

LIVE-IN CAREGIVERS FOR TENANTS WHO ARE PERSONS WITH DISABILITIES

This article was developed by the Fair Housing Partners of Washington to educate persons with disabilities about requesting reasonable accommodations for live-in caregivers.

WHAT IS A REASONABLE ACCOMMODATION?

The Federal Fair Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Washington State Law Against Discrimination, and local fair housing laws require that housing owners and managers provide reasonable accommodations for applicants and residents who have disabilities. Reasonable accommodations are changes in rules, policies, practices, or services that are necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. Allowing tenants who have disabilities to utilize the assistance of live-in caregivers is a reasonable accommodation.

WHAT IS THE DEFINITION OF DISABILITY?

Under fair housing laws, a person is considered to be disabled if s/he has a sensory, mental or physical condition that substantially limits one or more major life activities (such as walking, seeing, hearing, working, etc.). The state law definition includes disabilities that are temporary or permanent, common or uncommon, mitigated or unmitigated.

DEFINITION OF LIVE-IN CAREGIVER¹

Although there is no definition of a live-in caregiver in the fair housing laws, regulations for HUD-subsidized housing provide a useful definition. Using the HUD regulations as guidance, a live-in caregiver may be defined as a person who resides with a person(s) with disabilities² who is:

- (a) essential to the care and well being of the person(s);
- (b) not obligated to support the person(s) with the disabilities; and
- (c) would not be living in the unit except to provide the necessary supportive services.

Although a live-in caregiver is an occupant of the unit, the caregiver is not considered a tenant for the purpose of income qualification and is not liable for paying rent. Because a live-in caregiver only lives in the unit for the purpose of providing supportive services for a person with a disability, the caregiver has no right to continue living in the unit if the tenant with the disability moves out.

¹ HUD uses the term "live-in aide."

² Residents of HUD-subsidized housing who are elderly or near-elderly also may request live-in aides. For more information about this, contact the housing authority or HUD-assisted property owner.

HOW DO I REQUEST PERMISSION FOR A LIVE-IN CAREGIVER?

If you need the assistance of a live-in caregiver, make a request to your landlord or manager for a **reasonable accommodation**. It is best to submit such requests in writing, but verbal requests are acceptable. Sample letters can be found at the end of this article.

Can a housing provider verify that a live-in caregiver is necessary?

Yes. Housing providers are entitled to verify:

- the existence of the disability if it is not readily apparent,
- the need for the accommodation if it is not readily apparent, and
- that the caregiver is qualified to provide the supportive services that are needed because of the disability.

If your landlord or manager asks for this verification, you should obtain a signed letter from your doctor or other medical professional, or other qualified third party who, in their professional capacity, has knowledge about your disability and your need for the caregiver. ***You do not have to provide details about your disability or about the specific supportive services that the caregiver will provide.***

NOTE: A verification letter stating that the caregiver would be “nice” or “helpful” is insufficient.

What if I just need a care attendant?

A care attendant is a person that regularly visits the unit to provide supportive or medical services but does not live in the unit.

Because care attendants do not occupy the unit, a reasonable accommodation request should not be necessary and screening is generally not appropriate. While a housing provider may have a policy to conduct screening of everyone who works for residents, such a policy may have fair housing implications because it would likely impact people with disabilities more than others. However, it would be reasonable for the housing provider to request that a care attendant verify that s/he has a separate residence. If a tenant utilizes a company that provides in-home care services, the tenant can provide verification from the company that its employees do not reside in the unit.

A care attendant who occasionally spends the night in the unit is probably not going to be an issue under most rental agreements. However, it is a good idea to check your rental agreement to see how it defines guests. In many cases, a care attendant who spends more than two weeks a year sleeping in the unit may be considered a live-in caregiver.

Can apartment management require live-in caregivers to be screened?

A housing provider may require live-in caregivers to be identified and to undergo some screening. If a housing provider screens live-in caregivers, the screening should be

limited to appropriate areas. For example, it may be appropriate to screen a caregiver for a criminal record if the landlord's policy is to conduct criminal background checks for all adult applicants. But it is not necessary to screen the caregiver for the ability to pay the rent, because a caregiver is not obligated under the lease.

Housing providers can deny residency to a live-in caregiver who refuses to be identified or consent to limited screening.

It is always a good idea to request permission from the landlord before the caregiver moves in. If there is an emergency and you have an immediate need for a live-in caregiver and the housing provider's policy is to screen all live-in caregivers, the landlord may allow you to hire the caregiver, and then screen the caregiver following the hiring. While this practice entails some risk, the risk is low if the caregiver is paid and screened by a company or the state.

What if my caregiver is a relative?

There is no rule against a relative being your live-in caregiver provided the caregiver is essential to your care and well being, not obligated to support you, and would not be living in the unit except to provide the necessary supportive services. If your live-in caregiver is a relative, it would be reasonable for a landlord to follow HUD's policy of requiring the relative to sign a statement prior to moving into the unit relinquishing all rights to the unit in the event that you decide to move out.

What about occupancy standards?

A housing provider may require that the approval of a live-in caregiver not result in overcrowding of the existing rental, provided that the housing provider's occupancy limits are reasonable. If overcrowding will occur, it would be a reasonable accommodation for the landlord to allow a transfer to a larger rental.

What if the live-in caregiver can't pass a limited screening?

Generally, a housing provider who conducts screening of all residents may deny residency to a live-in caregiver if the limited screening check reveals:

- A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at present or prior residences that may adversely affect the health, safety, or welfare of other tenants or neighbors.
- Criminal activity such as crimes of physical violence to persons or property and other criminal acts including drug-related criminal activity that would adversely affect the health, safety, or welfare of other residents or staff or cause damage to the unit or the development.
- A record of eviction from housing.

However, the denial of a particular live-in caregiver should not result in denying you permission to select another live-in caregiver. A housing provider also may want to give the preferred live-in caregiver a chance to appeal the denial because there are situations when background checks are inaccurate, such as for someone with a

common name. If your preferred live-in caregiver is denied, the housing provider should be willing to consider an alternative live-in caregiver.

Are live-in caregivers to be listed on the lease as an Occupant, but not as a Lessee – not responsible for the terms and financial aspects of the lease?

If the housing provider wishes to list a live-in caregiver on the lease, it would be as an occupant and not as a lessee.

Remember that you are responsible for a caregiver's behavior on the premises whether or not the caregiver lives in the unit. If you know, or have reason to know, that the caregiver is engaging in wrong-doing, you have an obligation to do something about it. If you do nothing, the housing provider may be able to take action against you.

What happens if I move out and the caregiver refuses to move?

In some cases, a caregiver may wish to remain as a resident and the housing provider can require the live-in caregiver to submit a rental application and meet the standard tenancy qualifications. If, however, the caregiver refuses to move or to apply for tenancy, the housing provider can follow the state landlord-tenant act process for eviction as necessary.

Where can I get help?

If you apply for housing, or if you are already a resident, and a landlord or manager takes any of these actions towards you, you can contact a state or local civil rights agency to report it. The agency will investigate your discrimination complaint for free. See the list at www.kingcounty.gov/exec/CivilRights/FH/RHBresources.aspx.