

# Reasonable Accommodation

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# Fair Housing Laws

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- ❑ **Fair Housing Amendments Act (FHAA)**, 42 U.S.C. §§ 3604 et seq. Federal law covering all dwellings except (1) an owner-occupied building of four or fewer units and (2) sale of a single-family house without rental agents.
- ❑ **Section 504 of the Rehabilitation Act**, 29 U.S.C. § 794. Federal law covering any program or activity (including state, state departments and agencies and housing providers) that receive federal funds.
- ❑ **Americans with Disabilities Act (ADA), Title II**, 42. U.S.C. §§ 12131 – 12165. Federal law covering services, programs or activities of a public entity; **Title III**, 42 U.S.C. §§ 12181 – 12189. Federal law covering privately owned public accommodations if operation affects interstate commerce
- ❑ **California Fair Employment & Housing Act**

# Protected Classes

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State and federal fair housing laws protect people in the following categories:

- Race, Color, National Origin, Ancestry
- Familial Status, Marital Status
- Religion, Sex/Gender, Sexual Orientation
- Age, Source of Income, Medical Condition, Genetic Information
- **Disability**

# Who is Person with a Disability?

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- Individual with handicap (disability) defined:  
Physical or mental impairment that:
  - limits 1 or more life activities, or
  - has a history of impairment, or
  - is regarded as having impairment.

# What is a reasonable accommodation?

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- A change in rules, policies, practices or services,
- When such change is necessary,
- To afford a person with a disability an equal opportunity to use and enjoy a dwelling.

*Reasonable accommodations are powerful tools that allow people with disabilities to obtain and maintain housing.*

# When must a housing provider grant a request for an accommodation?

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

**NECESSARY + REASONABLE =  
MUST GRANT THE ACCOMMODATION**



# Necessary

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- Frees the tenant from a rule, policy, or practice that interferes with the person's **right to use and enjoy the dwelling**.
- Enhances the person's quality of life by ameliorating the effects of the disability.
- Enables the tenant to satisfy the essential requirements of tenancy.
- Must be a nexus between disability and need for accommodation.

# Reasonable

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





# Direct Threat Exception

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- A reasonable accommodation may be denied if granting that accommodation will:
  - ❑ Create a direct threat to the health or safety of other tenants; or
  - ❑ Result in substantial physical damage to the property of others.
  - ❑ Must look at nature, duration, severity of risk of injury, probability injury will occur, any accommodations that could eliminate the direct threat.

# 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 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

# 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.

# Interactive Process

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- Primary consideration is given to the RA request as made by the person with the disability.
- If the request poses an excessive burden on the housing provider, the provider must still engage in the interactive process to determine if an alternative, less-burdensome accommodation would offer equally effective results.

# Examples of Accommodations

- Considering disability as a mitigating factor when determining housing eligibility – for example, where there are problems with the rental history related to the disability.
- Accepting co-signors for people who are low-income because of disability.
- Extending voucher search time.
- Allowing a live-in aide.
- Making an exception to a “no pets” policy to allow a companion or service animal (even in shelters).

# Accommodations at 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 reasonable accommodation would allow a person with a disability to remain in the unit
  - Can reinstate voucher/tenancy

# Rosa

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- Rosa tells you at intake that she received a 3-day notice of nonpayment of rent. Rosa explains that she did not pay her rent because she was in the hospital in the beginning of the month. She has the money to pay rent now.
- How would you advise Rosa? How can you help?

# Enforcement

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