#### DISABILITY RIGHTS & HOUSING

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## Fair Housing Laws Protect People with Disabilities

- Disability = a physical or mental impairment or condition that substantially limits a major life activity
- Person with a Disability = someone who:
  - Currently has a disability;
  - Has a record of having a disability; or
  - Is regarded as having a disability.

## Some Examples of Disabilities

- Visual Disabilities
- Auditory Disabilities
- Mobility Disabilities
- AIDS & HIV, Diabetes, Cancer, Stroke, Arthritis, Chemical Sensitivities
- I/DD
- Past Substance Abuse/Addiction
- Mental Health Disabilities

### Who Must Comply with Fair Housing Laws?

- Landlords, housing authorities, group homes, property managers, homeowners' and condo owners' associations must comply with fair housing laws.
  - Single-family homes are sometimes exempt from federal fair housing law. State fair housing laws still apply.
- Fair housing laws can cover conduct by other tenants or neighbors

## What is Disability-Based Discrimination?

- Unequal Treatment;
- Denial of Housing Opportunities;
- Denial of Equal Access to Common Areas;
- Discriminatory Advertising or Other Statements;
- Retaliation; Harassment
- Failure to Provide Reasonable Accommodation



## Prohibited Practices: Examples

- Denying programs or services or benefits based on disability
- Providing only separate, or segregated, programs or services
- Using eligibility criteria that tend to screen out people with disabilities
- Making unnecessary inquiries about disability
- Imposing extra charges
- Retaliating for exercising fair housing rights

## Laws Protect Anyone Harmed by Discrimination

- Federal and state fair housing laws protect people with disabilities who are harmed because of discrimination
- These laws also protect others who are harmed because of illegal discrimination:
  - Family members
  - Friends
  - Others who try to assist people experiencing discrimination

### Reasonable Accommodations

Landlords have an affirmative legal duty

to be flexible in their rules, policies, practices & procedures when necessary to provide equal access to housing for persons with disabilities.

Reasonable
Accommodation
Rules, Policies,
Practices and
Procedures Examples

- Permitting co-signing of lease for rent
- Adjusting rental due date based on receipt of benefits
- Other flexibility in rules and procedures
- Live-in aides
- Delaying or foregoing a tenancy termination

#### Reasonable Modifications

- Modification is a physical change. Doesn't include repairs.
- Must be granted if the modifications are necessary to allow the person full enjoyment of the premises
- Who Pays?
  - Often the person with a disability,
  - But in federally funded housing, landlord pays

## Requesting an Accommodation

- No particular form required.
- Writing is preferable, but oral requests are OK.
- Request should explain that there is a disability-related need.

#### Q: WHEN MAY I MAKE A REQUEST?

A: Legally, any time:

- Application
- Payment
- During Tenancy
- Moving Out
- But, practically, timing can matter

## Landlord's Response

- If it's reasonable, must grant it.
- No delay, retaliation or interference
- If the disability is not apparent, the landlord may ask for verification
- Interactive Process

## Landlord May NOT

- Increase the security deposit.
- Give a blanket denial
- Refuse housing to a person with a disability because they may need a reasonable accommodation.
- Charge money for the policy change.

#### Interactive Process

- A landlord *must* provide a requested accommodation *unless* the landlord can show that doing so will:
  - Impose an "undue burden" or
  - Result in a "fundamental alteration" in the service provided by the landlord.
  - BUT accommodations *can* impose costs on landlords.

#### "VERIFYING" DISABILITY

- If the disability or need for accommodation is obvious or known to the landlord, the landlord may not ask for further information
- If the disability or need is not obvious, the landlord may ask for additional information to:
  - Confirm the existence of a disability
  - Confirm the connection between the disability and the accommodation requested.
- A limited exception to general rule against inquiring about disability

#### FROM THE LANDLORD'S MOUTH

## Real-world Scenarios

• "We won't consider your reasonable accommodation request unless you fill out our form."

• "In order to grant your request I'll need you to sign this release so that I can contact your doctor directly to verify your disability."

• "You can move from your studio on the 5<sup>th</sup> floor to a studio on the 1<sup>st</sup> floor to accommodate your disability, but you have to pay the difference in rent/deposit."

### ANIMALS IN HOUSING



## TERMS TO (UN)CONFUSE FOLKS



- Service Animals: Specifically trained to perform a task
- Emotional Support Animals: Ameliorate by their very presence
- Therapy Animals: Health care milieu
- Comfort Animals: Not a Thing
- Assistance Animals: HUD's term



#### Emotional Support Animals

- Support animals ameliorate psychiatric disabilities
- Not limited to dogs
- No task training required

## Federal and State Fair Housing Laws Cover Assistance Animals

- Both federal and states laws protect the right of people with disabilities to keep assistance animals, even when a landlord's policy explicitly prohibits pets.
- Landlord generally required to make an exception to its "no pet" policy so that a tenant with a disability can fully use and enjoy his or her dwelling.
- Federal interpretations and state regulations

• "You didn't tell me you needed/had an emotional support animal when you moved in and so you can't have one now."

- Reasonable accommodation requests can be made at any time.
- HOA discriminated against tenants by denying their reasonable accommodation for an emotional support animal, despite making that request after the animal had already been acquired.

•"I'll approve an emotional support animal but absolutely NO pitbulls."

Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm has to be based on the specific animal's conduct and not speculation based on harm by other similar animals.

• "If you are going to bring in an emotional support animal then you have to pay an additional deposit or pet rent."

• Landlords may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

• "I'll approve your reasonable accommodation request but first I need to see their service animal certification."

# No law requires an assistance animal to be "certified."

(For good reasons.)

## Enforcing Fair Housing Laws

- File an administrative complaint
  - with California Civil Rights Department f/k/a DFEH
  - with U.S. Department of Housing and Urban Development or "HUD"
- File a lawsuit
  - in California Superior Court
  - in federal District Court

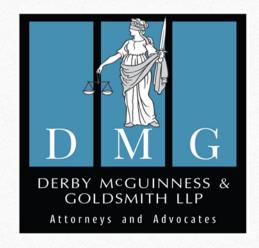
#### For Assistance

• Usually, the best first step if you suspect or experience housing discrimination is to contact

Project Sentinel

www.housing.org

(800) 339-6043



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