

Making the Road to Housing Accessible to All

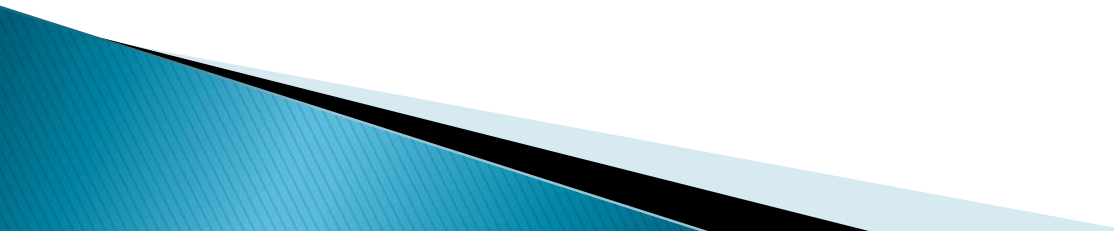
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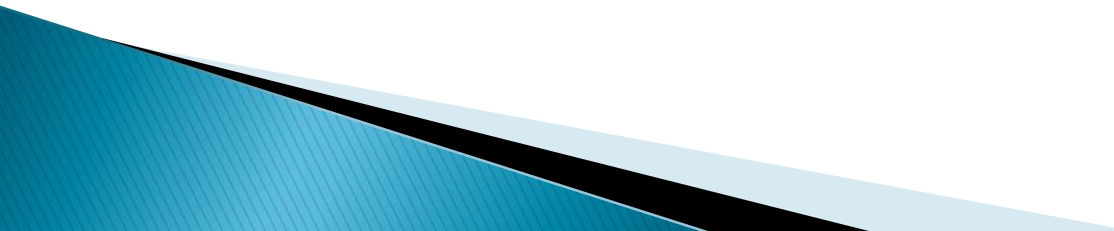
DISABILITY LAW
COLORADO™

Protecting the rights of Coloradans of all ages since 1976

Agenda

- ▶ Overview of Fair Housing Laws & Discrimination
 - ▶ Definition of Disability
 - ▶ Parking Issues
 - ▶ Service Dogs & Companion Animals
 - ▶ Direct Threat
 - ▶ Review of Reasonable Accommodations & Modifications
 - ▶ Avoiding Fair Housing Violations
- 

Fair Housing Laws

- ▶ Fair Housing Act 1968 (FHA)
 - ▶ Fair Housing Amendments Act 1988
added protection for people with disabilities
 - ▶ Colorado Anti Discrimination Act (CADA)
 - ▶ Rehabilitation Act of 1973 (§ 504)
 - ▶ Americans with Disabilities Act (ADA)
 - ▶ Local laws and ordinances
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Fair Housing Laws Apply To:

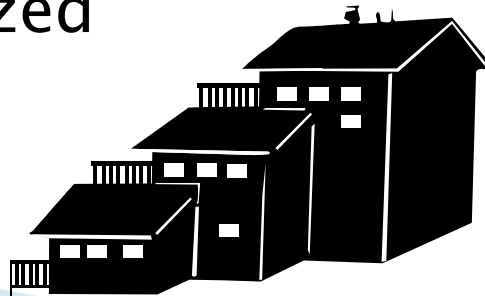


Most housing and vacant land
intended to be used for housing

Applicability of Fair Housing Laws:

All Dwellings

- Apartments
- Condos
- Assisted Living Facilities
- Nursing Homes
- HOA's
- Privately funded or subsidized



Excludes

- ▶ Religious Organizations
- ▶ Private Clubs
- ▶ Quad or fewer *if* owner lives there
- ▶ Single family homes
 - If no realtor, <3 homes owned & fair advertising
- ▶ Some senior housing

What Should I Look Out For?

To avoid getting on
his bad side. . .



