



Fair Housing Workshop

Sarah Steinheimer
Regional Counsel of Housing
Legal Services of Northern California

Nathanael Hill
Equal Opportunity Specialist
U.S. Department of Housing and Urban
Development

Sarah Ropelato
Managing Attorney
Legal Services of Northern California

Legal Services of Northern California



Mission:

“To provide quality legal services to empower the poor to identify and defeat the causes and effects of poverty within our community, efficiently utilizing all available resources.



Legal Services of Northern California



Offices:

- Sacramento
 - Auburn
 - Chico
 - Eureka
 - Redding
 - Ukiah
 - Vallejo
 - Woodland
-

Legal Services of Northern California



Service Priorities:

- Preservation of Housing
 - Health Care
 - Enhancing Economic Stability
 - Support for Families, Family Safety and Stability
 - Civil Rights
 - Education
 - Serving Populations with Special Vulnerabilities
-

Legal Services of Northern California



Special Programs:

- LSNC Health Program
 - Health Insurance Counseling and Advocacy Program
 - Senior Legal Hotline
 - Western States Pension Assistance Project
 - SeniorLink (Yolo County)
-

HUD's Office of Fair Housing and Equal Opportunity



Mission:

“To create equal housing opportunities for all persons in America by administering laws that prohibit discrimination in housing on the basis of race, color, religion, national origin, sex, disability, and familial status.”

Office of Fair Housing and Equal Opportunity



FHEO Organization

- 10 Regional Offices
 - Region IX
 - Covers CA, HI, NV, AZ and Pacific Territories
 - Headquarters is located in San Francisco
 - Field Offices in Los Angeles, Santa Ana, Honolulu, and Las Vegas
 - FHEO is divided into three “Branches”
 - Intake
 - Enforcement
 - Program Compliance
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Office of Fair Housing and Equal Opportunity



FHEO Jurisdiction

- Extends to all aspects of housing including sales, advertising, financing, rental, insurance, design, and construction.
- In a given year this potentially extends to:
 - 1,840,000 homes for sale*
 - 34,073,000 rental units across the United States**
 - 2,030,000 mortgage originations***

*National Association of Realtors

**US Housing Market Conditions Data

***Mortgage Bankers Association of America

Civil Rights Laws Enforced by FHEO

- Title VIII of the Civil Rights Act of 1968, as amended, aka The Fair Housing Act
 - Title VI of the Civil Rights Act of 1964
 - Section 504 of the Rehabilitation Act of 1973
 - Section 109 of Title I of the Housing and Community Development Act of 1974
 - Title II of the Americans w/ Disabilities Act of 1972
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A Year to Remember



50th

Anniversary

The Fair Housing Act of 1968:
50 Years of Opening Doors

If you believe you may be a victim of housing discrimination because of race, color, national origin, religion, sex, disability, or familial status contact HUD at 1-800-669-9777 or www.hud.gov/fairhousing.



Topics of Discussion

- HUD Criminal Records Guidance
 - Violence Against Women Act
 - Reasonable Accommodations
 - Reasonable Modifications
 - Service/Support/Assistance Animals
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HUD

Criminal Records
Guidance

HUD Criminal Records Guidance

- As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort.
 - The United States prison population of 2.2 million adults is by far the largest in the world.
 - As of 2012, the United States accounted for only about five percent of the world's population, yet almost one quarter of the world's prisoners were held in American prisons.
-

HUD Criminal Records Guidance

- Since 2004, an average of over 650,000 individuals have been released annually from federal and state prisons and over 95 percent of current inmates will be released at some point.
 - Access to safe, secure, and affordable housing is critical to their successful reentry to society.
 - But many face significant barriers to securing housing, including public and other federally-subsidized housing, and their record may not be related to being a bad neighbor.
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HUD Criminal Records Guidance

While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters of one race or national origin over another (i.e. disparate impact).

HUD Criminal Records Guidance

Disparate Impact/Discriminatory Effects

HUD defined a practice with a “discriminatory effect” as one that “actually or predictably”:

- (1) Results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or
 - (2) Has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.
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HUD Criminal Records Guidance

Disparate Impact/Discriminatory Effects

Thus, where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.

