

FAIR HOUSING: REASONABLE ACCOMMODATIONS & MODIFICATIONS

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AGENDA

- **Disability Discrimination & Reasonable Accommodations**
- **Administrative Complaints & Lawsuits**
- **Developing Pro-Active Fair Housing Policies**



PROJECT SENTINEL

Our Mission Statement:

To develop and promote fairness and equality of housing opportunity for all and to advocate peaceful resolution of disputes for community welfare and harmony.

Fair Housing Center offices in Fremont, Gilroy, Modesto,
Redwood City, Sacramento, and Santa Clara

www.housing.org



WHAT IS FAIR HOUSING?

- The ability of people of similar income levels to have available to them the same housing choices, regardless of personal characteristics such as race or national origin.

MOST COMMON TYPES OF DISCRIMINATION

- **Statistics from the U.S. Department of Housing & Urban Development (HUD):**
 - **53% Disability**
 - **28% Race**
 - **14% Familial Status**
 - **12% National Origin**



FEDERAL & STATE FAIR HOUSING LAWS

HIGHLIGHTS:

- Civil Rights Act of 1866
- Fair Housing Act & Fair Housing Amendments Act (“FHA”)
- California Fair Employment & Housing Act (FEHA)
- Unruh Act
- Ralph Civil Rights Act



CALIFORNIA FAIR HOUSING LAWS



Federal Fair Housing Act Protected Classes:

Race

Color

Religion

National Origin

Sex

Familial Status

Disability

California Fair Employment & Housing Act Adds:

Marital Status

Sexual Orientation

Ancestry

Source of Income

Gender Identity/Expression

Unruh Act Adds:

Immigration Status, Primary Language, Citizenship, Arbitrary Characteristics (Age, Occupation, Etc.)

TYPES OF HOUSING COVERED

- Dwelling unit: *occupied or designed as a residence. See 42 U.S.C. § 3607(b)(1).*
- Most single-family homes and multi-family apartments
- Mobile home parks and RV parks
- Condominiums, timeshares, co-ops
- Nursing homes, shelters, group homes, residential care facilities



RESPONSIBLE PARTIES

- Property owners (individual & corporate)
- Property managers
- Maintenance & administrative staff
- Real estate agents & brokers
- Lenders
- Insurers & appraisers
- Homeowner/condominium associations
- Property management companies
- Architects, builders, developers, and engineers
- Municipalities



DISABILITY DISCRIMINATION & REASONABLE ACCOMMODATIONS

**You have a nice
set of wheels but
can't find a place
to park them.**



The Fair Housing Act requires most multi-family dwellings built since March 13, 1991 to be accessible to people with disabilities. Mandatory features include:

- An accessible entrance on an accessible route, accessible parking, public and common use areas.
- Bathrooms and kitchens with usable sinks, toilets, tubs, and appliances.

If you are looking for an apartment and find you can't get in because of barriers such as steps, steep slopes and lack of curb cuts, or you get in and find that the kitchen and/or bathroom aren't usable, please call.

We will investigate to determine if the building violates the federal Fair Housing Act.



National Fair Housing Alliance
1-800-910-7315
www.nationalfairhousing.org



DISABILITY DISCRIMINATION

■ Key Laws

1. Fair Housing Act (FHA) and CA Fair Employment & Housing Act (FEHA): covers most housing
2. Section 504 of the Rehabilitation Act of 1973: covers federally-funded housing
3. Title II & III of the Americans with Disabilities Act (ADA): covers state or local government housing, commercial facilities, and public accommodations



DEFINITION OF DISABILITY

- Federal law:
 1. Physical or mental impairment
 2. Which **substantially limits**
 3. One or more major life activities

- State law:
 1. Physical or mental impairment
 2. Which **limits**
 3. One or more major life activities

Covers people who are currently disabled, people who have a record of impairment, and people who are regarded as impaired



DEFINITION OF DISABILITY

■ Physical or Mental Impairment

- Physiological disorder
- Contagious disease
- Cosmetic disfigurement
- Anatomical loss
- Mental retardation
- Emotional or mental illness
- Specific learning disabilities
- Alcoholism
- Substance Abuse*

*FHA excludes people who currently use, or are currently addicted to, controlled substances



DEFINITION OF DISABILITY

■ Major Life Activities

- Walking
- Seeing
- Self-care
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Manual tasks

REASONABLE ACCOMMODATION

■ Definition:

