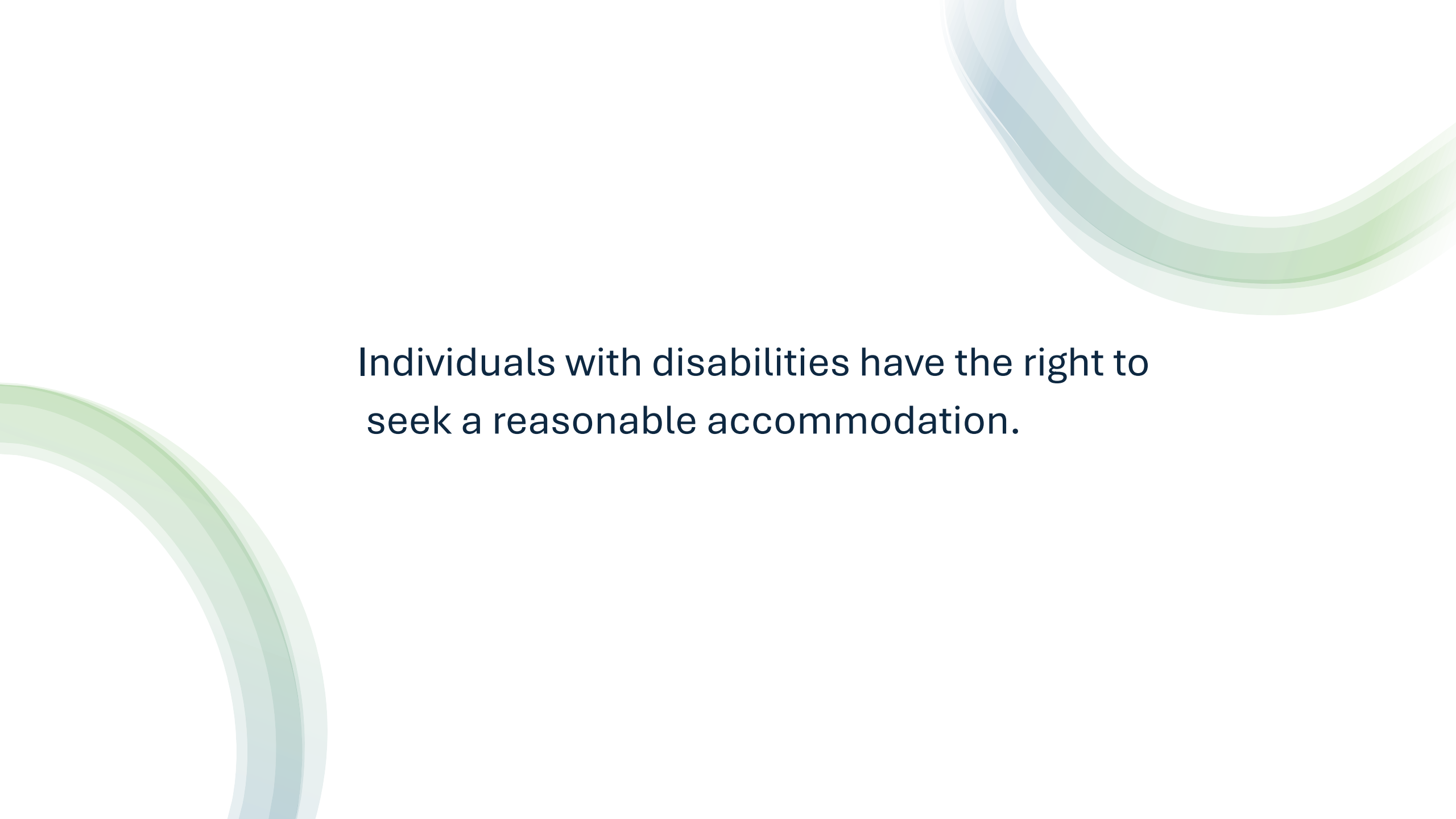


Demanding a Reasonable  
Accommodation to address  
Secondhand Smoke Exposure





Individuals with disabilities have the right to seek a reasonable accommodation.

