/Residents Regarding Reasonable Accommodation Requests**

Information on the availability of WVHA's reasonable accommodation procedure will be posted in the WVHA business offices and will be provided at application, notice of denial, notice of lease violation, and notice of lease termination. The preferred method for applicants or residents to request reasonable accommodation is to complete and submit a WVHA Request for Reasonable Accommodation form (contained in the Appendix). In the event completion of the agency form is not easily done by the applicant or resident, other methods of request will be accepted in lieu of completion of the agency form.

Several forms and letters have been developed to conveniently allow an applicant or resident the opportunity to request a reasonable accommodation. (These forms are listed in the appendix.) If an applicant/resident cannot use a form, WVHA will still respond to the request for a reasonable accommodation and assist the applicant/resident in acquiring the information needed to make a decision on his/her request.

Although the process for requesting a reasonable accommodation is standardized, each request will be treated uniquely. The results will be unique to the individual and the property and/or circumstances involved. Whenever possible, reasonable accommodation decisions will be made in a timely manner (generally within 14 days) and both denials and agreements to make accommodations will be documented in writing. If applicable, forms and notifications will be provided in a format accessible to the resident or applicant.

Any meetings required by this policy will be held in an accessible location.

### **Making a Request for Reasonable Accommodation**

Applicants or residents may make a request for a reasonable accommodation at any time. If the accommodation is reasonable, WVHA will make every attempt to approve the request. The general procedures are:

1. All applicants, at the time of application, are notified of their right to request Reasonable Accommodation. As well, application forms include questions regarding whether applicants need special features in a rental unit or if they need help in filling out the application. The Request for Reasonable Accommodation form is provided upon request.
2. All residents will be notified of their right to request a Reasonable Accommodation, at the time of re-certification, upon notice of lease violation, and upon notice of lease termination. The Request for Reasonable Accommodation form is provided upon request.

3. All responses to the Request Forms will be in writing and, if appropriate, in an alternative format intelligible to the person making the request.
4. Whenever possible, all decisions to grant or to deny reasonable accommodations will be communicated in writing (in the appropriate format as noted in #3 above) within 14 days of the receipt of the request. This timeframe may be extended due to a need for further investigation or documentation.

### **Determining Whether to Make the Accommodation**

1. Does the applicant/resident meet the definition of an Individual with Disabilities? (This can be determined through: the applicant's/resident's eligibility for SSI or SSDI benefits; through certification of disability, using the standard Verification of Disability Status for Use When Requesting a Reasonable Accommodation form; or when the disability is self-evident to a reasonable person.)
  - a. If No, WVHA is not obligated to make a reasonable accommodation, and may deny the request.
  - b. If Yes, go to Step 2.
  - c. If more information is needed, it will be requested and the applicant/resident will be notified of this request, using the standard Notification of Additional Information per Reasonable Accommodation Request form, or a meeting or discussion will be held to obtain additional information.
2. Is the requested accommodation related to the disability?
  - a. If No, WVHA is not obligated to make the accommodation, and may deny the request.
  - b. If Yes, go to Step 3.
  - c. If more information is needed, either write for more information and notify the applicant/resident, using the standard Notification of Additional Information per Reasonable Accommodation Request form, or request a meeting or discussion.
3. Is the requested accommodation reasonable? The **Guidelines for Determining Reasonableness**, listed below, will be followed in determining the reasonableness of the request.

- a. If YES, WVHA will approve the request for reasonable accommodation. A written description of the accommodation will be included in the approval letter.
- b. If NO, WVHA may deny the request or suggest/offer an alternative accommodation. The denial or suggestion/offer will be made in writing (in an accessible format, if requested.)
- c. If more information is needed, either write for more information and notify the applicant/resident, using the standard Notification of Additional Information per Reasonable Accommodation Request form, or request a meeting or discussion.

