



**FAIR HOUSING &
REASONABLE ACCOMMODATIONS
FOR PEOPLE WITH DISABILITIES**

OVERVIEW



- **FAIR HOUSING**
- **REASONABLE ACCOMMODATIONS**
- **REASONABLE MODIFICATIONS**

FAIR HOUSING

- State and Federal Laws
- Housing Providers Covered
- Definition of Disability & Examples
- Exclusions
- Examples of Discrimination
- Potential Penalties

FAIR HOUSING LAWS: FEDERAL



- **The Fair Housing Amendments Act of 1988 (FHAA)**
 - This Act applies to private and public housing. It covers all multi-family housing consisting of four or more units.
- **Section 504 of the Rehabilitation Act**
 - This law bars recipients of federal funds from discriminating on the basis of disability (applies to all housing receiving federal money, regardless of the amount of funds involved).
- **The Americans with Disabilities Act (ADA)**
 - This law covers governmental services (housing authorities and housing with local or state government funding and/or administration) and public accommodations (motels, hotels & rental/sales offices of building complexes).
- **Title II of ADA**
 - This law covers housing provided by state and local governments and their entities, including Public Housing Authorities and assisted living programs if funded by local or state finance agency, regardless of whether they receive federal funds.

FAIR HOUSING LAWS: STATE



California State Laws

- **Fair Employment and Housing Act (FEHA)**
 - California law covering all dwellings except an owner occupied house in which only one room is rented out.
- **Unruh Civil Rights Act**
 - California law covering all businesses, including those who engage in rental or sale of real property.

HOUSING PROVIDERS COVERED



- Apartment buildings
- Condominiums
- Housing transactions, including rentals and sales
- Board & Care Facilities (licensed and unlicensed)
- SROs (Single Room Occupancy Hotels)
- Subsidized housing
- Homeless shelters
- Transitional housing

DEFINITION OF DISABILITY



- **Disability Defined under Federal Law (ADA & FHAA)**
 - Having a physical or mental impairment that *substantially limits* one or more major life activities
 - Or having a **record of** such impairment
 - Or being **regarded as** having such an impairment

- **Disability Defined under California Law**
 - Having, having a record of, or being regarded as having a physical or mental impairment that *limits* one or more major life activities.

EXAMPLES OF DISABILITIES



- Mental Health Diagnoses
- HIV/AIDS
- Developmental disabilities
- Physical health conditions
- Alcoholism (past or present)
- Past drug addiction, if not currently using

EXCLUSIONS UNDER FEDERAL LAW



- Individuals whose tenancy will pose a **direct threat** to others, or result in **substantial damage to property** or others
- Individual **not otherwise qualified** for housing
- Individual **currently using** illegal drugs or illegally using legal drugs
 - *Standard for current use is whether a reasonable person would believe a person is still using (not simply that they used last week or last month).*

EXAMPLES OF DISCRIMINATION



- Denial of requests for reasonable accommodations/modifications
- Refusing to rent to a tenant *because* s/he is disabled
- Treating an applicant or tenant differently because of a disability
- A facially neutral rule with a disproportionate impact
- Newer buildings (built after 3/91) that are not accessible

EXAMPLES OF DISCRIMINATION



- Questions/statements about a person's disability
 - Generally a LL **cannot ask** questions to determine whether an individual has a disability, or the nature or severity of an individual's disability.
- Whether the individual is “capable of living independently”
- But, it is generally *permissible* for LL's to ask:
 - Whether an applicant is qualified for occupancy in a building specifically funded to house people with certain types of disabilities
 - Questions to determine whether an applicant will be a good tenant
 - These inquiries must be made of all applicants, regardless of disability.

POTENTIAL PENALTIES



- Loss of subsidy or funding
- Actual damages and punitive damages
- Attorney's fees
- Injunctive relief
- Emotional distress damages
- Increased monitoring

REASONABLE ACCOMMODATIONS

- Definition
- Examples
- Exceptions
- Interactive Process
- The ‘D.A.N.C.E.’

