

Reasonable Accommodations and Modifications for People with Disabilities



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HOUSING JUSTICE

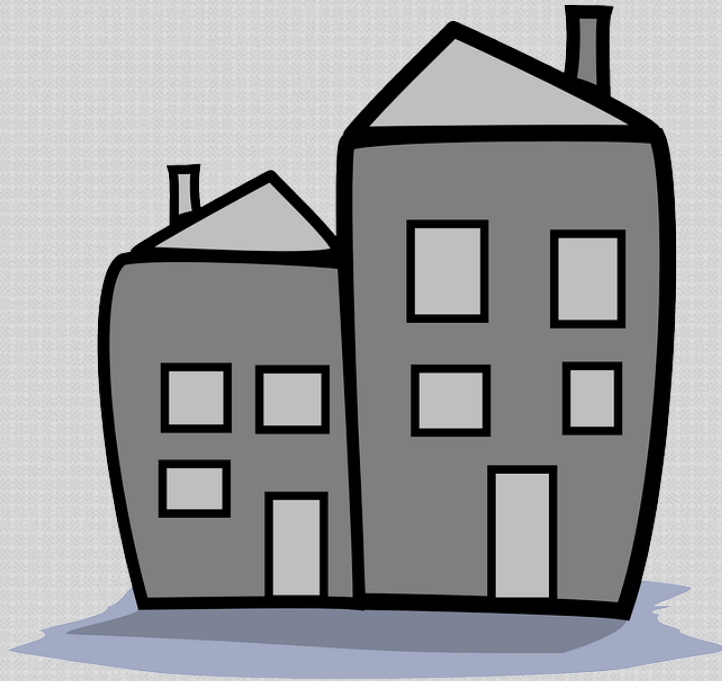
National Housing Law Project

What we're covering today

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- Housing obstacles faced by people who experience disabilities
- Housing rights and protections available for people with disabilities
- How to analyze a reasonable accommodation and reasonable modification request

Common Housing Issues Faced by People with Disabilities



Obstacles to Finding Housing

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- Poor rental, credit, or criminal history due to disability
- Lack of units that are accessible for people with mobility impairments
- Refusal to rent to an applicant who has a service animal
- Stereotypes about individuals with disabilities
- Insufficient income to pay the rent

Obstacles to Maintaining Housing

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- Tenant needs a transfer, but housing provider says that it lacks another accessible unit
- Tenant needs a modification to make the apartment physically accessible
- Tenant in subsidized housing may be absent from the unit during hospitalization or treatment
- Tenant needs disability-related changes in policies or rules, including lease terms.

Teresa

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Tenant, Teresa, comes to you with a 3-Day Notice to Comply with the Lease or Quit due to a “foul odor coming from her apartment” You visit her apartment and find this:



The rest of the rooms have clutter piled almost to the ceiling. Teresa wants to stay and says she just needs time to clean. What can you do to help Teresa remain in her home?

Reasonable Accommodations



Key Laws that Authorize RAs

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- Fair Housing Act (FHA): 42 U.S.C. § § 3604, *et seq*
- Section 504 of Rehabilitation Act:
29 U.S.C. § 794
- Americans with Disabilities Act (ADA): 42 U.S.C. §§ 12131, *et seq* (*and ADA Amendments Act of 2008*)
- State laws, such as California's
Fair Employment & Housing Act (FEHA)

What is a Reasonable Accommodation?

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- A reasonable accommodation is a **change** in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

When Must a Housing Provider Grant a Request for Reasonable Accommodation?

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When a
(1) PERSON WITH A DISABILITY makes a
request that is
(2) NECESSARY and
(3) REASONABLE

Who is a person with a Disability?

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- Handicap (disability) is defined as a physical or mental impairment that:
 - Substantially* limits one or more life activities or
 - Has a history of impairment or
 - Is regarded as having an impairment

*CA state law does not require that the disability “substantially” limit

Current Illegal User of a Controlled Substance

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- The **only** exception to the definition of disability:
- 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.

When is an Accommodation Necessary?

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- There is a nexus or connection between the disability and the requested accommodation.
- The change enhances the tenant's use and enjoyment of the unit by ameliorating the effects of the disability.

When is an Accommodation Reasonable?