HUD Criminal Records Guidance

- African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.
 - Criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.
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HUD Criminal Records Guidance

- **African Americans**
 - 36 % of prison population
 - 12 % of U.S. population
 - **Hispanics**
 - 22% of prison population
 - 17% of U.S. population
 - **Non-Hispanic Whites**
 - 34% of prison population
 - 62% of U.S. population
-

HUD Criminal Records Guidance

Three-Part Burden-Shifting Test

1. Evaluating Whether the Criminal History Policy or Practice Has a Discriminatory Effect
 2. Evaluating Whether a Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest
 3. Evaluating Whether There is a Less Discriminatory Alternative
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HUD Criminal Records Guidance

1.

Evaluating Whether the Criminal History Policy or Practice
Has a Discriminatory Effect

HUD Criminal Records Guidance

2.

Evaluating Whether a Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

Bald assertions based on generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk than any individual without such a record are not sufficient to satisfy this burden.

HUD Criminal Records Guidance

Exclusions Because of Prior Arrest

A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.

HUD Criminal Records Guidance

Exclusions Because of Prior Conviction

A housing provider that imposes a blanket prohibition on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden.

HUD Criminal Records Guidance

Resident Safety and the Protection of Property

- Ensuring resident safety and protecting property are often considered to be among the fundamental responsibilities of a housing provider, and courts may consider such interests to be both substantial and legitimate, assuming they are the actual reasons for the policy or practice.
 - A housing provider must, however, be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property.
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HUD Criminal Records Guidance

3.

Evaluating Whether There is a Less Discriminatory Alternative

Individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account.

HUD Criminal Records Guidance

Less Discriminatory Alternatives

- Individualized evidence might include: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts.
 - By delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process.
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HUD Criminal Records Guidance

Statutory Exemption to Fair Housing Act Liability

Section 807(b)(4) of the Fair Housing Act provides that the Act does not prohibit “conduct against a person because such person has been convicted ... of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).” Accordingly, a housing provider will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.

HUD Criminal Records Guidance

Disparate Treatment/Intentional Discrimination

A housing provider may violate the Fair Housing Act if the housing provider intentionally discriminates in using criminal history information. This occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic.

HUD Criminal Records Guidance

Background Screening Policies for HUD-Assisted, Housing Choice Voucher program, and Public Housing Tenants

- Crimes that may be justifications under the landlord's selection plan for adverse actions against a tenant or applicant:
 1. Drug-related criminal activity
 2. Violent criminal activity
 3. Threats to other residents or the owner
 - Crimes that require adverse action against a tenant or applicant:
 1. Evicted from federally assisted housing for drug-related activity in the past three years (except those who have completed rehab programs)
 2. A pattern of illegal drug use
 3. Subjects of lifetime sex offender registration
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VAWA:

Violence Against
Women Act

Violence Against Women Act

Violence Against Women Reauthorization Act of 2013:
Implementation in HUD Housing Programs

Violence Against Women Act: Who is Covered

- Applicants and Tenants of HUD Housing Programs who are victims of domestic violence, dating violence, sexual assault or stalking regardless of sex, gender identity or sexual orientation
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Violence Against Women Act: Who is Not Covered

- Guests, unassisted household members, and live-in aides are not eligible for protections. It is limited to tenants (and applicants) only.
 - Note: As a reasonable accommodation, a tenant can request VAWA protections if a live-in aid is a victim and may request an emergency transfer for household.
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Violence Against Women Act: Definitions

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Violence Against Women Act: Definitions

Dating violence means violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 1. The length of the relationship;
 2. The type of relationship; and
 3. The frequency of interaction between the persons involved in the relationship
-

Violence Against Women Act: Definitions

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's individual safety or the safety of others; or
 2. Suffer substantial emotional distress.
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Violence Against Women Act: When It Applies

- ❑ Section 202 Supportive Housing for the Elderly
 - ❑ Section 811 Supportive Housing for Persons with Disabilities
 - ❑ HOPWA Program
 - ❑ HOME Investment Partnerships Program
 - ❑ Homeless programs including
 - Emergency Solutions Grants
 - Continuum of Care
 - ❑ Multifamily Housing under Section 236 of National Housing Act
 - ❑ Public Housing, including tenant-based and project-based rental assistance
 - ❑ Housing Trust Fund
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Violence Against Women Act: What Does it Do

Notification and Certification Requirements:

- Notification of occupancy rights provided to all tenants and applicants
 - Certification form provided to all tenants and applicants
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Violence Against Women Act: What Does it Do

Denial or termination Protections

- An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

 - A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:
 - The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and
 - The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.
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Violence Against Women Act: Adverse Factors

- In addition to prohibiting a denial, termination, or eviction based on the fact that the applicant or tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, the VAWA Final Rule prohibits covered housing providers from denying assistance or admission, terminating participation in, or evicting a tenant based on an **adverse factor**, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.
-