1. Change in a housing provider's rules, policies, practices, or services
2. That is necessary
3. To afford a person with a disability
4. Equal opportunity to use and enjoy a dwelling



REASONABLE MODIFICATION

- Definition:

1. Physical modification of an existing structure
2. That is necessary
3. To afford a person with a disability
4. The equal opportunity to use and enjoy a dwelling



REASONABLE ACCOMMODATION EXAMPLES

- 1. Permission for companion animal in building with a “no pets” policy**
- 2. Extension of time to move out during eviction process**
- 3. Creating a reserved parking space for a tenant with a mobility impairment who needs to park close to her dwelling unit**

REASONABLE ACCOMMODATION EXAMPLES

4. Assisting an applicant with a developmental disability in completing a standard rental application
5. Permitting tenant with a caregiver to transfer from a one-bedroom to a two-bedroom unit
6. Accepting reference from a social worker on behalf of an applicant whose disability required hospitalization and lacks recent rental history



REASONABLE MODIFICATION EXAMPLES

- Installing ramps or grab bars
- Removing carpet
- Providing visual alarm for person with hearing impairment, or auditory alarm for person with vision impairment
- Widening doorways
- Disconnecting stove or installing microwave for person unable to safely operate stove



REASONABLE ACCOMMODATIONS

Physical or mental impairment



Limits major life activity



Disabled person needs change to existing practice or policy



TENANT'S BURDEN

1. Make initial request for accommodation or modification

- Request does not need to be in writing
- Can request RA at any time from pre-application through writ of possession

2. State two elements:

A. Tenant is **disabled**

B. Specific accommodation/modification is **necessary because of disability**



HOUSING PROVIDER'S BURDEN

Determine whether nexus between the requested accommodation and the disability is clear

- If not clear, housing provider may request verification (1) the person is disabled, and (2) the requested accommodation is necessary because of the extent of the person's disabilities
- Verification may come from any knowledgeable third party, such as doctors, nurse practitioners, therapists, or social workers



HOUSING PROVIDER'S BURDEN

Determine whether request is reasonable

1. Undue financial burden

- **Cost/benefit analysis:** weigh cost of accommodation to specific housing provider against benefit incurred by tenant
- **Accommodations:** Housing provider pays
- **Modifications in federally-funded housing:** Housing provider pays
- **Modifications in privately-funded housing:** Tenant pays

2. Undue administrative burden



HOUSING PROVIDER'S BURDEN

3. Fundamental alteration of the nature of the housing provider's services

3. Direct threat to the health, safety, or quiet enjoyment of other residents, staff, or visitors
 - Documented & verifiable, not speculative



REASONABLE ACCOMMODATIONS: DIRECT THREAT CASE STUDY

James, a long-time tenant at Sugar Mills Apartments, accosts an elderly neighbor. The neighbor reports James used obscene, offensive, and threatening language, which causes the neighbor to suffer great anxiety and makes him fearful for his physical safety. As a result of James' actions, the elderly neighbor moves out. James is convicted in criminal court of disorderly conduct, and the property management moves to terminate James' tenancy. James then responds that his outbursts, which he characterizes as neither threatening nor harassing, are the result of his mental disability and requests Sugar Mills make a reasonable accommodation to allow him to remain as a tenant. Sugar Mills refuses to grant an accommodation, stating James' conviction in criminal court demonstrates he is a direct threat to the health, safety, and quiet enjoyment of others, and they do not need to make any efforts to accommodate him.

See Roe v. Sugar Mills, 820 F. Supp. 636



REASONABLE ACCOMMODATIONS: DIRECT THREAT CASE STUDY

- 1) May Sugar Mills refuse to grant an accommodation on the grounds that James is a direct threat?
- 2) What reasonable accommodation might permit James to live peaceably & safely among other tenants?



HOUSING PROVIDER'S BURDEN

- If request is not reasonable, housing provider must still engage in interactive process to reach acceptable alternative accommodation
- Persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability
- Not obligated to accept alternative accommodation suggested by the provider if she believes it will not meet her needs & her preferred accommodation is reasonable



REASONABLE MODIFICATIONS

- Housing provider can require work done in workmanlike manner, permitted
- Housing provider can require restoration to original condition when tenant vacates only if:
 - Modification is interior (not in common areas)
 - Interferes with enjoyment of future tenant
 - Funds are put in escrow account



COMMON RA ISSUES: ASSISTANCE ANIMALS

■ Service Animal

- Defined under ADA: either dog or miniature pony that has been specifically trained to do a specific task
- Allowed in any public accommodation (restaurant, movie theater, shop, etc.)



