

To: National Church Residences

From: Diana Patton, VP/COO/General Counsel, Toledo Fair Housing Center and Katherine Thomas, Disability Rights Attorney, Ability Center of Greater Toledo

Date: Monday, May 21, 2015

RE – Recommendations Memorandum to National Church Residences regarding Reasonable Accommodation Policy

The Toledo Fair Housing Center (TFHC) is an organization that seeks to eliminate practices of housing discrimination and expand equal housing opportunities. The Ability Center of Greater Toledo (ACT) seeks to assist people with disabilities to live, work, and socialize within a fully accessible community. As part of our missions both organizations provide resources, information, and assistance to housing providers regarding affirmatively further fair housing in their policies and procedures.

The TFHC and the ACT offer the following recommendations to National Church Residences regarding its Reasonable Accommodations Policy in light of the Fair Housing Act (FHA) and HUD regulations. A reasonable accommodation change ÷in rules, policies, practices, or services when such accommodations may be necessary to afford such a person equal opportunity to use and enjoy a dwelling.ö¹ A Reasonable Modification is a ÷structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.ö² This memo outlines recommendations to National Church Residencesøpolicies provided by TFHC and ACT.

I. National Church Residences should make its Reasonable Accommodations policy easier for tenants to understand.

We recommend that National Church Residences review its policy to make it easier for tenants and employees to understand. Many tenants and housing provider employees are not familiar with the sometimes technical language from the Fair Housing Act and HUD regulations. While National Church Residences current policy contains many good descriptions of fair housing law, it contains language (although correct), that could be confusing to a tenant who may want to request an accommodation or modification or the employees evaluating the accommodation.

The policy should encourage those who need an accommodation to request one with ease and to educate people on the protections available under the Fair Housing Act. We suggest that

¹ 42 U.S.C. 3604(f)(3)(B).

² U.S. Department of Justice, U.S. Department of Housing and Urban Development, *Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications Under the Fair Housing Act*, 3 (2008), available at http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf (accessed 5/19/2015).

National Church Residences revise the language and structure of the Reasonable Accommodation policy for clarity and reference the sources used in creating the policy.³

In particular, we recommend that National Church Residences provide a clear, numbered list of steps that a person with a disability should take to make a request including: 1) how to make a request and to whom; 2) the time period and considerations during management's review of the request; 3) when and how the person will receive a decision regarding the request; 4) the steps taken after the decision is rendered including the possibility of engaging in the interactive process or having an appeal process. These steps are included in the current policy, but they could be laid out in a clearer format.

We recommend that it should be clear to the person making the request that someone will be in communication with them before, during, and after their request is made. In specific reference to page three of the policy, it reads:

If the accommodation is determined not to be reasonable, or if more than one reasonable accommodation would fulfill the needs of the person with the disability, *management will engage in a dialogue with the resident or applicant* to identify alternatives that may be less costly or administratively burdensome. (Emphasis added)

The policy should clarify who will be initiating the dialogue as well as who will be included. Finally, the policy cites the requirement that management may not request verification of a disability if it is readily apparent.⁴ However, that policy is lost in the procedure section of the policy. We recommend that, where a disability and need for accommodation are readily apparent, they should be routed through a separate track that allows them to be granted in a much faster time period than if they require verification. We also recommend that readily apparent accommodations/ modifications be able to be approved by an on-site manager rather than regional manager to expedite the process.

II. To reduce the time it takes for National Church Residences to process a RA request, National Church Residences should localize its process and train staff on how to efficiently process a request in a timely manner.

The policy as currently written may also create problems concerning the amount of time it takes to process a reasonable accommodation request. An undue delay in providing a response equates to a constructive denial of a request.⁵ Page two of the policy states:

Upon receipt of the Reasonable Accommodation Request Form, management will respond to the request within twenty (20) business days. At any time during this period, management may request additional information or verification.⁶

³ HUD/DOJ Statements, Ohio Revised Code, Fair Housing Act, etc.

⁴ NATIONAL CHURCH RESIDENCES Policy at 2.

⁵ Joint Statement of The Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004 at 11.

⁶ NATIONAL CHURCH RESIDENCES Policy at 2.

Then, on page three, the first paragraph states:

Management will approve or deny the accommodation/modification within thirty (30) business days after receiving all necessary information and documentation from the resident or applicant.⁷

The timing, as laid out, may create problems since all of the requests must be evaluated by the Regional Director, located in Columbus, Ohio. It is possible that these amounts of time may cause an undue delay in the time it takes to formulate a response. While it is clear that National Church Residences may need additional documentation to come up with a decision, the 20 days for notification and 30 days for a decision after documentation may unduly delay a person's access to their housing unit.