Violence Against Women Act: Adverse Factors

- An adverse factor refers to any factor that can be used as a basis for denying admission, terminating assistance, or evicting a tenant.
 - On the surface, adverse factors may appear unrelated to domestic violence, dating violence, sexual assault, or stalking and may present legitimate reasons for denial, termination, or eviction. However, the presence of an adverse factor may be due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking. An adverse factor may be present during much of an abusive relationship, or it may present itself only when a victim is attempting to leave, or has left, the abusive relationship.
 - Examples include:
 - Poor credit history
 - Poor rental history
 - Criminal record
 - Failure to pay rent
-

Violence Against Women Act: Adverse Factors

- Owners may consider documentation of adverse factors resulting from being a victim that otherwise deems the individual ineligible
 - Applicant or tenant must inform the Owner that he/she is a victim and provide enough information for the Owner to make a determination regarding adverse factor
 - The Owner may ask for clarification or additional information
 - The Owner must make an objective reasonable determination of whether the adverse factor is a direct result of the applicant or tenant being or having been a victim
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Violence Against Women Act: What Does it Do

Construction of Lease Terms/Terms of Assistance Protections

- An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as
 - A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or
 - Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident
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Violence Against Women Act: Emergency Transfer Plans

- Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan. The emergency transfer plan must provide that a tenant receiving rental assistance through, or residing in a unit subsidized under, a covered housing program who is a victim of domestic violence, dating violence, sexual assault, or stalking qualifies for an emergency transfer if:
 - The tenant expressly requests the transfer; and
 - The tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or
 - In the case of a tenant who is a victim of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer
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Violence Against Women Act: Emergency Transfer Plans

- The emergency transfer plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists.
 - The emergency transfer plan must incorporate strict confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.
 - The emergency transfer plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.
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Violence Against Women Act: Emergency Transfer Plans

- The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.
 - The emergency transfer plan must describe reasonable efforts the covered housing provider will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. The plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA out of the covered housing provider's program or project, and a tenant who is seeking an external emergency transfer under VAWA into the covered housing provider's program or project.
-

Violence Against Women Act: Documentation

Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking

- Request for documentation. (1) Under a covered housing program, if an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections under § 5.2005, or remedies under § 5.2009, the covered housing provider may request, in writing, that the applicant or tenant submit to the covered housing provider the documentation specified in paragraph (b)(1) of this section.
 - Permissible documentation and submission requirements. (1) In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit. SR1
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Slide 48

SR1

Maybe add the forms or shorthand - I think housers are surprised that it's tenant option and can be self-certification.

Sarah Ropelato, 3/30/2018

Violence Against Women Act: Preferences

Local Preferences in Admission to Public Housing Programs

- PHAs/Housing Providers may establish a preference for victims of dating violence, sexual assault, and stalking, in addition to domestic violence
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Violence Against Women Act: Remedies Available

Lease Bifurcation

A covered housing provider may bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual:

1. Without regard to whether the household member is a signatory to the lease; and
 2. Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.
-

Violence Against Women Act: Remedies Available

Reasonable Time

If a covered housing provider exercises the option to bifurcate a lease, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

- A. Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease; or
 - B. Establish eligibility under another covered housing program; or
 - C. Find alternative housing.
-

State Law DV Protections

Protections Against Terminations: Cal. Code of Civ. Proc. 1161.3

- Landlords prohibited from evicting tenants based on acts of domestic violence, sexual assault, human trafficking, stalking, elder/dependent adult abuse.
 - If tenant provides documentation of incident to landlord

AND
 - Person committing act is not a tenant
-

State Law DV Protections

Protections Against Terminations: Cal. Code of Civ. Proc. 1161.3

- Documentation = Temporary Restraining Order, Protective Order or Police Report w/in last 180 days
 - Applies to all tenancies (not just federally subsidized)
-

State Law DV Protections

Protections Against Terminations: Cal. Code of Civ. Proc. 1161.3

- Landlord may be able to terminate for acts of domestic violence, sexual assault, human trafficking, stalking, elder/dependent adult abuse IF
 - If after getting restrainer order, survivor allows abuser on premises;
 - Landlord must give 3 day notice to cure before terminating
-

State Law DV Protections

Ability to Break Lease – Civil Code 1946.4

- Under certain circumstances, survivors can break their lease with no further liability beyond 14 days.
 - Must notify the landlord (in writing) that you or a family member is a survivor of domestic violence, sexual assault, human trafficking, stalking, elder/dependent adult abuse.
 - Must give landlord at least 14 days notice.
 - Proof required: Restraining order, Police Report, Third Party Documentation
-