### **Guidelines for Determining Reasonableness**

1. If WVHA does not have enough information to approve or deny the requested accommodation, WVHA will request that the person with disabilities verify the need for an accommodation to enable him/her access and use of the housing program. Using the standard Reasonable Accommodation Verification form (on the reverse side of the Request for Reasonable Accommodation form), the person with disabilities will be asked to have a qualified individual verify that the requested accommodation: (a) is related to the applicant's/resident's disability; and (b) would provide the applicant/resident with an equal opportunity to enjoy our housing programs or that the applicant's/resident's disability restricts them from performing this task. Disabled persons are not required to submit medical records, provide medical test results, or required to have a medical examination when a Reasonable Accommodation request is submitted.

If, after receipt of the Reasonable Accommodation Verification form, WVHA still does not have enough information to approve or deny the requested accommodation, WVHA may request additional information/documentation from the family's medical or social service practitioner who completed Page 2 of the Request for Reasonable Accommodation form.

2. In most instances, the judgment of the professional corroborating the family's accommodation request, that the requested accommodation is the most appropriate for the family, will be accepted. However, WVHA retains the right to investigate alternatives to the requested accommodation, and/or alternative methods of providing the requested accommodation.
3. If a number of potential accommodations will satisfy the needs of the person with disabilities (and are equally effective), WVHA retains the right to select the accommodation, which is most convenient and cost-effective. This includes the

option to select a change in procedure or policy, rather than to make a structural change, when the procedure change would be equally effective.

4. Does the requested accommodation constitute a fundamental alteration? If so, the request will be denied.
5. Does the requested accommodation create undue financial and/or administrative burdens? If so, the request will be accommodated up to the extent that it can be met without creating undue burdens.

### **Denial of a Request for Reasonable Accommodation**

If a request for reasonable accommodation is denied, WVHA will inform the applicant/resident in writing (or other appropriate accessible form of communication) of the denial and the reason for the denial. The notice will also advise the applicant/resident of his/her right to appeal the decision to deny the accommodation. Reasons for the denial may include:

1. The individual requesting the accommodation does not meet the definition of an Individual with Disabilities.
2. The requested accommodation is not reasonable. The reason for the decision will be clearly stated.
3. There was no correlation between the requested accommodation and the individual's disability (e.g., a wheelchair ramp requested by an individual who has a mental disability, with no physical impairment).
4. The requested accommodation will create an undue financial and/or administrative burden for WVHA.
5. The requested accommodation will change the fundamental nature of the program.
6. The requested accommodation would violate a State or Federal statute or regulation.

Applicants for, and residents of, housing owned and managed by WVHA, who have been denied reasonable accommodations are entitled to the Informal Hearing procedures currently in place under program regulations for applicants denied housing.

## **Discontinuation of Reasonable Accommodation**

WVHA will not unilaterally change or discontinue a particular method of providing a reasonable accommodation without giving notice. Notice of the change or discontinuation of a reasonable accommodation will be given to the resident with disabilities, including the resident's right to appeal the decision to change or discontinue the accommodation.

## **Application and Waiting List**

The application forms for all programs contain the following statements or questions:

- If you have questions about applying for housing assistance, need this application in Spanish, or need help filing out this application, please notify the front desk staff or contact us at (503) 623-8387.
- Does your family require a unit with special features for a member's disability? Yes • No • If Yes, what unit features do you require?

(WVHA may be able to accommodate needs for a unit with special features.)

- Do you or any family member require an auxiliary aid or other accommodation for a disability? Yes • No • If Yes, please see the attached sheet and ask for a **Request for Reasonable Accommodation** packet from our local Office personnel. WVHA may be able to assist you by providing: note taker, assisted listening device, interpreter, TDD connection, someone to read, larger print, or other assistance described by the applicant.

As well, an insert is included in every application packet and recertification packet that provides additional information on requesting a reasonable accommodation.

As a part of the intake process, WVHA will attempt to verify an applicant's claimed disability status as a qualification for eligibility, deductions and allowances. Prior to housing an applicant in a unit with special features, when appropriate, WVHA will document the applicant's need for those features.

The application may be mailed to the applicant, picked up at one of WVHA's offices or obtained through a service provider in the community. WVHA accepts completed applications at each office or through the mail. Printed information about the various programs, the income requirements, and a statement of non-discrimination on the basis of sex, race, religion, national origin, age, sexual orientation, color, familial status, mental or physical disability are a part of the application packet. The Request for Reasonable Accommodation form is also available to any applicant/resident at any time, at their request.