You Cannot Discriminate Against a Person in a Protected Class

Federal Law

- ▶ Race
- ▶ Color
- ▶ Religion
- ▶ Sex
- ▶ Disability
- ▶ Familial Status
- ▶ National Origin

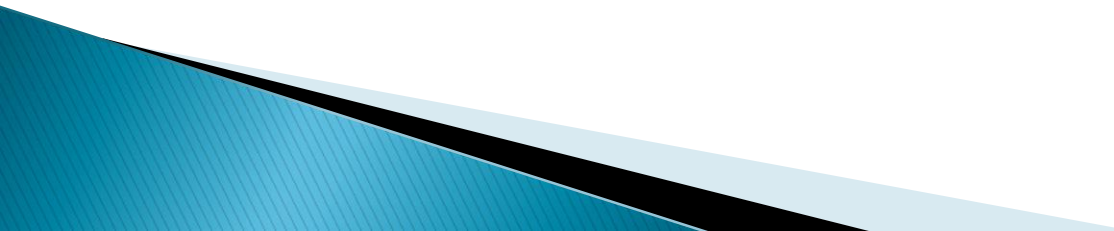
Colorado Law

- ▶ Race
- ▶ Color
- ▶ Religion/Creed
- ▶ Sex
- ▶ Disability
- ▶ Familial Status
- ▶ National Origin/Ancstry
- ▶ Marital Status
- ▶ Sexual Orientation

Scenario:

- ▶ Manny manager likes to go the extra mile for residents. Rita Resident knows Manny well. She is a senior. Manny has cleaned snow off her car, helped her with groceries, and other favors in the past. Rita knows Manny is really good with cars. She asks him if he can see why her car is leaking oil. Manny helps her. A week later, Tina asks Manny to look at her car. Tina is not a nice person. She has not been nice to the maintenance staff regarding certain work orders. Manny tells Tina he is too swamped.
 - Has Manny done anything wrong? Rita does not have a disability. Tina is a person with a disability.

What Constitutes Discrimination?

- ▶ Refusing to show, rent, lease or sell
 - ▶ Denying availability
 - ▶ Unequal terms, conditions or privileges
 - ▶ Different rents or security deposits
 - ▶ Different rules for eviction or non-renewal
 - ▶ Harassment
 - ▶ Unequal maintenance services
 - ▶ Higher interest rates or predatory terms
 - ▶ Discriminatory advertising
 - ▶ Blockbusting, redlining, “making unavailable”
 - ▶ Denying reasonable accommodations or modifications
 - ▶ Retaliation
- 

Basically, if you are treating someone differently *because of* their race, religion, gender, disability or other protected trait, you are likely discriminating against them!

Leads us to Hot Topics!

Tenants and Applicants with Disabilities

- ▶ This is tricky and is one of the most difficult areas of the law to understand.
- ▶ There are also *numerous* complaints filed based on disability discrimination.



First Thing's First: What is a Disability?

- ▶ Disability means:
 - Physical or mental impairment which substantially limits a major life activity
 - Record of a disability
 - Regarded As a person with a disability



Includes:

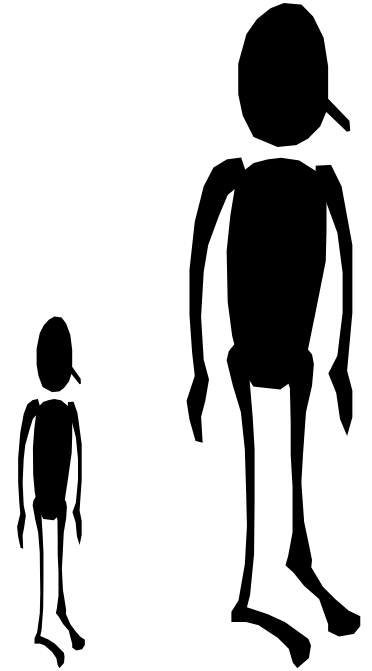
- ▶ People with a diagnosed mental illness
- ▶ Recovering Alcoholics
- ▶ Recovering Substance Abusers
- ▶ Does *NOT* include current users of illegal drugs

**Applies to buyer, renter or
roommate**



What is NOT Considered a Disability?