State Law DV Protections

Changing Locks– Civil Code 1941.5 and 1941.6

- Survivor of domestic violence, sexual assault, or stalking must inform landlord in writing (with 24 hours notice) that the lock needs to be changed.
 - Proof required: restraining order or police report documenting abuse from the last 180 days
 - If survivor lives with the abuser can only have locks changed if have a restraining order that prohibits abuser from entering the home (but still on hook for rent).
 - If landlord doesn't respond survivor can change locks on their own.
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Stretch Break



Reasonable Accommodations

Defining Disability

- A physical or mental impairment which substantially limits one or more major life activities.

Note: State law definition is broader and does not require that the impairment “substantially” limit the life activity.

OR

- A record of having such an impairment

OR

- Is regarded as having an impairment
-

Defining Disability

Limits One or More Major Life Activities

■ Physical:

- ❑ Caring for one's self
- ❑ Performing manual tasks
- ❑ Walking
- ❑ Seeing
- ❑ Hearing
- ❑ Speaking
- ❑ Breathing
- ❑ Sleeping

■ Mental:

- ❑ Caring for one's self
- ❑ Learning
- ❑ Working
- ❑ Interacting with others
- ❑ Cognitive/Memory

■ Developmental:

- ❑ Ability to learn with onset before age of 18
-

Excluded from Disability Definition

- Current drug user (one who is not recovered or not in recovering program).
 - Sale or manufacture of illegal drugs.
 - Behavior that constitutes direct threat to others or substantial physical damage to property. Must be based on recent and objective evidence.
-

Reasonable Accommodations

... a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

Joint Statement of the Department of Housing and Urban Development and the Department of Justice *Reasonable Accommodations under the Fair Housing Act*

Reasonable Accommodations: Examples

All examples are fact-dependent:

- Request for service, assistance or emotional support animal in no-animal building
 - Request to relocate to ground floor or accessible unit
 - Request for voucher extension to locate suitable rental unit
 - Permitting a live-in aid
 - Foregoing eviction to allow for receipt of mental health tx
-

Reasonable Accommodations: Examples

Parking Spaces:

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider.

Reasonable Accommodations: Submitting a Request

- Made by a person with a disability or someone on their behalf
 - Does not need to mention the Fair Housing Act or use the words “reasonable accommodation”
 - Can be oral or written
 - Can be made at any time (even after eviction proceedings filed)
 - While formal procedures may aid individuals in making requests and may aid housing providers in assessing those requests, they are not required, and if in place, a reasonable accommodation request cannot be denied because any formal procedures were not followed
-

Reasonable Accommodations: Receiving a Request

- A response to an RA Request MAY NOT be unreasonably delayed
 - An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation
 - A RA request MAY NOT be unreasonably denied
 - A RA request MAY NOT be conditioned on payment of a fee or deposit, or the imposition of other terms and conditions
-

Reasonable Accommodations: Inquiring About a Disability

- Limit documentation to that which establishes existence of disability, and nexus (disability-related need)
 - DO NOT ask for medical history or specific diagnosis
 - Doctor, any health care professional (e.g. nurse), social worker, psychiatrist, or other mental health professional (e.g. counselor, psychologist) with knowledge of person's disability can certify disability
 - A housing provider MAY NOT ask for access to medical records
 - Housing providers MUST safeguard all medical documentation by restricting access only to those with a strict need-to-know clearance
 - If the disability is readily apparent or already known to the provider, do not ask for documentation of disability
-

Reasonable Accommodations: What Constitutes a “Direct Threat”

A determination that an individual poses a direct threat *must* rely on an individualized assessment that is based on reliable objective evidence. The assessment must consider:

- The nature, duration, and severity of the risk of injury
 - The probability that the injury will actually occur
 - Whether there are any reasonable accommodations that will acceptably minimize or eliminate the direct threat
 - If there is a history of overt acts, whether the individual has received intervening treatment or medication that has eliminated or acceptably minimized the direct threat
-

Reasonable Accommodations: Denying a Request

A housing provider can deny a reasonable accommodation request if:

- If the request was not made by or on behalf of a person with a disability
 - If there is no disability-related need for the accommodation
 - If providing the request is not reasonable*
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Reasonable Accommodations: What Makes Providing a Request Not Reasonable

Providing a reasonable accommodation request is not reasonable if:

- ❑ It would pose an undue financial or administrative burden
 - ❑ It would fundamentally alter the nature of the provider's operations
-

Reasonable Accommodations: Undue Financial and Administrative Burden

The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as:

- ❑ The cost of the requested accommodation
 - ❑ The financial resources of the provider
 - ❑ The benefits that the accommodation would provide to the requester
 - ❑ The availability of alternative accommodations that would effectively meet the requester's disability-related needs
-

Reasonable Accommodations: Fundamental Alteration of Services

A fundamental alteration is a modification that alters the essential nature of a provider's operations.

