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

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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
- Mental and Physical Disability

vs.

- Must treat everyone the same; no special treatment
- 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

Permissible

• Tenant history, if any
• Ability to pay rent & source
• Ability to comply with lease
• Criminal convictions
• Supportive housing programs - supportive services inquiries permissible but generally best practice is to separate this process from eligibility

Impermissible

• Questions regarding disability based on source of income
• Personal lifestyle information that is unrelated to being able to comply with lease
• Arrest records are not determinative
• If housing for persons with disabilities, inquiries seeking specific/detailed info re nature and/or severity of disability
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

• California Fair Housing Laws –
  - Information, on-line filing of complaints of fair housing violations @ 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