Each applicant is asked, on the application, if they need a unit with special features. Priority for a vacant unit with special features will be given first to residents who need those features and then to applicants who need those features. If there is no other resident or applicant on the waiting list needing these features, WVHA may house the next eligible, non-disabled applicant in the unit. WVHA will inform this family or individual, as a part of the WVHA Lease Agreement that if another resident or eligible applicant needs the special features of that unit, then the non-disabled family/individual residing in the unit with special features will need to transfer to another unit without those special features.

WVHA grants reasonable accommodations by reinstating applicants with disabilities, who fail to respond within the required time frame to inquiries regarding updating the waiting list, if the reason they did not respond is reasonably related to their disability.

## **Intake**

Applicants may be on the waiting list for several months. At the time their application comes to the top of the waiting list, and before providing assistance, WVHA will verify eligibility, income, family composition, need for special features, and other required information. In the Low Rent Public Housing Program, WVHA will also verify the rental and criminal history of all adult family members.

If an applicant for WVHA's Low Rent Public Housing Program has a history of behavior or displays behavior, which, as a resident, would result in a serious violation (or repeated minor violations) of the WVHA Lease Agreement, WVHA may determine the applicant ineligible. The notice of denial will include information regarding the right to request a reasonable accommodation. If the applicant requests it, WVHA will consider mitigating circumstances and a reasonable accommodation, which may enable the applicant to become lease compliant. The applicant, not WVHA, has the burden of documenting mitigating circumstances and any requests for reasonable accommodation. If such a request is made by a qualified individual with disabilities, WVHA will:

1. Consider the identified mitigating circumstances.
2. Provide a reasonable accommodation that would enable the applicant to be lease compliant, using the Guidelines for Determining Reasonableness, listed above.
3. Consider whether the mitigating circumstances explanation and/or the reasonable accommodation would make lease compliance likely.

WVHA does not admit, to its Low Rent Public Housing units, individuals whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others,

regardless of their disability status. When an applicant with a disability has a history of actions that pose a direct threat to others or is likely to result in substantial physical damage to the property of others, WVHA will document the history of actions and establish the link between the applicant's proposed tenancy and the asserted direct threat and/or likelihood of physical damage, as a part of the determination that the applicant is ineligible to participate in WVHA's housing program.

Such determination will be based on objective evidence (current conduct or a history of overt acts). If a reasonable accommodation could eliminate or sufficiently reduce the risk to health or safety and/or the property of others, then WVHA will, in cases where the accommodation does not represent an undue administrative and/or financial burden, provide the accommodation.

If WVHA determines that it is unlikely that the problem will recur with the requested reasonable accommodation in place, and the applicant is otherwise eligible, the applicant will be determined eligible for placement on the waiting list. If WVHA determines that the requested reasonable accommodation is not likely to result in lease compliance, WVHA will determine the applicant to be ineligible.

WVHA will make the final decision on the adequacy and credibility of any and all documentation provided to substantiate reasonable accommodation requests. When verifications are not acceptable, WVHA will explain to the applicant/resident what is needed and may request that the applicant sign additional releases and/or contact other sources of information. WVHA may contact identified sources of information directly, in an effort to obtain objective, verifiable documentation regarding reasonable accommodation requests.

Applicants will be afforded an opportunity for an Informal Hearing regarding denial of eligibility or the denial of a reasonable accommodation request.

### **Non-Traditional Rental History**

WVHA will require all applicants to provide verification of ability to comply with the essential provisions of the WVHA Lease Agreement, specifically, an ability to pay rent, an ability to care for rental property, and an ability to get along with neighbors. In cases where the qualified applicant with disabilities is unable to provide acceptable landlord references because he/she was homeless, in a transitional facility, in a medical facility, living with family, or living in some other non-traditional living situation, and these periods were of significant duration, WVHA will ask for alternate references regarding the applicant's ability to comply with lease requirements. All applicants, who are unable to provide landlord references, whether they have disabilities or not, will be provided an opportunity to provide sufficient professional references. WVHA will consider the information presented and if acceptable, determine the applicant eligible.

