Housing Rights of Survivors with Disabilities
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FACILITATED BY
NATIONAL HOUSING LAW PROJECT
TRAINERS
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LAW AND POVERTY
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HOUSING JUSTICE

National Housing Law Project
Housekeeping

- 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. **Polls** (2)
About NHLP

• We are:
  o A national technical assistance provider for Office on Violence against Women (OVW) grantees.
  o Available to provide training, materials, and support on housing issues affecting survivors of domestic violence, sexual assault, and stalking.
  o More information: http://www.nhlp.org/OVWgrantees
What we’re covering today

• Common housing issues that survivors with disabilities face
• Housing rights and protections available for survivors with disabilities
• Using reasonable accommodation laws to advocate for survivors’ housing needs
Domestic & sexual violence & disability

- 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

- 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

- 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

- 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

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

• 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

- 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?

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

• 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

• 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

- A **current** illegal user of a controlled substance is not disabled for the purposes of reasonable accommodation.

- However, an individual with a disability can include 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**

- 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

- 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

- 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

- **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**:
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

- 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

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 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

- 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

- 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

- 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

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

- 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

- 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

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