Reasonable Accommodations: Interactive Process

If a particular reasonable accommodation poses an undue financial and administrative burden, or it would fundamentally alter the nature of provider's operations, the provider must enter into an interactive process with the disabled person and discuss alternative accommodations that would address the needs of the disabled person.

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation.

Reasonable Accommodations: Who Pays

Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden.

Reasonable Modifications

Reasonable Modifications

... a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises... can include structural changes to the interiors and exteriors of dwellings and to common and public use areas.

Joint Statement of the Department of Housing and Urban Development and the Department of Justice *Reasonable Modifications under the Fair Housing Act*

Reasonable Modifications: Examples

All examples are fact-dependent:

- Installing grab bars
 - Installing a ramp
 - Installing front-loading washer/dryer
 - Installing automatic shut off faucet for people with cognitive disabilities
 - Providing visual alarm for hearing impaired persons
 - Providing auditory alarm for visually impaired persons
-

Reasonable Modifications: Submitting a Request

- Made by a person with a disability or someone on their behalf
 - Does not need to mention the Fair Housing Act or use the words “reasonable modification”
 - Can be oral or written
 - Can be made at any time
 - While formal procedures may aid individuals in making requests and may aid housing providers in assessing those requests, they are not required, and if in place, a reasonable modification request cannot be denied because any formal procedures were not followed
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Reasonable Modifications: Inquiring About a Disability

- There must be an identifiable relationship (nexus) between the requested modification and the individual's disability
 - If a person's disability is obvious, or otherwise known to the housing provider, and if the need for the requested modification is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the modification.
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Reasonable Modifications: Inquiring About a Disability

- ❑ If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

 - ❑ If a disability is not obvious In response to a request for a reasonable modification, a housing provider may request reliable disability-related information that:
 1. Is necessary to verify that the person meets the Act's definition of disability,
 2. Describes the needed modification, and
 3. Shows the relationship (nexus) between the person's disability and the need for the requested modification.
-

Reasonable Modifications: Receiving a Request

- A person with a disability must have the housing provider's approval before making the modification
 - A response to an RM Request MAY NOT be unreasonably delayed
 - An undue delay in responding to a reasonable modification request may be deemed to be a failure to provide a reasonable modification
 - A RM request MAY NOT be unreasonably denied
 - If the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request
 - A housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made
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Reasonable Modifications: Receiving a Request

Key Points:

- The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make modifications
 - In general, the housing provider cannot insist on an alternative modification or an alternative design
 - If the housing provider wants a more costly design, then the provider must cover those costs
 - The housing provider may require a request for a reasonable modification include a description of the modification
 - The housing provider may require the requester obtain any necessary building permits and that work be performed in a “workmanlike manner”
 - Reasonable modifications are not restricted to the interior of a dwelling, and may also be made to public or common use areas.
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Reasonable Modifications: Paying for a Modification

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.

Reasonable Modifications: Paying for a Modification

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after 03/13/1991 shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes.

Reasonable Modifications: Paying for a Modification

Housing providers that receive federal financial assistance are also subject to the requirements of Section 504, which prohibits discrimination based on disability, and which obligates housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities (unless doing so poses an undue financial and administrative burden or a fundamental alteration of the program).

Reasonable Modifications: Making the Modification

- The housing provider may:
 - Require the requester obtain any necessary building permits
 - Require that work be performed in a “workmanlike manner”

 - The housing provider may NOT:
 - Require the requester obtain additional insurance or special liability insurance
 - Increase the security deposit
 - Insist on the use of a particular contractor
-

Reasonable Modifications: Who Pays for Upkeep/Maintenance

- The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by them.
 - If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for upkeep and maintenance.
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Reasonable Modifications: Restoring the Modification

- Where “it is reasonable to do so,” the tenant is obligated to restore, and pay for the restoration of, those portions of the interior of the dwelling when they move out if requested by the housing provider.
 - In general, if the modifications do not affect the housing provider’s or subsequent tenant’s use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state.
 - Housing providers may NOT require restoration of modifications made to the exterior of the dwelling or the common area.
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Service/Support/ Assistance Animals

Service/Support/Assistance Animals

Assistance animals perform many disability-related functions, including, but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.