If there is not enough information to make a reasonable judgment, WVHA will ask the applicant for additional information. If the documentation does not substantiate the applicant's ability to uphold the lease provisions, WVHA will determine the applicant to be ineligible. WVHA retains the right to be the final judge of what constitutes adequate and credible documentation. All reference evaluations or determinations whether they are satisfactory, are subject to the WVHA Screening Process as outlined in the Public Housing Leasing and Continued Occupancy Policy.

### **Service or Assistance Animals/Companion Animals**

Service or Assistance animals are considered auxiliary aids, and are not subject to additional requirements beyond those contained in the WVHA Lease Agreement. A seeing-eye dog or a dog trained to assist a hearing impaired person would be examples of service or assistance animals. Persons with disabilities may not be required to pay for costs associated with reasonable accommodations; therefore, WVHA will not charge a pet deposit or any other associated fees for a service/assistance animal kept in a development or building owned and managed by WVHA.

WVHA will use the following steps when considering a request for reasonable accommodation, from applicants/residents with disabilities, to keep animals in developments or buildings, owned and managed by WVHA:

1. When an applicant/resident with a disability asserts and can verify that an animal is therapeutic for his/her disability, the applicant/resident should make a request for a reasonable accommodation; specifically, to be allowed to keep the animal.
2. WVHA may request verification that the applicant/resident is an individual with a disability as defined in the Section 504 regulations and WVHA may also request information related to how the animal provides assistance to the applicant/resident that is related to the person's disability.
3. If both verifications are provided, and the animal actually assists the person with a disability, then the animal is a "service animal" as defined under Section 504. Service animals are equivalent to other "auxiliary aids" such as wheelchairs and eyeglasses, and as such will be permitted.
4. If, on the other hand, the animal does not have specific disability-related training but is necessary in coping with the disability (for instance, if the animal provides emotional support to a person with a panic disorder), the animal is considered a "companion animal"--not a "service animal"--and a request to keep such an animal will be considered under WVHA's standard reasonable accommodation procedure.

5. The resident will be responsible for the animal's care and the animal must be kept in a manner, which does not violate the WVHA Lease Agreement.
6. If, subsequently, the animal or its care poses a public health problem or results in a lease violation, the problem will be addressed, under the terms of the WVHA Lease Agreement. WVHA may send the resident a Notice of Lease Violation.
7. Reasonable accommodations to allow animals, other than service or assistance animals, in support of a disability, will be subject to reasonable rules (see WVHA's Pet Policy); however, a pet deposit will not be required for authorized companion animals.

## **Criminal Activity as Grounds for Evictions**

Current Public Housing regulations require that, in the units owned and managed by WVHA, the resident, any member of the household, a guest, or another person under the resident's control, shall not engage in:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees; or
- Any drug-related criminal activity on or off Public Housing premises. (Drug-related criminal activity is prohibited on or near the premises for other housing owned and managed by WVHA.)
- Crimes, which pose threats to residents or management staff, are grounds for eviction regardless of where they occur.

Any criminal activity in violation of the preceding statements shall be cause for termination of tenancy, and for eviction from a WVHA owned and managed unit. Thus, drug-related activity which does not threaten other residents is still grounds for eviction if it takes place on or off Low Rent Public Housing premises or on or near other premises owned and managed by WVHA.

Other activities, whether or not they are criminal, are grounds for eviction if they constitute a serious violation of the WVHA Lease Agreement (or if they constitute repeated minor violations of the WVHA Lease Agreement). For example, damages to the property will often be grounds for eviction as a violation of a lease provision requiring residents to refrain from destroying, defacing, damaging or removing any part of the dwelling unit or project.

One time occurrence of some minor criminal activities may not pose a threat but, if engaged in with frequency or duration, can have a very serious impact on individual residents or the housing community as a whole.

In deciding to evict for criminal activity, WVHA will consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity.

