



# Fair Housing For People With Disabilities

**A Guidance Manual for Emergency Shelter,  
Transitional Housing, and Permanent Supportive  
Housing Providers**

**Revised January 2023**

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Based on a manual originally developed by  
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## **Fair Housing for People with Disabilities**

by Mental Health Advocacy Services, Inc.

Mental Health Advocacy Services, Inc. (MHAS) is a private, non-profit organization whose mission is to protect and advance the legal rights of low income adults and children with mental health disabilities and empower them to assert those rights in order to maximize their autonomy, achieve equity and secure the resources they need to thrive.

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## **Introduction to the Manual**

Individuals with disabilities face many obstacles to securing, using, and enjoying housing. Fair housing and other laws aim to reduce those obstacles, in part, by codifying the rights of people with disabilities to be free from discrimination, including through the right to request reasonable accommodations. Housing providers, in turn, are required not only to refrain from intentional discrimination, but also to avoid policies and practices that unintentionally discriminate against people with disabilities; to make exceptions to rules or policies that would otherwise have a discriminatory effect on individuals with disabilities; and, in some instances, to take even more proactive measures to further fair housing rights. Transitional and permanent supportive housing must also comply with state landlord-tenant laws in order to preserve the rights of residents. Finally, residents with disabilities benefit from general due process protections, as well as fair housing protections for other characteristics such as source of income used to pay rent.

This manual was created to help emergency shelter, transitional housing, and permanent supportive housing providers understand their obligations under fair housing, disability rights, and other applicable laws; to implement policies to receive and respond appropriately to reasonable accommodation requests; and to advance fair housing by helping residents with disabilities obtain, maintain, and enjoy accessible housing. The manual begins with a brief overview of fair housing and other disability rights laws. It then examines key legal concepts that are essential to understanding housing providers' fair housing obligations. Next, using a question-and-answer format, the manual applies fair housing principles to the three phases of the residency cycle—the application phase, the occupancy phase, and the termination or transition out of residency phase—and discusses best practices for complying with fair housing law during each phase. The legal authority providing the basis for this manual can be found in footnotes and appendices. Appendix A contains a short glossary of terms. Appendix B provides a review of important federal and state fair housing and disability rights laws. Appendix C explains why state landlord-tenant laws apply to transitional housing.

Both federal and state laws provide significant protections for people with disabilities. California law, however, not only explicitly incorporates federal law as a floor of protection, but also goes beyond to offer additional protections. Because this manual is designed for use in California, and because compliance with

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California disability law ensures compliance with federal law, this manual focuses mostly on California law.

Although this manual focuses on fair housing protections for people with disabilities, readers should be aware of the broader applications of fair housing law. Federal fair housing laws prohibit discrimination in housing based on the following characteristics: race, religion, national origin, color, sex, familial status, and disability. California fair housing laws prohibit discrimination in housing based on all of those categories in addition to marital status, ancestry, sexual orientation, gender identity, gender expression, genetic information, source of income, and military or veteran status. For most housing, California laws also prohibit discrimination on the basis of citizenship, immigration status, primary language, and age. In addition to fair housing protections for people with disabilities, this manual provides an overview of fair housing protections against discrimination based on source of income, which are particularly relevant for tenants with disabilities who rely on disability benefits or housing subsidies.

The information in this manual does not constitute legal advice. Rather, it is meant to educate transitional housing and shelter providers about fair housing laws as they relate to people with disabilities. Because the law is unclear in a number of areas and often full of nuance, and because individual scenarios vary greatly, it is important to seek the advice of an attorney if you need guidance on how to comply with the law in a specific case. Nonetheless, this manual provides a general framework for housing providers to not only keep their own housing resources broadly accessible to people with disabilities, but also to advance the fair housing rights of residents with disabilities as they transition to permanent housing.

## **Disability Rights in Housing: Key Legal Concepts**

Several federal and state laws protect people with disabilities and prohibit discrimination on the basis of disability in public programs and housing. These include, at the federal level, The Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Fair Housing Amendments Act (FHAA); and, at the state level, California Government Code Section 11135, Civil Code Section 51 (Unruh Civil Rights Act), Civil Code Sections 54–55.32 (Disabled Persons Act), and the California Fair Employment and Housing Act (FEHA). While it is helpful to be aware of each of these laws, housing providers do not need to know the differences between them. All emergency shelter, transitional housing, and permanent supportive housing programs are covered by some of the laws, and they all provide similar protections to facilitate housing access for people with disabilities. It is most important for housing and shelter providers to understand the basic common rule: that both overt, intentional discrimination and unintentional discrimination against people with disabilities are not permissible in housing. Furthermore, to make sure that people with disabilities are not denied housing due to difficulty complying with policies and practices, or due to physical inaccessibility, providers must provide reasonable accommodations to, and allow reasonable modifications by, individuals with disabilities. Finally, housing providers must satisfy the basic requirements of due process to ensure that they do not unfairly deprive applicants and residents of any rights without fair notice and a chance to be heard.