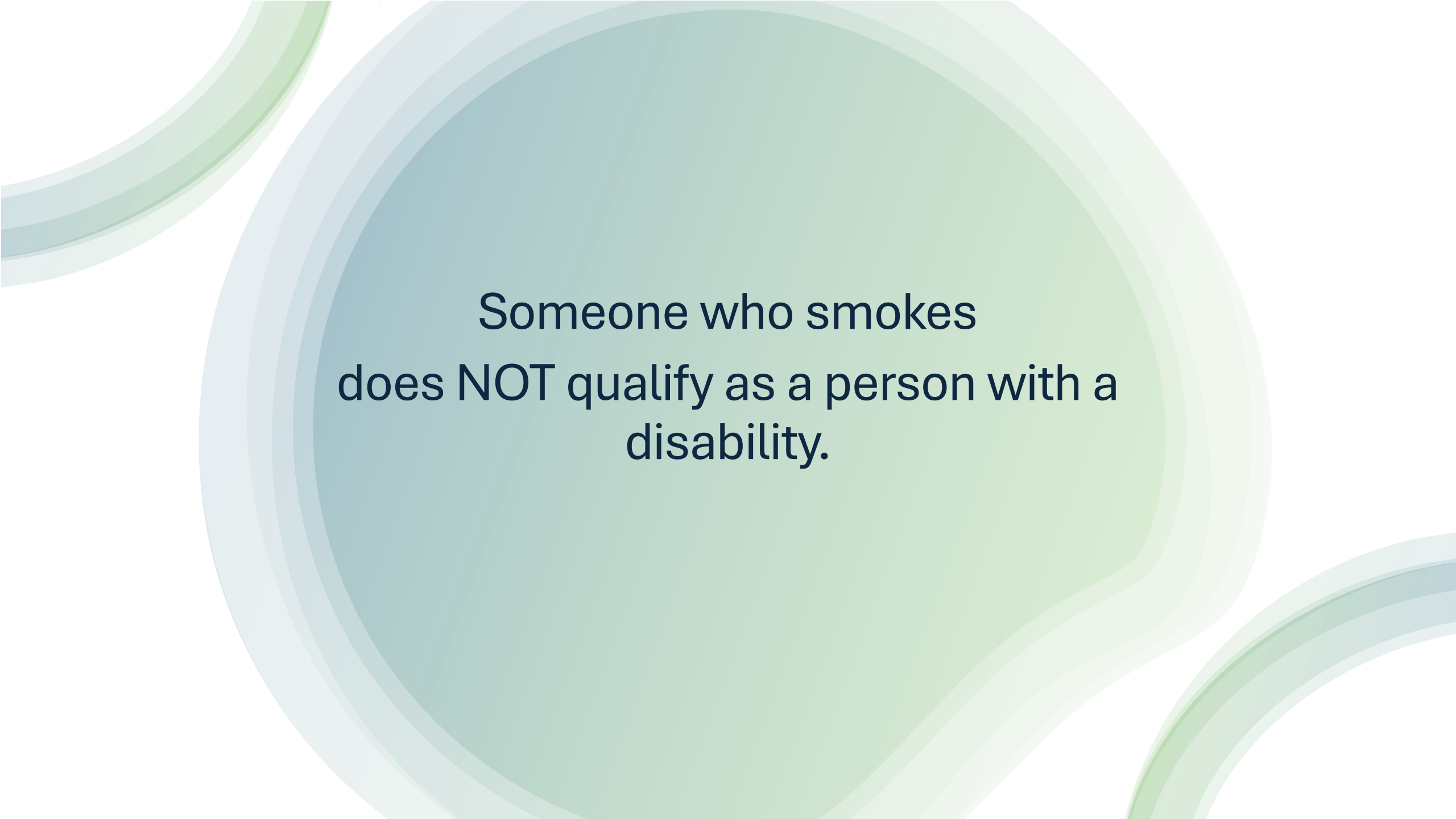


What is a reasonable accommodation?



What is a disability under the  
Fair Housing Act?

- If an individual has a physical or mental impairment that substantially limits at least one major life activity.
- If an individual has a record of such an impairment; or
- If an individual is regarded as having such an impairment.



Someone who smokes  
does NOT qualify as a person with a  
disability.

- Determining whether the individual's requested accommodation is necessary to afford an equal opportunity to use and enjoy a dwelling. (establishing the nexus)



- The accommodation must be related to the disability in a way that, without it, the individual would be denied a housing opportunity afforded to a resident that was not disabled.



When may a housing provider deny a reasonable accommodation request?





1) When Request was not made by or on behalf of a person with a disability.

2) There is no disability-related need for the accommodation (nexus).

3) The requested accommodation is not reasonable.

Is a smoke-free accommodation necessary to afford a resident with a disability equal opportunity to use and enjoy a dwelling?


- There is no safe level of exposure to secondhand smoke.
- Without a smoke-free environment residents may not be able to reside in their home because of their disability.

