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Justice in Aging 50 Years Advancing Equity Building Justice
Fighting Senior Poverty Through Law

Using the Reasonable Accommodation Process to Protect Older Tenants Living with Disabilities (Part One)

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JUSTICE IN AGING FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

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Justice in Aging's Commitment to Advancing Equity

To achieve Justice in Aging, we must:

- Advance equity for low-income older adults in economic security, health care, housing, and elder justice initiatives.
- Address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low-income older adults in marginalized communities.
- Recruit, support, and retain a diverse staff and board, including race ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, and economic class.

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- **Fair Housing Act (FHA-Federal)**
 - **Prohibits Discrimination in Housing on the Basis of Actual or Perceived:**
 - Race
 - Color
 - National Origin
 - Religion
 - Sex (Including Gender and Sexual Orientation)
 - Familial Status
 - Disability (Mental and Physical)
 - **Includes Two Provisions:**
 1. It is unlawful to refuse to make reasonable accommodations in rules, policies, practices, and services when necessary to allow the resident with a disability equal opportunity to use the property and its amenities.

2. It is unlawful to refuse to permit residents with disabilities to make reasonable accommodations to either their dwelling unit or to the public and common use areas, at the residents' cost.

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Fair Housing Law

- **Fair Employment and Housing Act (FEHA-State)**
 - **Prohibits Discrimination in Housing on the Basis of Actual or Perceived:**
 - Race
 - Color
 - National Origin (Including Language Use Restrictions)
 - Ancestry
 - Religion
 - Sex
 - Gender
 - Gender Identity
 - Gender Expression
 - Sexual Orientation
 - Marital Status
 - Military or Veteran Status
 - Familial Status (Household with Children Under Age 18 or Pregnant Individuals)
 - Source of Income
 - Genetic Information
 - Age
 - Citizenship
 - Primary Language
 - Immigration Status
 - Disability (Mental and Physical)

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FAIR HOUSING LAW

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 - Race
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 - National Origin
 - Religion
 - Sex (Including Gender and Sexual Orientation)
 - Family Status
 - Disability (Mental and Physical)
 - Includes Two Provisions:
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Fair Housing Law

- Fair Employment and Housing Act (FEHA-State)
 - Prohibits Discrimination in Housing on the Basis of Actual or Perceived
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- Sex
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Other Relevant Laws

- **Section 504 of the 1973 Rehabilitation Act**
- **Americans with Disabilities Act, Title II**
 - Section 504 and ADA Title II can be considered together. Section 504 applies to recipients of federal assistance in the operation of their programs and activities (e.g. private groups that receive funding; public housing authorities, etc.).
 - Title II of the ADA applies to housing that is operated by a governmental entity, including states, cities, or counties.
- Under Section 504 and ADA Title II, the concept of RAs/RMs are merged into one requirement that if a person with a disability needs either an adjustment to policies/rules/services, or a structural modification, the housing provider must provide and pay for it, unless it

is an undue administrative or financial burden. Under these laws, either an accommodation or modification are called accommodations.

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Fair Housing Law-Application

- Landlords
 - Property Management Companies
 - Homeowners Associations
 - Public Housing Authorities
 - Real Estate Agents
 - Home Sellers
 - Property Insurers
 - Builders
 - Mortgage Lenders
 - Tenant Screening Companies
 - Consumer Reporting Agencies
 - Others
-
- Prohibits refusals to make reasonable changes in housing rules, policies, practices, or services where necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling.
 - Prohibits refusals to permit, at the disabled tenant's expense, reasonable modifications when necessary to accommodate a disability.

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Application-Types of Housing

- **Fair Housing Act (Federal) Applies to:**
 - The Fair Housing Act covers most housing. In very limited circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family houses sold or rented by the owner without the use of an agent, and housing operated by

religious organizations and private clubs that limit occupancy to members.

- **Fair Employment and Housing Act (State) Applies to:**
 - Any building, structure, or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families and any vacant land that is offered for sale or lease for the construction thereon of any building, structure, or portion thereof intended to be so occupied. *There are some exemptions.

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Fair Housing Law-How is disability defined?

- Any person who:
 - has a physical or mental impairment that substantially limits one or more major life activities;
 - has a record of such impairment; or
 - is regarded as having such an impairment.
- 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 someone who has successfully completed a drug rehabilitation program, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use.

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What is a reasonable accommodation?

- A reasonable accommodation is a change, adaptation, or modification to a policy, program, or service, which will allow a qualified person with a disability to participate fully in a program or take advantage of a service.
- Reasonable accommodations are necessary for the person with a disability to use and enjoy a dwelling, including public and common use spaces.

- Since persons with disabilities may have unique needs due to their disabilities, in some cases, simply treating persons with disabilities exactly the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling.

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Making Reasonable Accommodation Requests

- Identify the rule, policy, practice, or service at issue.
- State that the person has a disability. While you don't have to explicitly name the disability, it may be helpful, if the client is comfortable.
- It is often necessary, to explain the symptoms that the person experiences due to their disability. This can be necessary when a disability is non-apparent or not commonly understood by the general public. Otherwise, at least establish that the rule/policy/practice/service is a barrier to the person due to their disability.
- Identify the specific accommodation request and explain the nexus between the disability, related symptoms, and the specific accommodation request.

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What is the interactive process?

- An interactive process is when the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations.
- Typically happens when an accommodation request is either questioned or denied.