The following concepts are essential to understanding legal protections for individuals with disabilities in housing.

### **Two Impermissible Paths: Disparate Treatment and Disparate Impact**

Discrimination is more than just a refusal to serve someone on the basis of a protected characteristic such as disability. In some instances, discrimination is intentional, like when a housing provider refuses to rent to an applicant because they use a wheelchair. This intentional form of discrimination is also known as disparate treatment. In other instances, a provider may be unaware that it is discriminating. For example, a policy that prohibits pets is not necessarily aimed at discriminating against people with disabilities, but unless it includes an exception

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for service and emotional support animals, that policy may have an adverse impact on people with disabilities who rely on assistance animals. This selectively adverse outcome, known as disparate impact, is also a form of impermissible discrimination.

Other forms of discrimination that are prohibited by law include:

- singling out an individual on the basis of perceived disability or difference (for example, suggesting counseling services to a resident because their behavior seems “unusual”);
- inquiring into disabilities (unless for the purpose of verifying eligibility for “disabled only” housing programs);
- failing to grant reasonable accommodations or allow reasonable modifications;
- failing to meet building accessibility standards;
- steering (for example, telling an applicant with a mental health disability that they will be more comfortable living in a different building or unit than the one advertised); and
- harassment.

In most cases, treating people differently on the basis of a protected characteristic like disability is impermissible discrimination. In some instances, though, treating people differently is not only permissible, but required by law. This is the case with respect to the requirement that housing providers make reasonable accommodations by granting exceptions to rules and practices when necessary for people with disabilities to access housing. The key difference is that this form of different treatment increases equity instead of diminishing it, and, significantly, is initiated by people with disabilities, not housing providers.

### **Disability Defined**

“Disability” is a physical or mental condition that makes it more difficult for someone to do certain activities. Beyond the word’s commonly understood meaning, “disability” is also a legal term of art with specific, statutorily defined meaning under both federal and California law. California’s definition of disability, which is broader and more inclusive than federal law’s definition, is: “a mental or physical impairment that limits a major life activity.”

A condition “limits” a life activity if it makes that activity difficult. Major life activities include physical, mental, social, and employment-related activities—for example, seeing, hearing, eating, sleeping, moving, standing, breathing, learning,



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thinking, communicating, reading, working, and caring for oneself. Examples of disabilities include cognitive limitations such as those resulting from developmental, age-related, or injury-related brain conditions; mental health limitations resulting from conditions such as depression, anxiety, schizophrenia, and post-traumatic stress disorder; and physical limitations, including those related to mobility, hearing, or seeing, or systemically limiting conditions such as cancer and HIV/AIDS. In contrast to federal law, which defines a disability as an impairment that “*substantially* limits” a major life activity, California law emphasizes that the limiting effects of a disabling condition do not need to be extreme for protections to apply.

Disability under both federal and California law is generally determined without looking at mitigating factors. For example, if a person has depression but is able to function well while on medication, they are still considered disabled, even if their major life activities are not limited when they take medication. Disability also includes having a record or history of a disability, or being regarded as having a disability. It does not include the current use of illegal substances, sexual behavior disorders, compulsive gambling, kleptomania, or pyromania, which are specifically excluded from the definition and therefore do not trigger fair housing protections. However, if one of the excluded conditions co-occurs with a non-excluded condition, then the non-excluded condition may still trigger fair housing protections. For example, a person who currently uses illegal drugs and also has a mental health disability would be entitled to fair housing protections based on that disability.

### **Reasonable Accommodations and Reasonable Modifications**

A reasonable accommodation is any change in rules, policies, or procedures that a person with a disability needs to fully use and enjoy housing or housing-related services. A reasonable modification is any physical change to a building, unit, or common area that is necessary for the same reason. Accommodations and modifications are automatically reasonable if they are necessary to provide someone with a disability an equal opportunity to use and enjoy housing, do not fundamentally alter the nature of the housing or other services provided, and do not create an undue financial and administrative burden for the housing provider.

Reasonable modifications differ from reasonable accommodations in that the person making a request for modification must generally bear its cost. However, if the housing provider is a recipient of federal funding—or if the building was constructed after March 13, 1991 and is a covered multifamily dwelling under the

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FHAA but has failed to comply with mandated accessibility requirements—then, as with reasonable accommodations, the housing provider is expected to bear reasonable costs. This manual focuses on reasonable accommodations, although the framework is similar for both.