- ▶ Common personality problems
- ▶ Homosexuality; transvestism
 - But could still be covered under CADA
- ▶ Pyromania; kleptomania
- ▶ Simple physical characteristics
- ▶ Sexual disorders
- ▶ Compulsive gambling



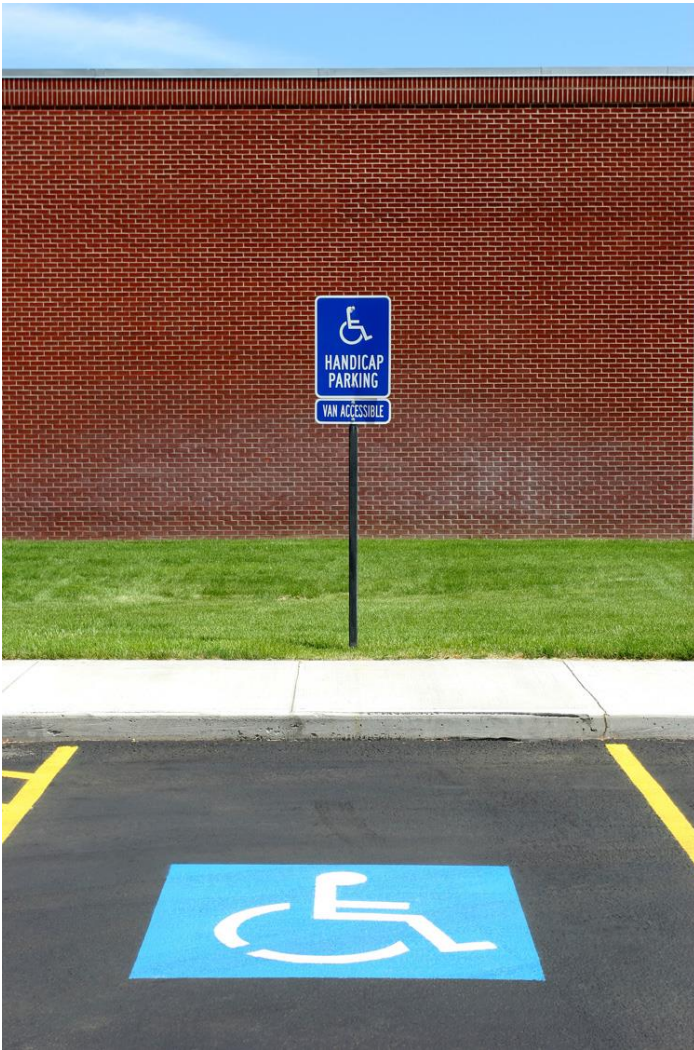
Temporary impairments may be considered a disability if substantial

Parking Scenario

Tammy Tenant lives at Happy Acres Apartments. Her young daughter has severe disabilities. Tammy has to lift her daughter and carry her, and the daughter is on oxygen. Parking at Happy Acres is first come, first serve. Tammy asks Marty the Manager to put an accessible parking space in the front row so that she can use it. Marty tells her no problem and has the accessible sign put up immediately.

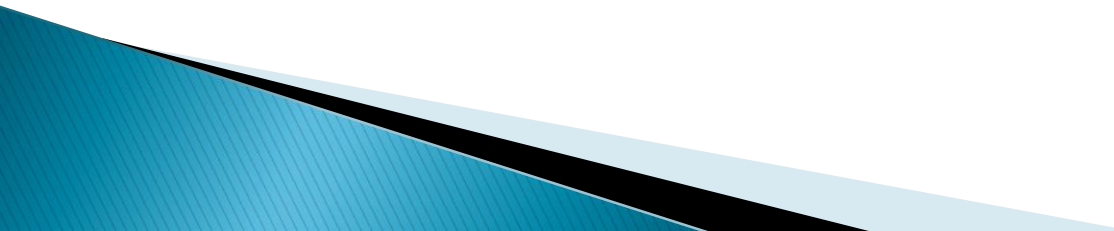
- Did Marty do everything right?