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- No **undue financial or administrative burden** on the landlord or housing provider
 - Considerations for undue financial burden: benefit to tenant, costs, financial resources, and availability of less expensive accommodation.
 - Will often cause *some* financial burden, which must be absorbed by the housing provider.
- Can not **fundamentally alter** the nature of the program.
 - Fundamental Alteration: the request would require the provider to change the nature of the services it provides

Exception: Direct Threat

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- An accommodation may be denied if the tenant poses a direct threat to the health and safety of others.
- The threat must be **objective**, not subjective.

Direct Threat Assessment

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Must assess:

- Nature, duration, severity of risk;
- Probability that potential injury will occur;
- Whether reasonable accommodation will mitigate risk.

How a Request is Made

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- Requests may be **oral** or **written**.
 - If possible, it is always best to make them in writing, but doing so is not necessary.
- The reasonable accommodation process begins once a tenant tells a housing provider that they are disabled and need something changed in order to accommodate that disability.

Elements of a Request

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- **Disability**: State that the tenant has a disability. It does NOT need to say the name of the disability, just the symptoms that necessitate the accommodation.
- **Accommodation**: The request should state what accommodation the tenant is looking for.
- **Necessary**: The request should state how the accommodation is related to the person's disability and how it will help them access, utilize, or remain in the housing program.

Verification of Disability

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Three possibilities

- 1. If a person's disability is obvious or known, *and* the need for the requested accommodation is known, then the housing provider should not ask for any more information.
- 2. If the disability is known or obvious, *but* the need is not, then the housing provider should ask only for information necessary to verify the need for the accommodation.
- 3. If *neither* the disability *nor* the need for the accommodation is readily apparent, the housing provider should ask for verification of both the disability and the need for the accommodation.

Denial of Accommodation

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- If the housing provider finds that the requested accommodation is not reasonable, its obligation does not end.
- The provider must engage in an **interactive process** and try to determine with the tenant if another accommodation is feasible.
- If no alternative accommodation is agreed to, it is treated as a **denial** of the original reasonable accommodation request.
- For federally assisted housing – the Section 504 hearing may substitute as the interactive process.

Santiago

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You meet Santiago at intake. He has a 30-Day Notice to Quit. Management received several complaints that Santiago is acting aggressively towards neighbors by yelling at them as they pass by his front patio. People report being scared. Neighbors also complain that Santiago has been watching TV loudly late at night. Santiago says he can explain his behavior but he refuses to talk to management about these issues. What questions will you ask at intake? How can you help?

Examples of Accommodations

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Admissions

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- Considering disability as a mitigating factor when determining eligibility – for example, where there are problems with the rental history related to the disability
- Rescheduling meetings/holding them in the applicant's home or accessible location
- Alternative forms of communication
- Accepting co-signors for people who are low-income because of disability

Locating Voucher Unit

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- Provide current listing of known accessible units
- Extending voucher search time
- Increasing payment standard
- Renting from a relative

Occupancy

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- Unit size – extra rooms for disability-related needs
- Must allow live-in aide
- Must allow service/companion animals
 - Includes shelters & congregate living situations
- Increase in utility allowance
- Unit transfers
- Parking

Eviction/Termination

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- Can request reasonable accommodation at any time, including after eviction/termination has begun
 - Landlord must consider RA requests until judgment of eviction is entered by the court
- Must consider whether or not a RA would allow a person with a disability to remain
- Can reinstate voucher/tenancy

Enforcement

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- HUD Complaint
- DFEH Complaint
- Federal Court
- State Court

Tenant and Max

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Reasonable Modifications

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Reasonable Modification

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- Reasonable modification is a request to *alter the physical structure* of a dwelling where necessary for a person with a physical disability to be able to have equal use and enjoyment of it.
- Anytime during tenancy.
- Modifications may be made to the interior of the unit, exterior of premises, and common use areas.

Who pays?

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- Private housing: **Tenant** pays for construction and may be required to restore interior especially if reducing marketability.
- Subsidized housing: **Housing provider** pays unless doing so would pose an undue financial burden.

Meet Tyrone

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Tyrone rents an apartment using a Section 8 voucher. He needs to install a wheelchair ramp in the entryway of his home. Tyrone requests that his landlord allow him to construct a wheelchair ramp. Who should pay for the construction? Are there other modifications or accommodations that Tyrone could request that would allow him to live in an accessible unit?

Questions?

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