If the resident is an individual with a disability and requests a reasonable accommodation, which would allow him/her to comply with his/her WVHA Lease Agreement, WVHA will require the resident to document the request in accordance with the standard reasonable accommodation procedures. In order to prevent the eviction, the resident would need to prove, to WVHA's satisfaction, that the behavior causing the lease termination was substantially related to the resident's disability, and that, because of some change in treatment, services or other verified facts, the behavior will not recur. WVHA must determine if the mitigating circumstances and requested reasonable accommodation outweigh the unfavorable information or action.

If, after receiving approval for a reasonable accommodation, a resident violates the WVHA Lease Agreement, WVHA may pursue enforcement of the lease, up to and including eviction (where the action constitutes a serious violation of the lease or repeated minor violations). Where (1) the new lease violation is related to a disability and (2) the previous reasonable accommodation was not intended to overcome this aspect of the disability, another reasonable accommodation may be appropriate.

When giving a resident a Notice of Eviction/Lease Termination, WVHA shall assure that the Notice will:

1. Be given in writing and in an accessible format;
2. Include a clear description of the offense, including how it violates the lease;
3. Describe what, if anything, the resident can do to cure the problem and prevent the eviction; and
4. Advise the resident of his/her right to request a reasonable accommodation, related to his/her disability that would allow him/her to comply with his/her lease.

The policy regarding Evictions, Informal Settlement Discussions, and Formal Grievance Hearings is outlined in the WVHA Grievance Policy. Residents being evicted from housing owned and managed by WVHA are entitled to use WVHA's grievance procedures. However, these grievance procedures do not apply to:

1. Any attempt to initiate or negotiate WVHA policy changes.
2. Any complaint from a participant in the Section 8 Housing Choice Voucher Program.
3. Any dispute between residents that does not involve their rental agreement or any WVHA regulation.
4. Eviction for any action or inaction of a resident, or someone in the resident's control, that endangers the health or safety or right to peaceful enjoyment of the premises, of WVHA employees, neighbors, or other residents. Any resident or someone in the resident's control who commits any act outrageous in the extreme.
5. Eviction for any action or inaction of the resident involving drug-related criminal activity on or off any Public Housing premises or drug-related criminal activity on or near non-public housing premises owned or managed by WVHA.
6. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises or other residents or WVHA employees. [24 CFR 966.51(2)(i)(A)] Residents grieving the types of activities listed in this section of the CFR may be excluded from all grievance proceedings or from the right to request a Formal Hearing. At WVHA's discretion, they may be offered the opportunity to request an Informal Settlement Discussion.
7. Ineligibility determinations of a resident requesting a reward transfer to one of WVHA's single-family houses or duplexes.

If the resident believes that his/her lease violation is related to his/her disability, he/she may request a reasonable accommodation, which would enable him/her to comply with his/her WVHA Lease Agreement. In reviewing the reasonable accommodation request, WVHA will consider the following, at a minimum:

- Does the resident meet the definition of an individual with a disability as defined by Reasonable Accommodation?
- Did the resident's disability substantially contribute to the lease violation?
- What is the likelihood that the requested reasonable accommodation would result in lease compliance (e.g., not using illegal drugs, paying rent on time, respecting the rights of others, etc.)?
- What is the seriousness of the lease violation?
- Does the requested reasonable accommodation, in fact, overcome the lease violation?

### **Former Users of Illegal Drugs**

Under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, a former user of illegal drugs (recovered or now in recovery) is considered to be a person with disabilities and is protected against discriminatory treatment, but persons engaged in **current** illegal use of controlled substances are not protected.

Drug-related criminal activity does **not** include use or possession, if the applicant/resident can demonstrate that he/she:

1. Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and
2. has recovered from such addiction and does not currently illegally use or possess controlled substances.

The term "Individual with a Disability" includes an individual who:

1. Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
2. Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
3. Is erroneously regarded as engaging in such use, but is not engaging in such use.

Individuals who have a history of illegal use of a controlled substance or addiction and do not engage in the current illegal use of a controlled substance are protected by disability discrimination laws if they can otherwise meet the definition of a person with a disability.