ASSISTANCE ANIMALS

- Companion/Emotional Support/Therapy Animal
 - Not restricted by type or breed (can be dog, cat, bird, etc.)
 - Does not need to be specifically trained, does not need to do a specific task
 - Provides support to disabled person by virtue of its very presence
 - No “pet rent” or “pet deposit”



BEST PRACTICE TIPS FOR HOUSING PROVIDERS

- If connection between disability and request is not clear, request clarification and verification from knowledgeable third party
- Determine whether granting request will entail incurring undue burden or fundamental alteration
- If no undue burden or fundamental alteration, provide written response explaining that request is granted
- If request would cause undue burden or fundamental alteration, engage in interactive process to reach acceptable alternative



RA CASE STUDY #1

John has AIDS. John worked as a psychiatric technician for many years, earning an adequate living. However, as a result of his illness, John can no longer work. He supports himself through a combination of monthly benefits from Social Security Disability Insurance (SSDI) and housing assistance from Housing Opportunities for People with Aids (HOPWA). He finds a new rental conveniently located near his mother, who assists him with daily tasks. Although John has a great tenant history and good credit, the management company at the new property rejects his application because he does not meet the minimum income requirement of three times the monthly rent. The following day, John's mother contacts the management company and offers to act as a guarantor or co-signer. She has good credit, owns her home outright, and earns income in excess of the minimum income requirement. Both John and his mother complete new applications, indicating John will be the only resident. John lists his present occupation as "disabled." The management company again rejects John's application, citing a policy against allowing any co-signers on leases.

John's attorney then requests the management company grant a reasonable accommodation by allowing the use of a co-signer or other alternative arrangements to meet the financial requirements for tenancy. The property management company again rejects John's rental application, and takes no further action to engage with John or consider his request.

See Giebeler v. M&B Assoc., 343 F.3d 1143



RA CASE STUDY #1

- 1) Is John disabled? What is the impairment, and what major life activity is limited?
- 2) Did the property management company know or reasonably should have known John was disabled?
- 3) What accommodation was requested, and was the accommodation necessary to allow John an equal opportunity to use & enjoy his home?
- 4) Would granting request incur an undue burden, fundamental alteration, or direct threat?



RA CASE STUDY #2

Evelyn's landlord serves her with a 30-day notice to cure or quit based on her failure to maintain her home in a clean and sanitary condition. Evelyn's apartment has a foul odor that emanates to the rest of building; the toilet is frequently filled with feces and urine; and garbage, rotting food, and dirty laundry are strewn about. Evelyn neither cleans nor vacates the premises during the notice period, and her landlord subsequently files an unlawful detainer. Evelyn then requests a reasonable accommodation for a mood disorder that affects her ability to keep her apartment safe and sanitary. Evelyn notes she has a caseworker from Adult Protective Services who can offer assistance, and mentions she is currently an outpatient at a substance abuse clinic. The landlord never responds to this request.

See Douglas v. Kriegsfeld Corp., 884 A. 2d 1109



RA CASE STUDY #2

- 1) Is Evelyn “disabled” under fair housing law? If so, is there a nexus between her disability and request?
- 2) May Evelyn make a request for accommodation after the filing of an unlawful detainer action?
- 3) Evelyn’s request did not specify a specific accommodation. Was the landlord obligated to respond?
- 4) Can the landlord refuse to grant Evelyn’s RA on the grounds that she poses a direct threat?
- 5) Would the requested RA be unduly burdensome?

FHA NEW CONSTRUCTION REQUIREMENTS

- Multi-family housing of 4 or more units, built for first occupancy after March 1991
 - With an elevator
 - ALL units must comply
 - Without an elevator
 - ALL GROUND FLOOR units must comply