- ▶ What if Tammy later claims that she did not ask Marty for an accessible spot but for a close up, reserved spot?



Hot Topic #1

Parking Issues

- ▶ HUD and DOJ consider parking issues *accommodations*, not modifications
 - ▶ Covered by ADA (common areas) and FHA
 - ▶ Can mean designating parking, making spots accessible, skipping a wait list
 - ▶ Can be for resident or care-giver
 - ▶ First-come, first-served policy is not ok
 - ▶ Treating everyone the same is not ok
- 

Parking Issues, Cont.

- ▶ Be creative, you may be able to re-configure parking
- ▶ This is one area where tenants are very successful
- ▶ Remember that while parking far away is *annoying* for most, it can be *life-changing* for people with disabilities

Scenario

Rose has been a tenant of a large, privately owned apartment complex for several years. The landlord is unaware that Rose has any disabilities and she does not present as such. The building is not designated as seniors only, but most residents are older and it is known to be a very quiet, “keep to yourself community.” There are no pets allowed in the complex. After living there for 5 years, Rose submits a letter to the landlord asking to have a 65 pound dog. The letter simply states that she needs the dog due to her depression and it is accompanied by a letter from a peer group leader (who does not appear to have medical credentials) who states that Rose has been attending a peer support group for seniors with depression. The group leader states that he has known Rose for three years and he strongly believes the dog will help Rose deal with her depression symptoms.

- Must the landlord allow Rose to have the dog? What factors into your decision?

Hot Topic #2

Service Dogs & Companion Animals

- ▶ A housing provider must allow a service or companion animal for a tenant even if they do not allow “pets” if:
 - The person has a disability,
 - The person requests it as a reasonable accommodation, and
 - The person can show why they need the animal to help with issues related to their disability (documentation)

**Companion animals are different than service animals,
but BOTH must be allowed in housing**

But what about. . .

- ▶ Does the type of animal matter? Size? Breed?
- ▶ What if they want more than one?
- ▶ Must the tenant request “a reasonable accommodation”?
- ▶ Is the animal allowed in the gym/ pool area?
- ▶ Who can provide the documentation?



What Can the Landlord Require?

▶ Can require

- Proof that the animal will help with the person's disability (often from a medical professional)
- Proof that the animal is registered and vaccinated
- The tenant to take care of the animal
- The animal cannot pose a *real* threat or a nuisance

▶ Cannot require

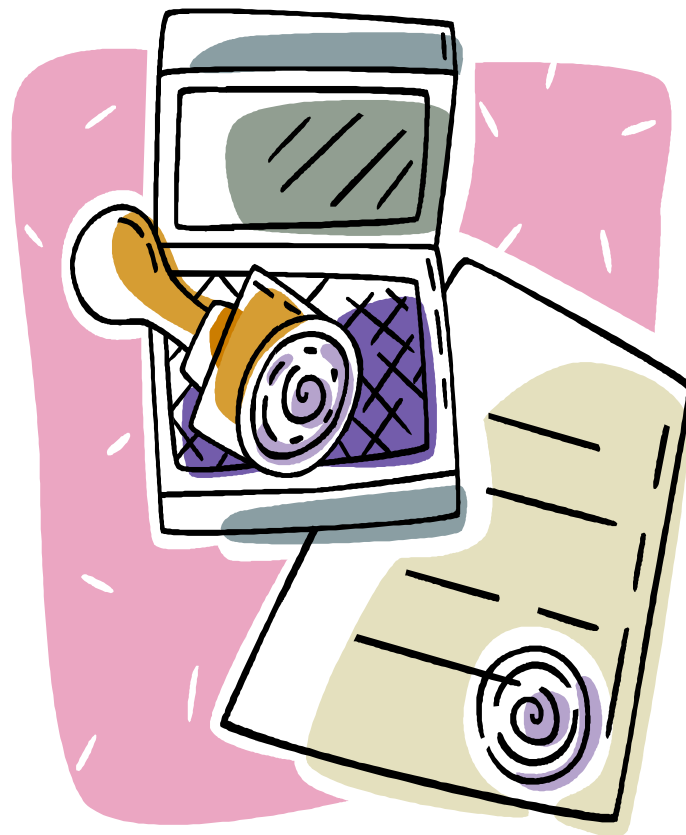
- Additional security deposit
- Full medical records



