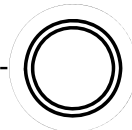


Housing Rights of Survivors with Disabilities

November 10, 2015



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SILICON VALLEY**

HOUSING JUSTICE



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Housekeeping

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- Materials were emailed to registrants this morning and will be emailed again after the webinar, along with evaluations.
- Materials and the recording will be posted at www.nhlp.org/OVWgrantees.
- Evaluations and CLE certificates will be emailed after the webinar.
- Getting to know you. ***Poll***

What we're covering today

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- **Common housing issues faced by survivors with disabilities**
- **Housing rights and protections available for survivors with disabilities**
- **Using reasonable accommodation laws to advocate for survivors' housing needs**

Domestic & sexual violence & disability

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- **Women with disabilities are at a 40% greater risk of violence than women without disabilities.**
- **Women with disabilities are much more likely to have a history of unwanted sex with an intimate partner.**
- **80% of women and 30% of men with intellectual disabilities have been sexually assaulted.**
- **Children with disabilities are more than twice as likely to be physically abused and more than twice as likely to be sexually abused than children without disabilities**

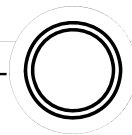
Source: National Coalition Against Domestic Violence. Fact Sheet attached

Tactics of abuse

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- Abusers maintain power over survivors with disabilities through control of:
 - Medicine, medical equipment, or mobility aids
 - Disability services, including access to case managers
 - Access to family members and friends
 - Communication devices & services
 - Access to transportation
 - Social bias or stigma surrounding people with disabilities
- All of the above and other tactics may impact the survivor's ability to obtain & maintain housing
- ***Question:*** What other tactics have you encountered?

Common Housing Issues



**SURVIVORS WITH DISABILITIES
FACE MANY OBSTACLES TO
ACCESSING AND MAINTAINING
HOUSING**

Obstacles to Finding Housing

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- **Poor rental, credit, or criminal history due to disability**
- **Lack of units that are accessible for people with mobility impairments**
- **Refusal to rent to survivor who has a service animal**
- **Stereotypes about individuals with disabilities**
- **Inability to find an affordable unit in a safe neighborhood**
- **Insufficient income to pay the rent**

Obstacles to Maintaining Housing

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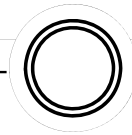
- Survivor needs a safety transfer, but housing provider says that it lacks another accessible unit
- Survivor needs a modification to make the apartment physically accessible
- Survivor needs additional safety measures that are tailored to his or her disability
- Survivor in subsidized housing may be absent from the unit during hospitalization or treatment
- Survivor needs disability-related changes in administrative policies or rules

Disability and Evictions

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- **Survivor may be unable to fulfill a lease or program requirement due to disability or fear of abuse. Examples:**
 - Inability to leave the unit to pay rent or to attend meetings at the housing provider's office
 - Inability to exclude abuser from the unit
 - Failure to pay the rent on time due to condition related to the disability
 - Exhibition of disruptive behavior caused by disability-related symptoms

Reasonable Accommodation



What is a Reasonable Accommodation?

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- A reasonable accommodation is a **change** in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

Laws Providing for Reasonable Accommodation

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- The right to reasonable accommodation arises out of fair housing law.
- FHA: 42 U.S.C. § § 3604, *et seq*
- Section 504 of Rehabilitation Act:
29 U.S.C. § 794
- ADA: 42 U.S.C. §§ 12131, *et seq*
 - (*and ADA Amendments Act of 2008*)
- State laws, such as California's
Fair Employment & Housing Act



When Must a Housing Provider Grant a Request for Reasonable Accommodation?

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When a qualified person with a disability makes a request that is:

NECESSARY + REASONABLE = MUST GRANT ACCOMMODATION

Federal Definition of Disability for the Purpose of Reasonable Accommodation

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- **Any person who:**
 - has a physical or mental impairment that substantially limits one or more major life activities;
 - has a record of such impairment; or
 - is regarded as having such an impairment
- **State law can be more broad**

Direct Threat

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- An accommodation may be denied if the tenant poses a direct threat to the health and safety of others. This must be **objective**, not subjective.
- Must look at nature, duration, severity of risk of injury, probability injury will occur, any accommodations that could eliminate the direct threat.
- NOT the same as the actual and imminent threat rule under VAWA
- **Question:** What arguments have you made when a landlord alleges a direct threat? Were you successful?

