Fair Housing . . . It’s the Law!

How Fair Housing Laws Protect Tenants with Disabilities

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Fair Housing Law

- Federal Law - *Fair Housing Amendments Act of 1988*
  - Prohibits discrimination based on race, color, religion, sex, national origin, disability and family status.

- California Law - *Fair Employment and Housing Act*
  - In addition to the above, also prohibits discrimination based on marital status, ancestry, sexual orientation, gender-identity or expression, genetic information and source of income.

- California Law - *Unruh Civil Rights Act*
  - Prohibits discrimination in many types of housing based on citizenship, immigration status and primary language.

- Other federal and state laws
Fair Housing in California

The law prohibits discrimination based on:

- Race
- Religion
- National origin
- Color
- Sex
- Physical and mental disabilities
- Family status (includes children under 18 or pregnant)
- Age
- Ancestry
- Sexual orientation
- Source of income
- Genetic information
- Marital status
- Gender identity & expression
In California, what is a disability under fair housing law?

- A limitation on a major life activity – a disability makes a major life activity difficult
- Working and mental, physical and social activities are major life activities

Is alcoholism or addiction to illegal drugs a disability?

- Current alcoholism, past alcoholism and past drug addiction are disabilities.
- Current illegal drug use is *not a disability*. 
“Disability” also includes...

- Record or history of disability
  - Includes previously having, or being misclassified as having, a disability

- Perceived disability
  - Includes people who are regarded as having a disability, even if they do not actually have a disability
What Does the “FAIR” in Fair Housing Mean?

Race, color, religion, sex, gender & gender-related, national origin, family status, sexual orientation, ancestry, source of income, genetic information

Mental and physical disability

Everyone should be treated the same.

People with disabilities should be treated the same, EXCEPT it may be necessary to make reasonable changes to rules to enable them to live in their housing.
When Is a Landlord Unlawfully Discriminating?

- Some discrimination is intentional.
  - “I don’t rent to people in wheelchairs.”
  - “We don’t want any weirdos here.”
- Sometimes, policies have a disparate impact on people with disabilities because they effectively make an opportunity less accessible to people with disabilities.
  - “no pets allowed”
  - “to apply, visit the office”
- Denial of a “reasonable accommodation” is unlawful discrimination.
What Makes an Accommodation Reasonable?

A change in the rules to help a person with a disability access housing or housing-related services is reasonable if it:

- Is necessary due to the disability,
- Provides the person with equal access to housing, AND
- Is not an undue burden, fundamental alteration, or direct threat.
When is an Accommodation Necessary due to Disability? When is there a Connection?

Ask: Is there a connection between the accommodation requested and the limitations of the disability?

Examples:

Can a tenant use a side door for entry because the tenant’s disability makes contact with people frightening? The side door limits contact.

NOT: Can a tenant use the side gate because the main gate is inconvenient and tenant has depression? Is there a connection? If not, the requested accommodation is not necessary due to disability.
When is an Accommodation an *Undue Burden* or *Fundamental Alteration*?

- **Undue Burden** – The accommodation is too difficult or expensive.
  
  Example: Landlord cannot expose tenants to fire hazard to accommodate hoarding.

- **Fundamental Alteration** – The accommodation changes the nature of the program.
  
  Example: Landlord cannot be expected to walk or feed emotional support animal.
Direct Threat

- Accommodations cannot be a direct threat to the health or safety of others OR result in substantial physical damage to property.

- Landlords must make an individualized assessment of direct threat based on:
  - Nature, duration, severity of risk of injury;
  - Probability that injury will actually occur; and
  - Whether any reasonable accommodations can significantly reduce the threat.
The Interactive Process

What if the initial request for accommodation is denied?

- The landlord must invite discussion about alternative accommodations that would address the tenant’s disability-related needs.
- Housing providers MUST engage in the interactive process with tenants to explore options that would meet the tenant’s needs.
Reasonable Accommodation Request Process

- Tenant must request the accommodation.
- If the disability is not obvious, the landlord can ask the tenant to provide verification of the disability.
- If the connection between the accommodation and the disability is not clear, the landlord can request or verification of the disability-related need for accommodation, but cannot demand medical records, diagnoses, or independent evaluations.
- Tenant may request multiple accommodations.
- Tenant may request accommodations at any time—during application, tenancy or eviction.
Who Can Verify Disability or Need for Reasonable Accommodation?

“Depending on the individual’s circumstances, information verifying that the person meets the [FHAA’s] definition of disability can usually be provided by the individual himself or herself… A doctor, medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.”

What is a Reasonable Modification?

- This is a change to the building or unit that allows a person with a disability to access or use the housing.
- The tenant must pay to install the modification and to restore the unit to prior condition if the changes could interfere with next tenant’s use.
  - EXCEPTION: If the housing provider receives certain federal financial assistance, the housing provider pays.
- Modifications must be correctly installed and comply with codes, e.g., shower grab bars.
Making Decisions Based on Actual Behavior is Different from Responding to Stereotypes

- A landlord can ask about tenant history and tenancy-related behavior, such as evictions, credit history, income, criminal background, etc.
  - SO LONG AS these standards are applied equally to all applicants.

- Making decisions based on stereotypes of how a person with a certain disability will behave violates the law.

- Making decisions based on actual behavior-as-a-tenant is legal.
Can a Landlord talk about my Accommodations with other Tenants?

- All application, tenant, and guest information about disabilities is confidential.
- A landlord may not disclose that information to anyone.
- A tenant can authorize release of the information, but is not obligated to release that information.
Filing a Housing Discrimination Complaint

- U.S. Department of Housing & Urban Development (HUD): 800-669-9777
  www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process

- California Department of Fair Employment & Housing (DFEH): 800-884-1684
  www.dfeh.ca.gov/complaint-process/file-a-complaint/

- Local fair housing agency
  - Housing Rights Center: 800-477-5977
  - Fair Housing Council of San Fernando Valley: 818-373-1185
  - Fair Housing Foundation (LA County): 562-989-1206
For More Information, Contact:

Mental Health Advocacy Services, Inc.
3255 Wilshire Boulevard, Suite 902
Los Angeles, California 90010
www.mhas-la.org

For an intake or if you have questions, call us at 213-389-2077.

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