



SANTA CLARA COUNTY  
HOMELESSNESS CONTINUUM OF CARE

FAIR HOUSING AND TENANTS'  
RIGHTS TRAINING SERIES

PART 2:  
FAIR HOUSING TRAINING

Presented by Bay Area Legal Aid

April 18, 2024



# Agenda

## A. Overview of Bay Area Legal Aid

- i. Our Services
- ii. Client Eligibility
- iii. Ways to Access our Services

## B. Fair Housing Overview

- i. Fair Housing Laws
- ii. Protected Classes
- iii. Prohibited Conduct
- iv. Reasonable Accommodations
- v. Assistance Animals
- vi. Source of Income Discrimination
- vii. Protections for Immigrant Tenants

**Who We Are: Bay Area Legal Aid** provides free legal services to eligible low-income residents in the Bay Area.

**Practice Areas in Santa Clara County include:**

|                                                                                                                                                                                                                  |                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Housing Preservation And Homelessness Prevention <ul style="list-style-type: none"><li>• Landlord-tenant Matters</li><li>• Eviction Defense</li><li>• Fair Housing</li><li>• Subsidized Housing Issues</li></ul> | Domestic Violence And Sexual Assault Prevention <ul style="list-style-type: none"><li>• Restraining Orders</li><li>• Family Law</li><li>• Domestic Violence Related Immigration</li></ul> |
| Immigration <ul style="list-style-type: none"><li>• Services for Immigrant Survivors of Domestic Violence and Sexual Assault</li></ul>                                                                           | Economic Justice <ul style="list-style-type: none"><li>• Public Safety Net Programs</li></ul>                                                                                             |
| Health Consumer Center <ul style="list-style-type: none"><li>• Health Care Access</li><li>• Public Health Insurance Programs</li><li>• Health Consumer Issues</li></ul>                                          | Consumer Law <ul style="list-style-type: none"><li>• Debtor's Rights</li><li>• Fair Credit Reporting</li></ul>                                                                            |
|                                                                                                                                                                                                                  | Youth Justice Project                                                                                                                                                                     |

# Ways to Access Our Services

LEGAL ADVICE LINE (ALL PRACTICE AREAS)

1-800-551-5554

Monday - Thursday 9:30AM - 1PM

HEALTH CONSUMER CENTER

1-855-693-7285

Monday - Friday 9AM - 5PM

# Fair Housing Laws

# Fair Housing Laws

## ■ Federal Law

- *Fair Housing Act (FHA)*
- *Fair Housing Amendments Act (FHAA)*
- *Section 504 of the Rehabilitation Act*
- *Americans With Disabilities Act (ADA)*

## ■ State Law

- *Fair Employment and Housing Act (FEHA)*
- *The Unruh Civil Rights Act*

- **Purpose of fair housing laws:** to prevent discrimination in housing by making it illegal to disadvantage someone in renting, buying, or occupying a home because of that person's membership in a protected class.

# Protected Classes (Federal)

**The Fair Housing Act prohibits housing and housing-related discrimination because of a person's:**

- Race
- Color
- Religion
- Sex (including gender identity and sexual orientation)
- Familial Status
- National Origin
- Disability

# Protected Classes (CA)

**California Law includes all protected classes under federal law, plus:**

- Marital Status
- Ancestry
- Sexual Orientation/Gender Expression/Identity
- Source of Income
- Medical Condition /Genetic Information
- Military/Veteran Status



# Hypo

(1) Tammy Tenant believes that her landlord is discriminating against her because she is Native American.

Is Tammy Tenant a member of a protected class and therefore entitled to enforce her rights under fair housing laws? Yes or No.

(2) Tammy Tenant believes her landlord is discriminating against her because of her Veteran status. Tammy is a member of a protected class under which laws?

- a. The federal Fair Housing Act
- b. California's Fair Employment and Housing Act
- c. None of the above
- d. Both a & b

# Hypo

Tammy Tenant has a HUD-VASH voucher and wants to rent a unit owned by Larry Landlord. When Larry met Tammy, he thought that she would be a good tenant. After finding out that she had a HUD-VASH voucher Larry told Tammy that he couldn't rent to her because he didn't want to rent to a Veteran with PTSD.

Larry Landlord discriminated against Tammy based on her membership in which protected classes?

- a. Race
- b. Gender
- c. Disability
- d. Veteran status
- e. c & d
- f. None

# Prohibited Conduct

## Intentional Discrimination

Treating a member of a protected class, or a person associated with them, differently.

## Disparate Impact

Conduct that is neutral on its face but results in a discriminatory impact on a protected class.

# Prohibited Conduct

Sexual harassment

Hostile environment

Quid pro quo

Discrimination against domestic violence survivors

# Hypo

Developer constructing a building puts out applications for new properties. As part of the application to rent, the developer stated that each person needs to be “gainfully” employed as a measure to ensure residents could afford to pay. The policy had a discriminatory effect on people with disabilities because they are more likely to be unemployed and receive income through other means rather than employment, like SSI or SSDI.

What type of prohibited conduct is at issue here?

