Understanding the Protections of Fair Housing & Landlord-Tenant Laws for Persons with Disabilities

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County of Los Angeles Dept. of Mental Health
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Relationship of Fair Housing Laws to California Landlord-Tenant Laws

• California Landlord-Tenant Laws define the rights and responsibilities of landlords and tenants in residential dwellings

• Federal & State Fair Housing Laws provide protections for people with disabilities in housing to ensure equal opportunity & prevent discrimination
Key Areas of Concern

• Application and tenant selection process
• Rental/Lease agreement provisions
• Reasonable Accommodation
• Issues during the tenancy
• Termination of tenancies including lease violations and emergencies
• Confidentiality
Federal & State Fair Housing Laws

Fair Housing Amendments Act of 1988:
Prohibits discrimination in housing based on a person’s race, color, religion, sex, national origin, disability or familial status

California Fair Employment & Housing Act:
all of the above bases plus: marital status, ancestry, sexual orientation and source of income
Federal & State Fair Housing Laws
Prohibitions Specific to Disability

- Discrimination in sale/ rental or to “otherwise make unavailable” or deny;
- Refusal/failure to make reasonable accommodations;
- Refusal/failure to permit reasonable modifications;
- Failure to design/ construct multi-family dwellings according to accessibility rules
What is “Fair” in Fair Housing?

race, color, religion, sex, national origin, family status and sexual orientation

Must treat everyone the same; no special treatment

vs.

Mental and Physical Disability

Must treat everyone the same, UNLESS that would effectively bar access
Definition of Disability

* A physical or mental impairment that limits one or more major life activities;
  
  Makes that activity difficult
  Major Life Activity includes: mental, physical and social activities, as well as working
  Examples: depression, alcoholism, schizophrenia, blindness

  OR

* A record of such an impairment;

  OR

* Being regarded as having such an impairment.
Substance Abuse/Alcohol Use

- Current users of illegal controlled substances are NOT protected by the law;

- People in recovery for substance abuse are protected;

- Alcohol is not illegal so people who use alcohol/ alcoholics are protected by fair housing laws.
Direct Threat Exception

Someone who is a direct threat to the health and safety of others or property is NOT protected by fair housing laws:

– imminent threat but don’t have to wait for actual harm
– objective evidence, not stereotypes & fears
– cannot be “stale”
– provider must attempt a reasonable accommodation, unless he can show that no reasonable accommodation could have eliminated the threat
Housing Applicant Screening & Selection Process

- Landlord must follow the same application, review and selection process for everyone.
- Exception: Some housing/units based on funding sources & specifically reserved for persons with disabilities may permit a different process.
- Exception: An individual with a disability may request reasonable accommodation in any or all aspects of the application/selection process.
## Specific Inquiries

<table>
<thead>
<tr>
<th>Permissible</th>
<th>Impermissible</th>
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<tbody>
<tr>
<td>• Tenant history, if any</td>
<td>• Questions regarding disability based on source of income</td>
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<td>• Ability to pay rent &amp; source</td>
<td>• Personal lifestyle information that is unrelated to being able to comply with lease</td>
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<td>• Ability to comply with lease</td>
<td>• Arrest records are not determinative</td>
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<td>• Criminal convictions</td>
<td>• If housing for persons with disabilities, inquiries seeking specific/detailed info re nature</td>
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<td>• Supportive housing programs - supportive services inquiries permissible but</td>
<td>• and/or severity of disability</td>
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<td>generally best practice is to separate this process from eligibility</td>
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Reasonable Accommodation

Housing providers have an affirmative duty to provide flexibility in rules, policies, practices and procedures when it may be necessary to making housing available to a person with a disability.
Reasonable Accommodation: Key Concepts

- **Purpose**: overcome a barrier to housing - a barrier because of the disability
- **When**: any time – as a housing applicant, resident and even during an eviction process
- **Number**: there is no limit to the number of requests
- **Timing**: the landlord’s delay in responding to the request may be considered a denial
- **Costs**: housing provider can be expected to pay for reasonable cost associated with providing the RA and cannot charge tenant
Reasonable Accommodation Examples

- Accepting alternative references for person who has no tenant history
- Waiving the “three times the rent” rule with a family guarantor
- Flexibility in the rent payment due date because of delay in receipt of disability benefits/illness/hospitalization
- Providing a reserved handicapped parking space, waiving “first come” rule
- Waiving the “no pets” rule for an emotional support/assistive animal
- Care giver exceptions
- Delaying or waiving an eviction if the lease violation was due to the disability
Reasonable Accommodation Analysis

- Does the person meet the definition of “disability?”
- Is the accommodation requested necessary to provide the person with equal access to the dwelling/use & enjoy the dwelling?
- Will granting the accommodation create an undue financial or administrative burden?
- Will granting the accommodation undermine the fundamental purpose of the program?

** This is a case by case analysis based on the facts of the request.
Requesting Reasonable Accommodation

- Decide when to make the request
- Put the request in writing (date the letter)
- Explain why you need the accommodation
- Include verification of need from a medical/mental health provider
- Request a written response within a reasonable but short amount of time (7 – 10 days)
- Include reliable contact information for landlord follow-up
- If mailing, send certified so you have evidence of receipt
What If The Request for Reasonable Accommodation Is Denied?

- Understand the basis of the denial
- Does the landlord need any additional information that will be persuasive?
- Assert the landlord’s obligation to engage in the “interactive process” (California law)
- Propose an alternative accommodation that may work (almost) as well
- Seek a legal remedy – file administrative complaint with DFEH – CA enforcement agency
Reasonable Modifications

• A physical/structural change necessary because of disability
• The requested modification will provide equal opportunity to use and enjoy the dwelling
• Follow the procedure outlined for making a written request for RA
• Tenant pays for modification unless landlord voluntarily agrees to do so OR it’s a federally funded program
• Local government may have funds for modifications
• Requirement to restore premises to original condition unless doing so problematic/not possible
Termination of Tenancy

• State landlord-tenant law applies; local rent control laws (requiring good cause) may apply
• Most common reasons for eviction:
  – Non-payment of rent
  – Conduct violation
• If the basis of the eviction is not related to disability, fair housing laws will NOT help
• Is reasonable accommodation possible?
  – non-payment (illness/ hospitalization – payment plan)
  – conduct violation (disability related – mitigation?)
  – time to move – dismiss eviction – preserve record
Confidentiality

• Landlord & manager are not to release information about tenant to anyone
• Landlord & manager may not discuss any RA’s
• Housing programs with supportive services must separate tenancy files from services component
• No information sharing between property management & services providers (unless written consent of individual)
Additional Resources

• Landlord-Tenant Rights and Responsibilities – *California Tenants* @ [www.dca.ca.gov](http://www.dca.ca.gov)

• California Fair Housing Laws –
  - information, on-line filing of complaints of fair housing violations @ [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

• HUD DOJ Joint Statement on Reasonable Accommodation

• HUD DOJ Joint Statement on Reasonable Modification
  [www.hud.gov/…/reasonable_modifications_mar08.pdf](http://www.hud.gov/…/reasonable_modifications_mar08.pdf)