- The interactive process can be used to identify alternative reasonable accommodations, keeping in mind that the person with a disability is in the best position to confirm what will or won't work as an accommodation.
- Both HUD and the CRD are clear that a housing provider must engage in the interactive process when a RA request is not granted.

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When can a reasonable accommodation be denied?

- A reasonable accommodation can be denied if providing the accommodation is not reasonable, if the request was not made by or on behalf of a person with a disability, or if there is no disability-related need for the accommodation.
- A reasonable accommodation request is not reasonable if:
 1. it would impose an undue financial or and administrative burden on the housing provider;

OR

 2. it would fundamentally alter the nature of the provider's operations

OR

 3. if granting the accommodation would result in a direct threat to the health and safety of other residents or staff (e.g. behavioral health issues, or ESA or service dog threats).

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RA Example #1

- Jane (she/her) has Alzheimer's Disease, a disability that affects her capacity to manage her own finances.
- Jane tells her building manager that her daughter will be paying her rent for this reason and asks if all notices relating to her rent can be sent to her daughter.
- The building manager tells Jane that the management company has a policy of only sending notices to residents—no exceptions. Several months later, Jane receives an eviction notice because her daughter had not known that Jane's rent had been increased.
- Jane files a complaint with HUD because denying a reasonable accommodation is a form of disability discrimination.

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RA Examples #2-Parking

- Reasonable accommodations in parking include:
 - Waiving First Come, First Served Parking Policy
 - Waiving Fee Charged for Parking Near Building
 - Providing Accessible Parking Spaces
 - Providing Striping, or Signage to Access Accessible Parking Spaces

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RA Example #3

- Gloria (she/her) has a hearing impairment and needs to keep an assistance animal in her unit as a reasonable accommodation.
- The housing provider may not require Gloria to pay a fee or a security deposit as a condition of allowing her to keep the assistance animal.
- However, if Gloria's assistance animal causes damage to her unit or the common areas of the dwelling, the housing provider may charge her for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

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What is a reasonable modification?

- A reasonable modification is 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.
- Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas.
- Examples include the installation of a ramp into a building, lowering the entry threshold of a unit, or the installation of grab bars in a bathroom. Under fair housing law, prohibited discrimination includes a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.

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When can a reasonable modification be denied?

- A housing provider can deny a request for a reasonable modification if the request was not made by or on behalf of a person with a disability, or if there is no disability-related need for the modification.
- In addition, a request for a reasonable modification may be denied if providing the modification would impose an undue financial and administrative burden on the housing provider, or it would fundamentally alter the nature of the housing provider's program. This particularly comes into play with RM requests made to housing providers subject to Section 504.
- The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors.

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Reasonable Modification in Public/Common Use Areas

- Residents also may make modifications to the public and common use spaces.
- For example, it would be considered reasonable for a resident who uses a wheelchair to have a ramp built to gain access to an on-site laundry facility.
- Modifications of this type are not required to be returned to their original condition.
- If a resident cannot afford such a modification, the resident may ask a friend or IHSS provider to do his or her laundry in the laundry room, and the landlord must waive any rule that prohibits nonresidents from gaining access to the laundry room.

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Reasonable Modification-Example #1

- A resident needs grab bars and pays to have the original wall reinforced with blocking between studs so grab bars can be securely mounted.
 - It would be reasonable to require that the resident remove the grab bars at the end of the tenancy; however, it would be unreasonable to require that the blocking be removed since the reinforced wall would not interfere with the next resident's use and enjoyment of the dwelling unit and may be needed by some future resident.
- A resident who uses a wheelchair finds that the bathroom door in the dwelling unit is too narrow to allow his or her wheelchair to pass, the landlord must give permission for the door to be widened, at the resident's expense.
 - The landlord may not require that the doorway be narrowed at the end of the resident's tenancy because the wider doorway will not interfere with the next resident's use of the dwelling.

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What happens when an RA/RM request is effectively or actually denied?

- A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation.
- A failure to engage in the interactive process can be considered a RA/RM denial.
- If the individual who was denied an accommodation files a Fair Housing Act or Fair Employment and Housing Act complaint to challenge that

decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law.

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Enforcement

- Unlawful Detainer Defense
 - A denial of reasonable accommodations may be listed as an affirmative defense in unlawful detainer proceedings. (See sample in list of resources.)
 - RAs can also be made in settlement agreements with opposing counsel (e.g. additional move-out time), or in some cases, post-judgment.
- Department of Housing and Urban Development (HUD) Complaints
 - Conciliation and voluntary compliance agreements are options. In some cases, HUD prosecutes violations.
- California Civil Rights Department (Formerly Department of Fair Employment and Housing) Complaints
 - Voluntary mediation and mandatory mediation are options. In some cases, CRD prosecutes violations.
- Private Lawsuits
- Damages: remedies may include the award of compensatory and punitive damages.

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Resources

- Please reference the [List of Resources: Using Reasonable Accommodations to Protect Older Tenants with Disabilities](#), which will also be emailed to you after the webinar.
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- Disability Rights California has many helpful publications:
<https://www.disabilityrightsca.org/resources/housing-homelessness>

- Always feel free to contact Disability Rights California's Statewide Intake Line:

1-800-776-5746

or TTY call: 1-800-719-5798

Available Monday/Tuesday/Thursday/Friday from 9:00AM – 3:00PM Our intake line is closed on Wednesdays.

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Questions?

Reminder

Part Two:

Friday, September 30, 2022,

10-11:15 a.m.