- a. Intentional discrimination
- b. Disparate impact discrimination

# Hypo

What type of discrimination is in this ad?

What protected classes are being discriminated against?

reply below

**\$750 beautiful house for rent 4bd  
2bath no black or spanish (west side)**

Members  
Events  
Videos  
Photos  
Files  
Group Insights  
Recommendations  
Get Facebook Support  
Moderate Group  
Group Quality

Search this group

Shortcuts

- Blanket The Park 20+
- West Side Alive!
- DesignBuffalo Worki... 3
- Preservation-Ready ... 6
- Nickel City Longsword 9
- See more

Fargo Estate Neighborhood Association  
153 members

West Side Defenders  
119 members

English (US) · Español · Português (Brasil) · Français (France) · Deutsch

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Facebook © 2019

Chat (77)

https://www.facebook.com/photo.php?fbid=2912021052195103&set=gm.2486896101357180&type=3&eid=ARCh7uKRGNI4PurrhoYX7UX9MJdqB0clhACIEH4E7QYpSv0DN6Nm9hU8kELkSN7l0RsGGXuqoVjk&fg=1

# Reasonable Accommodations

# Reasonable Accommodations

## What is a Reasonable Accommodation?

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

## What Constitutes a Disability under Fair Housing Laws?

- Mental or physical impairment that substantially\* limits one or more life activities; and/or
- A history of such impairment; and/or
- Regarded as having such impairment.

\*California law does not require a “substantial” limitation.



# How to Request a Reasonable Accommodation

A reasonable accommodation may be requested verbally or in writing (preferably)

A reasonable accommodation must have a “nexus” to the disability requested. This means that the accommodation requested must be connected to the disability and be necessary for the person with a disability to use and enjoy their housing.

## **Best Practices:**

- a) Make request in writing
- b) Attach statement from a knowledgeable professional that verifies:
  1. The person requesting the accommodation has an impairment that substantially limits (or just limits for CA law) one or more major life activities
  2. The accommodation requested is necessary

# Reasonable Accommodation Denials

A reasonable accommodation may be denied if:

- A person is not “disabled” under fair housing laws
- There is no nexus between the disability and the requested accommodation
- The request is not reasonable
  - The reasonable accommodation would result in an undue administrative burden or financial burden
  - The reasonable accommodation would fundamentally alter the nature of the provider’s operations

# Hypo

Someone who has a hearing impairment requests a parking spot closer to their unit as a reasonable accommodation. Their request will likely be:

- a. Granted
- b. Denied

# Hypo

Someone with a mobility impairment requests a parking spot closer to their unit as a reasonable accommodation. Their request will likely be:

- a. Granted
- b. Denied

# Hypo

## **True or False**

A person with a mental health impairment received a notice of lease violation due to symptoms of his or her disability. This person can request that the notice be withdrawn as a reasonable accommodation.

# Housing Provider Obligations

After a tenant requests a reasonable accommodation, a housing provider must engage in the interactive process if they believe they cannot grant the request.

The interactive process is where the housing provider and the tenant discuss the tenant's disability-related need for the requested accommodation and possible alternative accommodations.

## **A Housing Provider Should:**

- Provide prompt responses to reasonable accommodation requests
  - An undue delay may be deemed to be a failure to provide a reasonable accommodation request
- Engage in the Interactive Process
  - Failure to engage in the interactive process could be deemed as a denial and can be considered discrimination based on disability.

# Reasonable Modifications

# Reasonable Modification

## What is a Reasonable Modification?

A structural change made to existing premises, that is occupied or going to be occupied by an individual with a disability to enable that person to have full use and enjoyment of the premises.

Interior/Exterior

Common/Public Use Areas

Examples, Ramps, Grab Bars



# Assistance Animals

An assistance animal is NOT a pet.

An Assistance Animal is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability (Service Animal),

*OR*

provides emotional, cognitive, or similar support that alleviates one or more identified symptoms or effects of an individual's disability.  
(Emotional Support Animal)

# Assistance Animals: Service Animals

“Service animals” are animals that are trained to perform specific tasks to assist individuals with disabilities, including individuals with mental health disabilities. Service animals do not need to be professionally trained or certified...they may be trained by the individual with a disability or another individual.

Examples:

- Guide dog or animal trained to guide a visually impaired individual
- Service dog or other animal trained to the requirements of an individual with a disability

The only permissible questions that can be asked of an individual to determine if the animal is a service animal are:

- 1) “Are you an individual with a disability?” and
- 2) “What is the disability-related task the animal has been trained to perform?” It is **not** permitted to ask the individual with a disability to demonstrate the task.

# Assistance Animals: Support Animals

“Support animals” are animals that provide persons with a disability:

- Emotional support
- Cognitive support, or
- Other similar support to an individual with a disability.

A support animal does not need to be trained or certified.

Support animals are also known as comfort animals or emotional support animals “ESA”.

The standards, procedures, and defenses for evaluating a **reasonable accommodation** request also apply to support animals.