## Examples:

A resident with a respiratory condition (like asthma) may be unable to sleep through the night because SHS exposure from a neighboring tenant makes it more difficult to breathe.

Or

A person who is hypersensitive to smoke is entitled to a RA because the exposure to SHS meets the requirement to substantially limit a major life activity – in this case, breathing.




Examples of options for accommodations that may be reasonable:


- Asking landlord to prohibit smoking in the common areas of the building, if the smoke is coming from those areas
- Asking landlord to move to a vacant unit in the complex, away from the drifting smoke
- Asking landlord to prohibit smoking in the apartments and balconies surrounding resident's unit (realizing that this would not be immediate as it would require lease modifications)
- Asking landlord for early termination of lease without financial penalties

## When is a requested accommodation not reasonable?

### Considerations:

- The fundamental purpose of the policy in question
  - The circumstances of the resident's situation
  - The administrative and financial capacity of the housing provider
  - The feasibility of granting the RA
  - The availability of other solutions
  - The precedent the housing provider wants to set
- 

What should a resident do to avail themselves of the disability protections afforded to them under the FHA?

- 1) Keep a log of instances when the smoke drifted into resident's apartment (time, date, and resulting health problems)
  - 2) Make a written request (demand) for a reasonable accommodation (include log)
  - 3) Have a letter from a health care provider to support the a) disability and b) the nexus.
  - 4) Give the landlord a reasonable amount of time to respond to the request.
  - 5) If the request is deemed unreasonable, participate in an interactive dialogue to attempt to work out a solution.
  - 6) If no accommodation is made, and the resident believes illegal discrimination occurred, resident can contact DORA – Civil Rights Division:  
<https://socgov07.my.salesforce-sites.com/ColoradoCivilRights/>
- 

## Demand letter:

- Describes the physical condition that is aggravated by exposure to SHS;
- Identifies the source and frequency of drifting SHS;
- Outlines the RA resident is requesting
- Summarizes Landlord's responsibility to accept the request



## Provider's Letter

- Documents the effect the SHS has on resident's health
- Documents the need for the accommodation

If requested accommodation is unreasonable,  
then what?



ENGAGE IN INTERACTIVE  
DIALOGUE



MEDIATION MAY BE  
APPROPRIATE

- +
  - If the resident is NOT disabled, a resident can use the following legal theories against the Landlord:

- Constructive Eviction
- Breach of Warranty of Habitability
- Trespass
- Nuisance



# Trespass

- An unlawful entry on another's property
- 



**Private Nuisance:** The unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another's property.

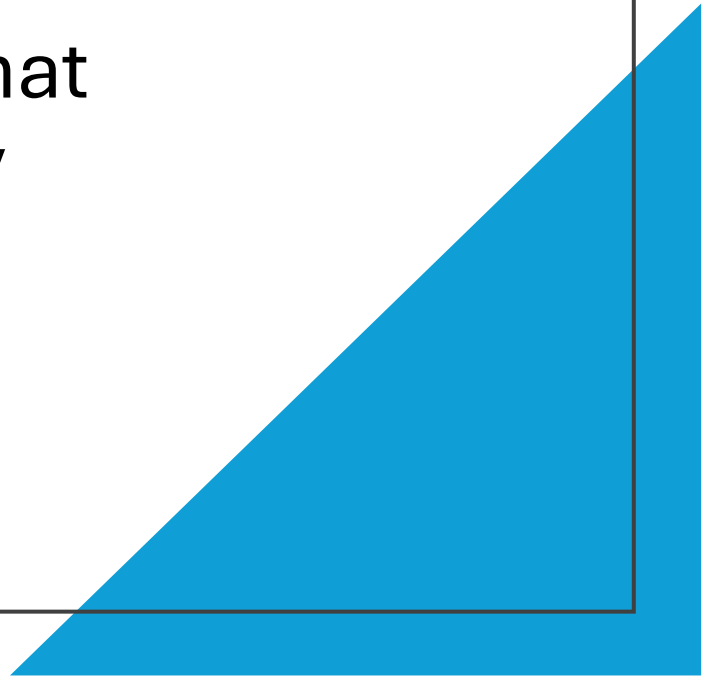


## Constructive Eviction

- When a landlord substantially interferes with the tenant's use and enjoyment of the premises by their failure to act to resolve a problem after the tenant gives the landlord notice of the problem

# Breach of Warranty of Habitability

- The failure of the landlord in keeping the rental unit free from a condition (SHS) that is seriously harmful to health and safety



Thank you!

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