FHEO Notice 2013-01: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

Service/Support/Assistance Animals

If a property does not allow animals, or allows pets but has a pet deposit or charges extra rent for pets, then persons with disabilities may request a reasonable accommodation for a service animal, including an emotional support or assistance animal.

Service/Support/Assistance Animals

Important Rules Regarding Service Animals:

- Service animals ARE NOT Pets = No Pet Deposit or Pet Rent
 - Under the Fair Housing Act and Section 504, Service animals Do Not Need to be Individually Trained or Certified
 - Dogs are NOT the Only Type of Service Animal
 - NO Breed, Size, or Weight Restrictions Apply
-

Service/Support/Assistance Animals: Reasonable Accommodation Requests

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests.

After receiving such a request, the housing provider must consider:

1. Does the person seeking to use and live with the animal have a disability?
 2. Does the person making the request have a disability-related need for an assistance animal?
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Service/Support/Assistance Animals: Reasonable Accommodation Requests

If the answers to both questions are “yes,” the Fair Housing Act and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would pose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services.

Service/Support/Assistance Animals: Inquiring About a Disability

- Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal.
 - If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for the assistance animal.
 - A housing provider may NOT ask for documentation showing the disability or the disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider.
 - A housing provider MAY NOT ask for access to medical records or medical providers
 - A housing provider MAY NOT ask for detailed or extensive information or documentation of a person's disability
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Service/Support/Assistance Animals: Receiving a Request

- A response to an RA Request MAY NOT be unreasonably delayed
 - An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation
 - A RA request MAY NOT be unreasonably denied
 - A RA request MAY NOT be conditioned on payment of a fee or deposit, or the imposition of other terms and conditions
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Service/Support/Assistance Animals: Reasonable Accommodation Requests

Reasons for Denial that are NOT in Violation:

- If the specific service animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation

 - If the specific service animal in question would cause substantial physical damage to the property of others
 - A determination that the service animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct.
 - NOT on mere speculation or fear about the types of harm or damage an animal may cause and NOT on evidence about harm or damage that other animals have caused.
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Service/Support/Assistance Animals: Reasonable Accommodation Requests

Please note:

In situations where multiple laws apply, the ADA definition of “service animal” (narrowly defined as any dog, and in some instances miniature horses, that is individually trained to do work or perform tasks for the benefit of an individual with a disability) MAY NOT be used as a justification for reducing one’s obligations under the federal Fair Housing Act or Section 504.

In situations where the housing provider is subject to only the federal Fair Housing Act, the ADA definition DOES NOT apply.

Internet Resources

- Legal Services of Northern California <https://lsnc.net/>
 - U.S. Dept. of Housing and Urban Development (HUD) www.hud.gov
 - HUD's Fair Housing Laws www.hud.gov/offices/fheo/FHLaws/Index
 - April 4, 2016 Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions
https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF
 - 24 CFR Part 100: Implementation of the Fair Housing Act's Discriminatory Effects Standard; Final Rule
<https://www.hud.gov/sites/documents/DISCRIMINATORYEFFECTRULE.PDF>
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Internet Resources

- Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs
<https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>
 - Violence Against Women Reauthorization Act of 2013: Additional Guidance
 - <https://www.hud.gov/sites/documents/17-05HSGN.PDF>
 - <https://www.hud.gov/sites/documents/PIH-2017-08VAWRA2013.PDF>
 - Joint Statement on Reasonable Accommodations under the FHA
www.hud.gov/offices/fheo/library/huddojstatement
 - Joint Statement on Reasonable Modifications under the FHA
www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar_08.pdf
 - FHEO Notice 2013-01: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs
https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF
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QUESTIONS?

Contact Information

Sarah Steinheimer
Regional Counsel of Housing
Legal Services of Northern California
515 12th Street
Sacramento, CA 95814
ssteinheimer@lsnc.net
916.551.2150

Sarah Ropelato
Managing Attorney
Legal Services of Northern California
515 12th Street
Sacramento, CA 95814
sropelato@lsnc.net
916.551.2150

Nathanael R. Hill
Equal Opportunity Specialist
U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
One Sansome Street, Suite 1200
San Francisco, CA 94104
415.489.6541
nathanael.r.hill@hud.gov