Drug Use

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- A **current** illegal user of a controlled substance is not disabled for the purposes of reasonable accommodation.
- However, an individual with a disability can be an alcoholic or past drug user who is in **recovery**
 - Successfully completed a drug rehabilitation program
 - Currently in a rehab program
 - Otherwise clean, sober and not using controlled substances

Necessary

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- **Requested accommodations must be necessary because of the tenant's disability.**
 - This means that there is a nexus or connection between the disability and the requested accommodation.
- **The change enhances the tenant's use and enjoyment of the unit by ameliorating the effects of the disability.**

Reasonable

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- No **undue financial or administrative burden** on the landlord or housing provider
 - Considerations for undue financial burden: benefit to tenant, costs, financial resources, and availability of less expensive accommodation.
 - Will often cause *some* financial burden, which must be absorbed by the housing provider.
- Can not **fundamentally alter** the nature of the program.
 - Fundamental Alteration: the request would require the provider to change the nature of the services it provides

How a Request is Made

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- Requests may be oral or written.
 - If possible, it is always best to make them in writing, but doing so is not necessary.
- The reasonable accommodation process begins once a tenant tells a housing provider that they are disabled and need something changed in order to accommodate that disability.

How to Make a Request

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- **Disability**: State that the tenant has a disability. It does NOT need to say the name of the disability, just the symptoms that necessitate the accommodation.
- **Accommodation**: The request should state what accommodation the tenant is looking for.
- **Necessary**: The request should state how the accommodation is related to the person's disability and how it will help them access, utilize, or remain in the housing program.
- ***Poll question***:

Verification of Disability

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Three possibilities

- 1. If a person's disability is obvious or known, *and* the need for the requested accommodation is known, then the housing provider should not ask for any more information.
- 2. If the disability is known or obvious, *but* the need is not, then the housing provider should ask only for information necessary to verify the need for the accommodation.
- 3. If *neither* the disability *nor* the need for the accommodation is readily apparent, the housing provider should ask for verification of both the disability and the need for the accommodation.

Denial of Accommodation

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- If the housing provider finds that the requested accommodation is not reasonable, its obligation does not end.
- The provider must engage in an **interactive process** and try to determine with the tenant if another accommodation is feasible.
- If no alternative accommodation is agreed to, it is treated as a **denial** of the original reasonable accommodation request.
- For federally assisted housing – the Section 504 hearing may substitute as the interactive process.

Disability and Evictions: Problem

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- Carol is a survivor of domestic violence. She obtained a restraining order and her husband moved out. Her doctor, who treats her for anxiety and depression suggested that she would benefit from the companionship of a dog. He also believes that the dog would make her feel more safe and secure. The apartment complex has a “no pets” policy and she has been served with a notice of eviction.
- **Question:** What if housing provider: wants proof of vaccination, limits places where dog can go on property, limits the size of the dog, and/or requires dog to be muzzled at certain times?
- What do you think of these restrictions? What more might you want to know to determine if these are reasonable restrictions?

Section 504

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- Entities that receive federal assistance are covered: *e.g.* PHAs, HUD Multifamily Properties, Domestic Violence Shelters, Transitional Housing Units, etc.
- Requires affirmative steps to make federally assisted housing accessible to people with disabilities
 - *Heightened obligation to make sure that all people with disabilities can use federally-funded programs*



Possible Steps for Section 504 Compliance

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- **Self-evaluation**
- **Needs assessment of the need for wheelchair accessible units**
- **Designated Section 504 Coordinator**
- **Adopt grievance procedures**
- **Notify participants of non-discrimination**
- **Adopt a Reasonable Accommodation policy**



Admissions

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- Affirmative outreach to landlords
- Marketing to people with disabilities
- Considering disability as a mitigating factor when determining eligibility – for example, where there are problems with the rental history related to the disability
- Rescheduling meetings/holding them in the applicant's home or accessible location (this can apply to in-place tenants, too)
- Alternative forms of communication
- Accepting co-signors for people who are low-income because of disability



Locating Voucher Unit

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- Provide current listing of known accessible units
- Extending voucher search time
- Increasing payment standard
- Renting from a relative
- Unit Transfers



Occupancy

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- Unit size – extra rooms for disability-related needs
- Must allow live-in aide
- Must allow service/companion animals
 - Includes shelters & congregate living situations
- Increase in utility allowance
- Switching location of unit
- Parking



Eviction/Termination

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- **Can request reasonable accommodation at any time, including after eviction/termination has begun**
 - Landlord must consider RA requests until judgment of eviction is entered by the court
- **Must consider whether or not a RA would allow a person with a disability to remain**
- **Can reinstate voucher/tenancy**
- **Examples**
 - Direct Threat/disability-related behavior
 - Unauthorized occupant
 - Inability to comply with program policies

Enforcement

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- HUD
- Federal Court
- State Court
- Writ of Mandamus

Contact Information

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<http://www.nhlp.org/OVWgrantees>

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