# Assistance Animals: Support Animals

An individual with an assistance animal is not required to pay any pet fee, additional rent, or other additional fee, including additional security deposit or liability insurance, in connection with the assistance animal; but may be required to cover the costs of repairs for damage the animal causes to the premises, excluding ordinary wear and tear;

An individual may have more than one assistance animal, but:

- Will need to demonstrate why additional assistance animals are necessary.

- A housing provider may consider whether the cumulative impact of multiple animals in the same dwelling unit constitutes an undue burden or fundamental alteration.

# Assistance Animals: Support Animals

Generally, no breed, size, and weight limitations may be applied to an assistance animal.

A housing provider may deny an assistance animal if the animal constitutes a direct threat to the health or safety of others (i.e. a significant risk of bodily harm) or would cause substantial physical damage to the property of others, and that harm cannot be sufficiently mitigated or eliminated by a reasonable accommodation,

For example, a housing provider cannot deny a reasonable accommodation request for a tenant to have a pitbull. But, if that pitbull threatened the health and safety of other residents by trying to bite a resident, a housing provider may be justified in denying the reasonable accommodation request.

# Reasonable Accommodation Examples

## Parking Space

- A housing provider has unassigned parking spaces for residents on a first come first serve basis. A tenant has a mobility impairment and is substantially limited in her ability to walk. She requests an assigned parking space close to the entrance of her unit. The housing provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.



# Reasonable Accommodation Examples



## “No pets/animals” policy

- A housing provider has a no pets/animals policy. A tenant with a hearing impairment requests that he be allowed to keep a dog as a reasonable accommodation. The dog is an assistance animal that alerts the tenant to sounds, including knocks on the door, and the sounding of smoke detectors. The housing provider must make an exception to its “no pets” policy.
- A tenant suffers from depression, and uses an emotional support animal to cope with symptoms of depression. The housing provider must make an exception to its “no pets” policy.

# Hypo

## **True or False:**

It is unlawful discrimination for a housing provider to not respond to a reasonable accommodation request.



# Hypo

## **True or False:**

If a housing provider waits 3 months before responding to a reasonable accommodation request, the reasonable accommodation request may be considered denied.

# Hypo

## **True or False:**

If granting the reasonable accommodation would cost the housing provider money, the housing provider can deny the request.

# Source of Income Discrimination

# Source of Income Discrimination

- All landlords in California cannot refuse to accept Section 8 or HUD-VASH vouchers. Landlord are required to consider Section 8 and HUD VASH vouchers and other forms of rental assistance and to consider them as part of an applicant's income.
- Source of income is defined as:
- “lawful, verifiable income paid directly to a tenant or to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issues under Section 8 of the United States Housing Act of 1937 (42 USC Sec 1437f).
- “Source of income” also includes HUD-VASH.

# Source of Income Discrimination

## **Income**

Not only wages from employment

## **Includes:**

Section 8 (Housing Choice Vouchers) or other Rental Assistance

Social Security

Supplemental Security Income

Veteran's Benefits

CalWorks

General Assistance

Child Support

Alimony

Unemployment Insurance

Pensions

# Hypo

True or False: This housing ad is lawful



very good neighborhood  
large open and sunny 4 bedroom  
All large rooms  
washer dryer hookup in unit  
2nd floor apartment of 3 floors  
good sized yard  
natural gas forced hot water heat (tenant pays separate)

Not accepting section 8

# Hypo

A two-bedroom unit is advertised at a rent of \$2,500 per month. The building has a policy that all households must have an income of at least three times the rent to qualify for a unit. A household with a Section 8 voucher applies for the apartment. The tenant's portion of rent is \$300.

Is the housing provider permitted to required the tenant to have a monthly income of \$7,500?

Yes or No.

# Protections for Immigrant Tenants



# Immigrant Tenant Protection Act

Landlords are prohibited from:

Asking a tenant about their immigration or citizenship status (unless to comply with federal government program, or other legal obligation)

Requiring a tenant or prospective tenant to make a statement, representation, or certification about their immigration or citizenship status

# Immigrant Tenant Protection Act

Landlords are prohibited from disclosing any information relating to the immigration or citizenship status for purposes of

- Harassment
- Intimidation
- Retaliation
- Influencing a tenant to vacate
- Recovering possession of the dwelling

# Immigrant Tenant Protection Act

Landlords are prohibited from evicting tenants based on their immigration status

If a landlord tries to evict a tenant based on immigration status, a tenant may use that as a defense to an unlawful detainer action

# Hypo

Tammy Tenant rents a studio from Landlord. She has a green card. During her tenancy, Tammy's studio required several repairs. She provided written notice to her landlord, but her landlord did not respond immediately. After three weeks, her landlord stated that he would get a repair person out to her unit. After reminding her landlord, no one came to Tammy's unit for over a month. Tammy contacted Code Enforcement. Code Enforcement investigated and ordered Tammy's landlord to make repairs. Tammy's landlord gets upset and accuses Tammy of being undocumented and tells her that she needs to vacate immediately and "go back to her country". Landlord sends Tammy a text message threatening to contact ICE.

**True or False:** Landlord engaged in unlawful retaliation

# Thank You

**Questions?**