

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, source of income, and military or veteran status.
- 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 (Includes hair style/texture)
- 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
- Citizenship
- Immigration status
- Primary language
- Military or veteran status

Source of Income Discrimination: Section 8 & Other Housing Subsidies

- ⦿ In California, it is *illegal* for landlords to refuse to take Section 8 or other housing subsidies, or to treat applicants/tenants with subsidies differently.
- ⦿ Any requirement that an applicant have income equal 2-3 times the monthly rent *must be based on the portion of the rent the tenant will actually pay.*
 - Example: If landlord requires applicant to make 3X the monthly rent, and applicant's portion of the rent will be \$200/month, the tenant cannot be required to receive income of more than \$600/month.

Who must follow fair housing laws?

Housing providers, including:

- ⦿ Landlords
- ⦿ Mobile home parks
- ⦿ Condo complexes and HOAs
- ⦿ Nursing homes/board and cares
- ⦿ Sober living homes
- ⦿ Transitional and interim housing providers
- ⦿ Homeless shelters
- ⦿ Master tenants/sublessors
- ⦿ Housing authorities

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
- ⦿ Mental, physical, and social activities are major life activities
- ⦿ Examples of major life activities: working, eating, breathing, walking, learning, communicating

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**
- ⦿ People who currently use illegal drugs may have an underlying physical and/or mental health disability, which *would* qualify them for reasonable accommodation

“Disability” also includes...

- ⦿ Record or history of disability
 - Includes previously having a disability
- ⦿ Perceived disability
 - Includes people who are regarded as having a disability, even if they do not actually have a disability
- ⦿ Any family member’s disability

Q: Is this Housing Discrimination?

- ◉ Jamie is a veteran who is applying for an apartment. When the landlord goes into the office to get an application for Jamie, Jamie overhears the landlord say to an office worker that they don't like to rent to veterans because they have PTSD and "act crazy." Jamie fills out the application, but is denied. Does Jamie have a claim for housing discrimination based on disability?

Answer

- ◎ Yes! Even if Jamie doesn't actually have PTSD—or any other disability—the landlord's statement is evidence of discrimination based on *perceived* disability. Additionally, in California, there is also a claim for discrimination based on veteran status.

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***

Everyone should be treated the same.

***Mental and physical
disability***

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.
- ◎ **Denial of a reasonable accommodation can be unlawful discrimination.**

Question: Is there a Disparate Impact on People with Disabilities?

- ⦿ A property that requires prospective tenants to apply in-person at the office, which is a second floor walk-up.
- ⦿ A property with a strict “No Pets” policy.

Answers

- ⦿ A property that requires people to apply in-person at their office, which is a second floor walk-up. **Yes! Disparate impact on applicants with mobility issues, as well as those who suffer from mental health disabilities such as social anxiety.**
- ⦿ A property that has a strict “No Pets” policy. **Yes! Disparate impact on tenants who require service or emotional support animals.**

What is a Reasonable Accommodation?

- ⦿ A change in the rules to help a person with a disability access housing or housing-related services
- ⦿ Examples:
 - Waiver of “no pet” rule for service or emotional support animal
 - Paying rent later in the month
 - Request to move to quieter or first floor unit
 - Reserved parking space
 - Extra time to cure lease violation

What Makes an Accommodation Reasonable?

An accommodation 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?

- ⦿ An accommodation is necessary if there is a nexus between the accommodation requested and the limitations of the disability.
- ⦿ Nexus = connection between the request and the disability.

Is there a Connection?: Example 1

A tenant in a large complex has a mental health disability that makes contact with strangers anxiety-provoking. The front door entrance of the building is frequently busy. The tenant makes a reasonable accommodation request to use a side-door entrance typically only for employees.

Answer: Yes. Symptom of tenant's disability is exacerbated by using the front door. Ability to use the side door will diminish the tenant's anxiety and allow equal use and enjoyment of housing.

Is there a Connection? Example 2

A tenant in a large complex has a mental health disability and wants to use the side gate because the main gate is inconvenient.

Answer: No. Without additional information, there appears to be no connection between the inconvenience associated with using the main gate and the 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.

Reasonable Accommodation Request Process: Step 1

- ⦿ Request the Accommodation
- ⦿ Request can come from person with disability or their representative (family member, social worker, attorney)
- ⦿ Request can be made at any time during tenancy: During application, tenancy or eviction (and sometimes even after)

Reasonable Accommodation Request Process: Step 1, Cont.

- ◎ Best Practices for RA Requests
 - Make request in writing (email or text is fine)
 - Keep a copy
 - Indicate that you have a disability (no need to include diagnosis)
 - Explain connection between the disability and accommodation requested
 - Use the words “reasonable accommodation”- Not necessary, but helpful

Reasonable Accommodation Request: Step 2 - The Interactive Process

- ◎ Housing provider *may not* deny request without engaging the tenant in dialogue
 - If the disability is not obvious or known to the landlord, landlord can ask for verification of disability
 - If the connection between the accommodation and the disability is not clear, landlord can request verification of disability-related need for accommodation (but *cannot* demand medical records or diagnoses)
 - If landlord thinks the request is unreasonable, they *must* invite discussion about alternative accommodations

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.”

from Joint Statement of the Department of Housing and Urban Development and the Department of Justice,
Reasonable Accommodations Under the Fair Housing Act,
May 17, 2004.

How many reasonable accommodations can tenants ask for?

- ⦿ Tenants can request multiple accommodations!
- ⦿ Examples
 - Applicant requests landlord to consider evidence they will be a good tenant despite disability-related credit issue
 - Tenant requests to pay rent in person at management office because disability makes using virtual payment platform challenging
 - Tenant who receives eviction notice requests more time to pay rent or comply with lease

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.
- ⦿ Landlords must make decisions based on actual behavior as a tenant, not based on stereotypes of how a person with a certain disability will behave.

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.

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_opportunity/complaint-process
- ◎ California Department of Fair Employment & Housing (DFEH):
800-884-1684 www.dfeh.ca.gov/complaint-process/file-a-complaint/ Find a list of fair housing resources from DFEH here: <https://bit.ly/3AdfZSh>
- ◎ 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.

For California Relay Service TTY, call 800-735-2929

Disclaimer: This material is for educational purposes only and does not constitute legal advice. If you have a legal question, please contact MHAS, your local fair housing council or another attorney of your choice.

This material is based on work supported by the Department of Housing and Urban Development (HUD) under FHIP Grant # FEO1900435. Any opinion, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of HUD. (rev. 03/01/2021)