Does an Assistance Animal Need to be Certified?

No.

Under the FHA, an assistance animal does not require certification or any kind of special equipment, identification or tags –except registration & vaccination



ADA vs. FHA

- ▶ Is there a difference between the ADA and the FHA on animals?
 - YES!!
 - Service animals are covered by the ADA
 - FHA is much broader
 - Your facility could be covered by BOTH
 - Should be aware of all potential laws/rules

Damages

- ▶ A tenant cannot be required to pay additional maintenance or cleaning fees
 - can charge for damage if you ordinarily charge for damages to property



Another fun one. . .

Harry has been a long time resident. And a good resident. However, recently, he is acting very differently and aggressively. Harry gets in a fight with his neighbor. The police come and you receive a copy of a report that says Harry was given a summons for taking a swing at the neighbor. Right after that, Harry is aggressive to the office staff.

- What do you do as the manager?

Hot Topic #3

Direct Threat

The exception states:

- Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
- 42 U.S.C. 3604(f)(9)

More Information on Direct Threat

- ▶ Evaluation must consider:
 - Nature, duration, severity of risk of injury
 - Probability that injury will actually occur
 - Whether there are reasonable accommodations that will eliminate the threat
- ▶ Ex. Any intervening treatment? Medication?
Change of circumstances?

Scenario Part 2

- ▶ After you post the eviction notice and the time period expires, you send the matter to your legal counsel for eviction. After your law firm serves the eviction lawsuit on Harry, Harry's attorney files an Answer to the suit. In the Answer, Harry's attorney states that Harry has severe bi-polar disorder and has been off his medication recently. He also sends your attorney a letter stating that Harry would like you to stop the eviction and hold off so that he can get back on his medication.
 - Do you have to consider this request?
 - If so, what do you do?

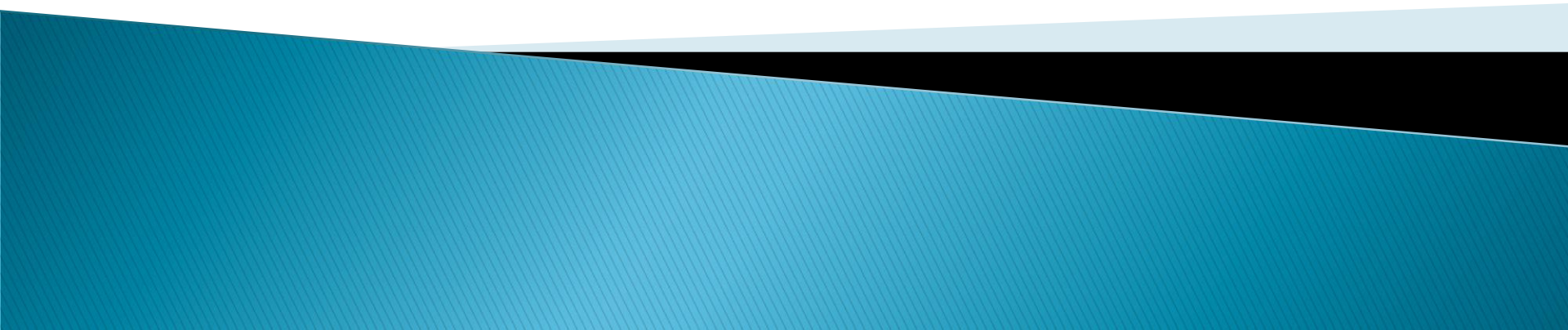
What It Means

- ▶ Tenant may not pose a direct threat to other tenants
- ▶ Objective evaluation is necessary
- ▶ Landlord must demonstrate that no reasonable accommodation would lessen or eliminate the threat