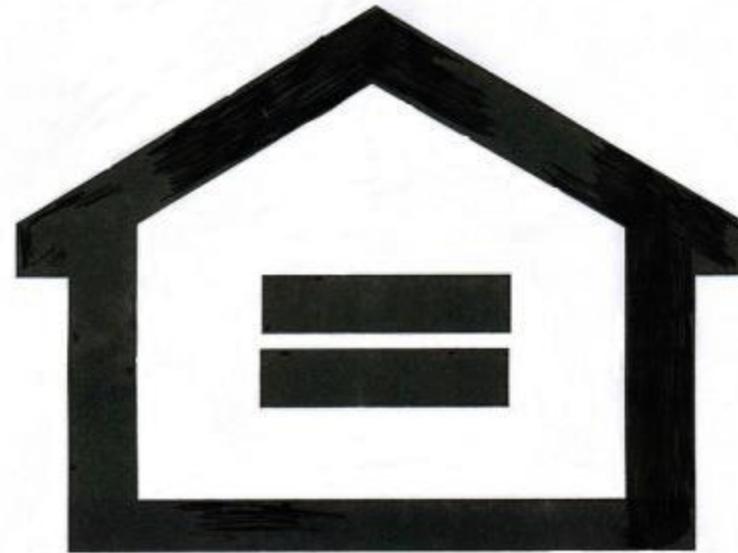


FHA NEW CONSTRUCTION REQUIREMENTS

1. Accessible building entrance on accessible route
2. Accessible public & common use areas
3. Doors that can be used by person in wheelchair
4. Accessible routes into & through dwellings
5. Accessible light switches, thermostats within dwellings
6. Reinforced walls
7. Kitchens & bathrooms with adequate space for wheelchair to maneuver



ADMINISTRATIVE COMPLAINTS & LAWSUITS



**EQUAL HOUSING
OPPORTUNITY**



ADMINISTRATIVE COMPLAINTS & LAWSUITS

- Individuals, private fair housing groups, government agencies, and classes of people may file a complaint
- An aggrieved party can:
 1. File a lawsuit in federal court within 2 years of the alleged discriminatory act; or
 2. File an administrative complaint with HUD/DFEH within 1 year of the alleged discriminatory act



ADMINISTRATIVE COMPLAINTS

- U.S. Department of Justice
 - Accepts “pattern or practice” complaints or complaints that raise issue of “general public importance”
 - Pattern or practice: evidence establishes that discriminatory actions were Defendant’s regular practice, rather than isolated instance
 - Resolution may include imposition of consent decree
- Ex of DOJ case - September 2012: DOJ settled FHA claim alleging sexual harassment of women tenants and prospective tenants in Bakersfield for \$2.13 million
 - 25 individual victims



LITIGATION

- Lawsuits alleging violations of FHA may be filed in federal court
- Lawsuits alleging violations of FHA/FEHA may be filed in state court
- No “right to sue” letter required prior to filing



COST OF DISCRIMINATION

- In an administrative complaint:
 - HUD can impose civil penalties ranging from \$16,500 - \$65,000
- In a lawsuit:
 - Actual & punitive damages
 - Injunctive and equitable relief
 - Attorneys' fees



ADVISING HOUSING PROVIDERS: PRO-ACTIVE FAIR HOUSING POLICIES

**“You want me
to fix
your stove?
...how bad do
you want it,
honey?”**

If a landlord has other “ideas” about making needed repairs, we have a few “ideas” of our own. You can hit him where it hurts by reporting him for sexual harassment under the Federal Fair Housing Act.

If you suspect unfair housing practices, contact HUD or your local Fair Housing Center. Everyone deserves a fair chance.



FAIR HOUSING IS THE LAW!

U.S. Department of Housing and Urban Development • 1-800-669-9777 • TDD 1-800-927-9275



ADVISING HOUSING PROVIDERS: PRO-ACTIVE FAIR HOUSING POLICIES

- 1. Set clear, consistent policies & procedures**
- 2. Provide fair housing training to all staff**
- 3. Publish & display equal opportunity housing policy**
- 4. Develop, print & distribute rental eligibility criteria to all applicants**



RESOURCES

- Project Sentinel: www.housing.org
- U.S. Department of Housing and Urban Development (HUD):
www.hud.gov
- California Department of Fair Employment and Housing (DFEH): www.dfeh.ca.gov
- Fair Housing Act:
www.justice.gov/usao/eousa/foia_reading_room/usam/title8/title8.htm
- Code of Federal Regulations, 24 C.F.R. 100 et seq, Discriminatory Conduct Under the Fair Housing Act
- Reasonable Accommodations Under the FHA, Joint Memo by HUD and DOJ:
www.hud.gov/offices/fheo/library/huddojstatement.pdf



THANK YOU

Project Sentinel

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