REASONABLE ACCOMMODATIONS



- A change in **policies, practices, rules or procedures**
- **Necessary** because of the tenant's disability for full and equal use and enjoyment of unit
- Can be requested at any stage of the tenancy:
 - Application stage
 - During tenancy
 - Eviction
- Landlords can't ask if a tenant needs a reasonable accommodation, but they can let all tenants know they are available.

REASONABLE ACCOMMODATIONS



Examples

- Emotional Support or Service Animals
- Extension of rent due date
- Live in care givers/overnight guests
- Transfer units
- Extension of deadlines for recertifications/or other program requirements

REASONABLE ACCOMMODATIONS



Exceptions -- Housing provider need not:

- **Fundamentally alter nature of service** (If request is not cost-based, then look at the purpose of the program & what is necessary to achieve the purpose of the accommodation.)
- **Suffer undue financial or administrative burden** (If request is cost-based, look at the nature & cost of accommodation and the size of the owner's housing business.)

REASONABLE ACCOMMODATIONS



“Direct Threats”

- In Roe v. Sugar River Mills Assoc., an apartment complex was **required to attempt to accommodate plaintiff’s mental disability** before it could evict him on the grounds that he constituted a threat to the safety of others.
- In Roe v. Housing Authority, an apartment complex was **required to demonstrate that no reasonable accommodation would eliminate or acceptably minimize any risk posed by tenant with mental illness** who exhibited abusive behavior, before it could evict him on the grounds that he constituted a threat to the safety of others.

REASONABLE ACCOMMODATIONS



Interactive Process

- **Once a request is made, a housing provider *must* engage in an *interactive process* with the tenant.**

Auburn Woods I Homeowners Ass'n v. Fair Employment, “As one court noted, ‘If a landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.’”

REASONABLE ACCOMMODATIONS



The “D.A.N.C.E.”

- **DISABILITY**
 - Does the tenant have a disability as defined by fair housing laws?
- **ACCOMMODATION**
 - Has the tenant asked for an accommodation?
- **NEXUS**
 - Is there is a sufficient nexus between the disability and the accommodation?
Is the accommodation necessary because of the tenant’s disability?
- **CHANGE**
 - Would the accommodation require a fundamental change to the nature of the program or services offered by the landlord?
- **EXCESSIVE**
 - Would the accommodation create an excessive administrative or financial burden on the landlord?

REASONABLE MODIFICATIONS

- Definition
- Examples

REASONABLE MODIFICATIONS



- A **physical modification** of an existing unit (includes interior, exterior, and common areas) that is necessary for full and equal use and enjoyment of unit.
 - Private landlords have to *allow* the modification
 - Public and assisted housing providers *may be required to pay for physical modifications*
- Exception: where modification would cause an undue hardship on the housing provider

REASONABLE MODIFICATIONS



Examples

- Install automatic faucet shut-off for someone who, due to a disability, can't remember to turn off water
- Install carpet to reduce noise made by a person whose disability causes her to make a lot of noise
- Disconnect a stove and install a microwave for a person unable to operate a stove safely
- Widen doorways to accommodate wheelchairs

FAIR HOUSING LAWS & EVICTION DEFENSE



- RA requests can be made at any time – application stage through final execution of eviction!
- Failure to accommodate (or to participate in an interactive process) can be a complete defense to eviction lawsuit
 - Other remedies: damages award in UD judgment; affirmative lawsuit, administrative action through HUD, DFEH

FAIR HOUSING & EVICTIONS



- Past substance use as defense to nuisance/breach
 - Tenant must admit to behavior and to past use
 - Issues re: proving that use is not current or ongoing
 - What is the requested reasonable accommodation?
- Non-payment of rent cases
 - Must be able to link the non-payment/late payment to disability
 - What is the requested reasonable accommodation?
- Potential pitfalls during litigation
 - Medical history likely to be disclosed through discovery
 - Juries not always sympathetic or able to understand RAs
 - Request bench trial

QUESTIONS?

GET ASSISTANCE



Bay Area residents with an HIV/AIDS diagnosis:

AIDS Legal Referral Panel

(415) 701-1100

1663 Mission Street, Suite 500

San Francisco, CA 94103

www.alrp.org



THANK YOU!