So What This Really Comes Down To:

**Reasonable Accommodations &
Modifications**



What Does Reasonable Accommodation *REALLY* Mean?

You must do what is *REASONABLE*

- Is it practical and feasible?
- Is it an undue administrative or financial burden?
- Is it a fundamental alteration of the program?
- Is it related to the person's disability?



Can a Landlord Charge an Extra Fee for Granting a Reasonable Accommodation?

NO!

Housing providers cannot require people with disabilities to pay extra fees for deposits in order to have reasonable accommodation requests granted.

- ▶ Fees for wheelchair damage to carpet
- ▶ Fees for companion animals
- ▶ Late fees for paying rent on the 10th



Reasonable Modifications

- ▶ Different than *accommodations*
- ▶ What is a Modification?
 - A *physical* change or alteration
 - That is *necessary*
 - And *reasonable*
 - For a tenant to *use and enjoy* their housing



Who Has to Pay for Modifications?

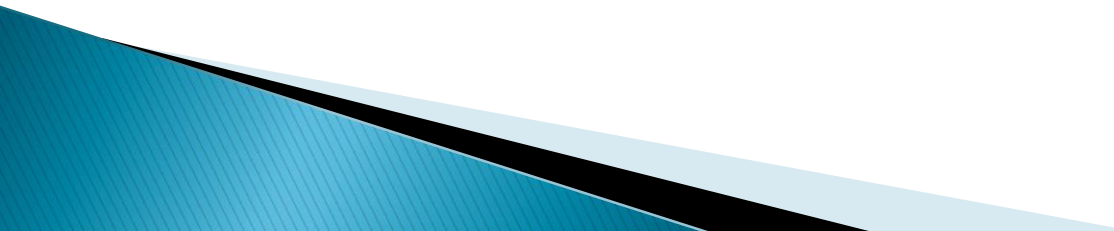
- ▶ The FHA requires the tenant to pay
- ▶ However, landlords that receive federal funds *may* be required to pay for modifications pursuant to § 504



What information
can you ask for
concerning
accommodations
and
modifications?



Answer: You May Inquire As To:


- ▶ Whether the requesting party has a disability as defined by federal and state fair housing laws.
 - ▶ Whether the requesting party needs the accommodation he or she has requested.
 - ▶ Whether the request is reasonable (feasible or practical)
- 

HUD/DOJ Joint Guidelines

- ▶ If the disability is obvious, you cannot ask for documentation. If it is truly not obvious, you can.
- ▶ If the need for accommodation is obvious, you cannot ask for documentation. If it is not obvious, you can.