Furthermore, it is unclear as to when the 20 days starts. Does it start when the Regional Director receives the request, or when the request is actually made? One suggestion to alleviate this problem is to train the onsite manager, service coordinator, and maintenance staff on how to process these requests to minimize the time it takes since a person's need for the accommodation or modification may be immediate. Ultimately, localizing this process would eliminate these issues.

As noted above, we would also recommend creating a second, more expedited track where a disability and need for an accommodation are readily apparent.

III. The management staff at Alpha Towers should engage in a record keeping process to improve accountability and communication of RA requests.

We also recommend recommendation that National Church Residences engage in a record keeping process that would allow a consolidation or elimination of some of the accommodation forms in order to simplify the Reasonable Accommodation procedure. Particularly, it would be beneficial to record when a request is initially made, how it was made (written or orally), any discussions pertaining thereto, whether any additional information to verify the request is needed, when/if any verification was received, and whether the request has been approved or denied. This process would serve to confirm or dispel any confusion as to when the request was made as well as to hold National Church Residences and the requesting tenant accountable throughout the process.

Although having a number of request, verification, and meeting request forms may be useful in creating a paper trail or of keeping records, there are other ways to make the process more efficient. It would be easier on both parties if some of the forms were consolidated. For example, the "Notice that the Request has been Received" form could be combined with the "Request for a Meeting" and "Request for More Information" forms. Having fewer forms would make the process simpler and faster for all parties. By engaging in internal record keeping and consolidating forms, National Church Residences could create a paper trail and make their Reasonable Accommodation policy more user-friendly.

⁷ NATIONAL CHURCH RESIDENCES Policy at 3.

IV. National Church Residences' RA Policy should include more examples of common reasonable accommodation requests.

We recommend that National Church Residences' Reasonable Accommodation Policy include examples of common reasonable accommodation and modification requests. National Church Residences' Reasonable Accommodation policy includes the definition of a reasonable accommodation and reasonable modification as well as a few brief examples. This is a very useful resource to the tenants, however, pursuant to TFHC and ACT's experience, there are additional accommodation requests that are more common that could also be included. They are as follows:

- 1) Designating Parking Spaces where an accessible spot is far from the unit;
- 2) Rent Accommodation
- 3) Replacing doorknobs with accessible doorknobs;
- 4) Installing a ramp at a building or apartment entrance;
- 5) Installing grab bars in a bathroom;
- 6) Assigning a mailbox in a place that is easily accessible by a person with a mobility impairment
- 7) Assisting a person with a vision impairment in filling out a rental application.

V. There should be a provision in National Church Residences' policy regarding bed bugs.

TFHC has had complaints from tenants regarding Alpha Towers' handling of bedbug extermination, so National Church Residences should have a clear policy regarding bed bug extermination as well. For example, a tenant with a disability may need to remove belongings from their dwelling prior to pest control visiting their apartment. They may need to request a reasonable accommodation for help to remove these items. The policy should be clear about who pays any additional expenses for the extermination, and when. These policies should then be enforced fairly and consistently.

VI. National Church Residences should note in its policy that it is responsible for the costs of a reasonable accommodation and modification and should make its policy available at the time a tenant signs a lease.

Alpha Towers has a responsibility under Section 504 of the Rehabilitation Act of 1973 to bear all costs to provide an accommodation so long as it does not cause an undue financial and/or administrative burden on the housing authority.⁸ It is recommended that this be noted in the policy to ensure that tenants are fully informed of their rights.

Additionally, the National Church Residences policy provides that a tenant may obtain copies of the policy by contacting the property manager and that the policy will be posted in

⁸Section 504 of the Rehabilitation Act, U.S. Dept of House and Urban Dev. (March 16, 2015), <http://portal.hud.gov/hudportal/HUD?src=/programdescription/sec504>

common areas. We recommend that the policy also be made available to tenants at the time they sign their lease.

VII. Additional suggestions to enhance the overall implementation of National Church Residences' RA Policy.

In easing the transition and enhancing National Church Residences' reasonable accommodations policies, The Toledo Fair Housing Center is willing to provide onsite training to both Alpha Towers' residents as well as staff and management upon approval from National Church Residences' Regional Director. These trainings will also be accompanied by the Ability Center of Greater Toledo on what services are available and what services they provide. Ultimately, Toledo Fair Housing Center would also be able to provide training to National Church Residences at a national level on reasonable accommodations policies.

TFHC and the ACT appreciate the actions that National Church Residences has taken to protect tenants' rights to request reasonable accommodations under the Fair Housing Act and HUD regulations and are excited by the chance to give input regarding National Church Residences' policies. We hope that our suggestions are helpful and that we can continue to work together to affirmatively further fair housing.

Finally, please note that nothing within this memo should be construed as legal advice. Should you need additional assistance and our counseling regarding the implementation of these suggestions, we encourage you to contact your Legal Counsel.

Sincerely,

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