When an individual claims recovery, WVHA will require the person to present evidence of recovery from a qualified, neutral third party. WVHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in a unit owned and managed by WVHA or as a condition to being allowed to participate in other WVHA housing programs. If it is determined that the individual "has recovered or is in recovery" and is thus an "Individual with a Disability," WVHA will consider requests for reasonable accommodations.

WVHA will require the applicant/resident to provide documentation in a manner that would convince a reasonable person that the applicant/resident is not a current user of illegal drugs. Documentation that an applicant/resident is not a current user of illegal drugs could include:

- Verification from a reliable drug treatment counselor or program administrator, or other party acceptable to WVHA, indicating: that the applicant/resident is/has been in treatment; that there is a reasonable probability of success in refraining from use of illegal drugs; that the applicant/resident is complying/has complied with the requirements of the treatment program; that the applicant/resident is not currently a user of illegal drugs; and, for what period of time the applicant/resident has not been using drugs (this verification may include documentation of the results of urinalyses over a period of time); and/or
- Verification from a probation or parole officer that: the applicant/resident has met or is meeting the terms of probation or parole; is not currently a user of illegal drugs; and for what period of time the applicant/resident has not been using illegal drugs (this verification may include documentation of the results of urinalyses over a period of time); and/or
- Verification from a lay third party/parties, indicating that: the applicant/resident is not currently using illegal drugs and for what period of time the applicant/resident has not been using illegal drugs; the relationship between the third party/parties and the applicant/resident (verifications will not be accepted from the applicant's/resident's relatives); and, a description of how the third party/parties knows the status of whether the applicant/resident is currently not using illegal drugs.

When an applicant/resident has a history of drug rehabilitation/treatment followed by recidivism, or is currently in treatment (as opposed to having completed treatment), more documentation may be necessary to convince a reasonable person that the applicant/resident is not a current user of illegal drugs. The applicant/resident may be required to show in what ways (1) his/her current situation, and (2) his/her claim to be a former illegal user of a controlled substance, and (3) his/her claim to be able to comply with the essential terms of the WVHA Lease Agreement or other housing program requirements, is different from previously unsuccessful efforts to stop illegally using a controlled substance. In all situations, in which an applicant/resident claims to be an Individual with a Disability, due to former illegal drug use, WVHA will determine the reliability and validity of information/verifications provided with the request for reasonable accommodation. WVHA will make a determination of approving or denying the reasonable accommodation request and a determination of eligibility for housing assistance accordingly.

## **Alcoholism**

WVHA will not discriminate against someone solely because he/she is a person with alcoholism.

However, WVHA will deny admission to an applicant for housing owned and managed by WVHA, who WVHA has reasonable cause to believe abuses alcohol in a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or WVHA personnel.

WVHA will apply the same standard of performance and behavior (tenant selection criteria) to an individual with alcoholism as it applies to others. If any unsatisfactory performance or behavior is related to the applicant's disability, the behavioral manifestations of the condition may be taken into consideration in determining whether he/she is qualified. If the individual is unable to meet the tenancy requirements, he/she may be denied housing on that basis, provided any request for reasonable accommodation has been considered.

## **Policies Specific to the Section 8 Housing Choice Voucher Program**

WVHA will:

1. When providing notice of the availability and nature of housing assistance for low-income families under program requirements, assure that the notice reaches eligible individuals with disabilities.
2. Encourage participation by owners, including encouragement of participation by owners having accessible units.
3. When issuing a Housing Choice Voucher to a family, which includes an individual with a disability, include a current listing of available accessible units known to WVHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit, to the extent feasible.
4. Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers including exceeding the standard WVHA 60-90 Day Voucher term.
5. If appropriate, WVHA will make a determination Payment Standard (up to 110% of applicable Fair Market Rent) to allow Section 8 Voucher holders to rent accessible units or other units with special features that would allow equal access to use of the rental assistance program.

## **Appendix**

Forms included in the Appendix are:

- Notice of Right to Reasonable Accommodation
- Request for Reasonable Accommodation
- Reasonable Accommodation Verification
- Notification of Approval of Reasonable Accommodation Request (3 samples)
- Notification of Additional Information Per Reasonable Accommodation Request
- Notification of Denial of Reasonable Accommodation Request