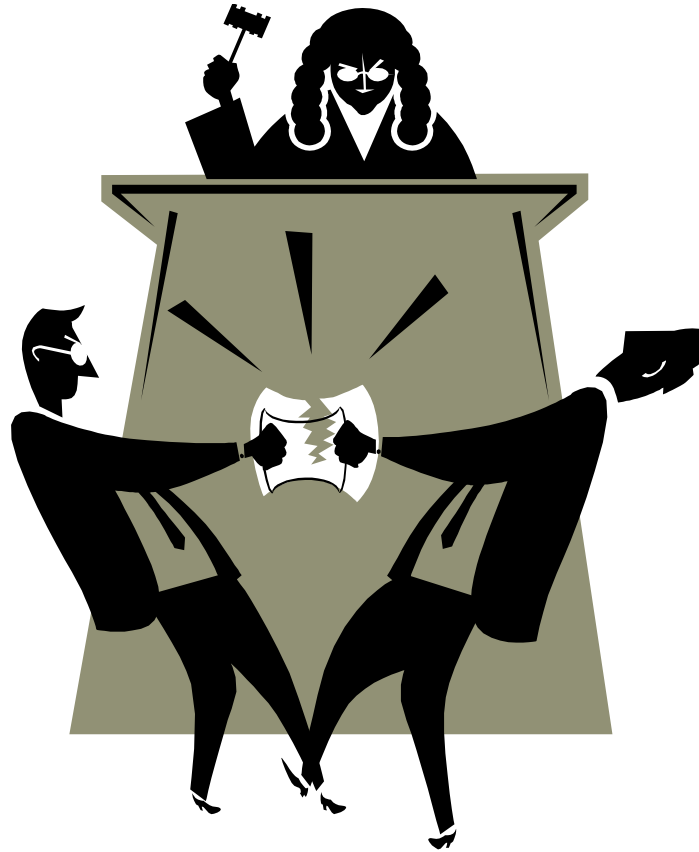


Bottom Line on Accommodations/Modifications

- ▶ The landlord has a *responsibility* to engage in an interactive dialogue
 - ▶ This means that when a tenant requests a reasonable accommodation or modification, the landlord cannot simply refuse it and say it is not reasonable.
 - ▶ The landlord must make an effort to understand the tenant's request and try to come up with an effective solution that works for both parties.
 - ▶ Deference is given to the person with a disability to describe what they need.
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With That in Mind. . .

How to Avoid a Conflict

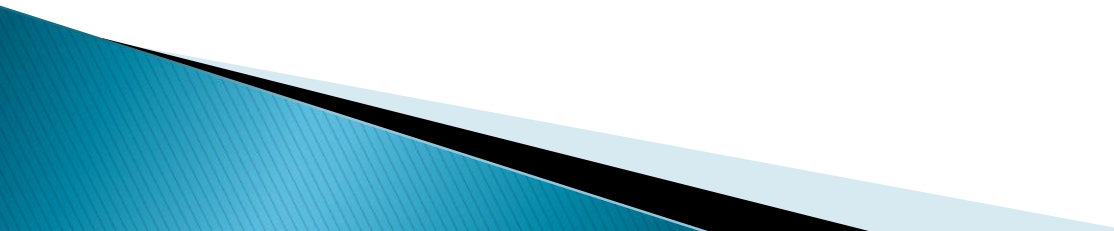


The Housing Application: What It Should *NOT* Ask

- ▶ What kind of medication do you take?
- ▶ What is the matter with you?
- ▶ Are you crazy?
- ▶ Have you been hospitalized recently?
- ▶ Do you have a disability?
- ▶ What is your diagnosis?
- ▶ What race are you?
- ▶ Where were you born?
- ▶ Are you married/divorced?
- ▶ Do you plan to have children?
- ▶ What religion are you?
- ▶ Are you gay?

A tenant does NOT have to answer these questions!

What It *CAN* Ask


- ▶ Will you be able to comply with the rules of tenancy?
 - ▶ Do you have a criminal history or have you been convicted of the manufacture of illegal drugs? (if you ask that question to everyone)
 - ▶ Can you verify your stated income?
 - ▶ Will you cause damage to property?
- 

A Few Final Notes

- ▶ Make sure you know the relevant laws
- ▶ Attend trainings
- ▶ Do things in writing
- ▶ When in doubt, consult someone



Resources

- ▶ Joint Statement of HUD & DOJ “Reasonable Accommodations under the Fair Housing Act”
 - ▶ Joint Statement of HUD & DOJ “Reasonable Modifications under the Fair Housing Act”
 - ▶ HUD FHEO Notice FHEO-2013-1 “Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs”
 - ▶ FAQ- U.S. Dept. of Justice Civil Rights Division
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Questions???

&

Thank You!



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