Reasonable accommodations enable equal access to housing for people with disabilities. While many accommodations fall within a few popular categories, there is no limit to what a person can request, as long as the accommodation is necessary due to disability and does not create an undue burden or fundamental alteration for the provider.

Some examples of reasonable accommodations include:

- allowing a prospective resident with cognitive disabilities to get assistance with or skip complicated sections of a shelter intake application, when the resident would otherwise be required to complete the application on their own and in full;
- providing a single bed to a resident recovering from major surgery, even though bunk beds are normally provided and the accommodation will temporarily reduce the number of available beds;
- allowing a resident to keep their assistance animal, even though animals are normally prohibited;
- allowing a resident to pay rent on the 15th of every month, even though rent is normally due on the 1st, when the tenant relies on Social Security Disability Income, which is not paid until later in the month; and
- granting a second chance to a resident who has broken a program rule as a result of mental health disability, even though the program normally has a zero tolerance policy for violations.

Some examples of reasonable modifications include:

- allowing a resident with limited mobility to install grab bars in the bathroom;
- allowing a resident with low vision to modify the elevator by installing braille buttons;
- allowing a resident to install an automatic stove shutoff system, when the resident's mental disability makes it difficult for them to remember to turn off the stove;

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- installing air filters and weatherstripping to maintain air quality for residents with asthma; and
- installing ramps, adjusting cabinet and sink heights, and taking other measures to keep common areas accessible for people who use wheelchairs.

Fair housing law requires housing and shelter providers to consider requests for accommodations by applicants, residents, and, in some limited instances, former residents. Housing providers cannot charge money for providing a reasonable accommodation, and there is no limit to the number of reasonable accommodation requests a person with a disability can make. The need for accommodation may arise at any time—during application for housing or services, during tenancy or in the course of service delivery, or to avert or postpone eviction or termination from a program—and people with disabilities may communicate their accommodation requests in any reasonable manner, including by another person acting on their behalf. It is the responsibility of the requestor to ask for needed accommodations and to provide verification of disability and need if necessary for the housing provider to evaluate the request. Housing providers, in turn, are required to consider reasonable accommodation requests on a case-by-case basis, provide timely responses to requests, and engage in a good-faith interactive process when they cannot grant a request outright.

### **Inviting and Identifying Reasonable Accommodation Requests**

It is the responsibility of the person with a disability, or someone acting on the person's behalf, to ask for a reasonable accommodation when needed. However, many people with disabilities who need accommodations do not request them. Some do not know that their physical or mental health condition constitutes a legally protected disability or that reasonable accommodation laws exist. Others have disabilities that make it difficult either to recognize the availability of accommodations or to communicate requests. For that reason, housing providers should encourage and facilitate discussion about needed accommodations. Housing providers should not ask applicants or residents whether they are disabled but should make sure that all clients are aware of the option to request a reasonable accommodation. If program staff are aware that a person has a disability and needs an accommodation to access housing, services, or other program benefits, they should initiate the process by reminding the person that reasonable accommodations are available upon request.

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As a best practice, and in some cases a requirement of funding or affiliation, shelter and housing providers should provide applicants, residents, and other interested parties with a notice of rights regarding disability nondiscrimination laws and the applicability of those laws to program services and activities. Even when not required, a notice of rights can empower individuals to learn about their fair housing rights, set a positive tone for the future relationship between individuals and housing providers, and reduce the risk that a housing provider will inadvertently deny a reasonable accommodation request or otherwise subject someone to discrimination. The notice should be easy to read, provide the basics of disability discrimination requirements, and include the contact information of a designated employee or group responsible for ensuring fair housing compliance. The notice should also set forth the timeframe for a response to an accommodation request. Staff should be prepared to read the notice to someone if requested or if necessary to make sure it is understood.

Because an individual may communicate an accommodation request in any reasonable manner, to any staff member, at any time, and does not need to use the term “reasonable accommodation” to trigger the housing provider’s duty to respond, program staff should listen carefully for any statement that could be interpreted as a reasonable accommodation request. Essentially, any request for a change in rules, policies, or practices because of a disability can trigger a housing provider’s obligation to either evaluate the request on its merits or elicit further necessary information. If a resident indicates that a rule, policy, or practice is making it difficult for them to access program services, or to fully use and enjoy their housing, the housing provider should ask if they are requesting an accommodation.

### **Considering and Responding to Requests:**

#### **Determining the Nexus between Disability and Need**

Once a housing provider has determined that an applicant or resident is requesting a reasonable accommodation, it should determine whether there is enough information to verify the “nexus” (connection or causal relationship) between the requestor’s disability and the need for accommodation. The threshold is very low: a description of the disability and explanation of the nexus between the disability and the requested accommodation—i.e., how the requested accommodation will help the requestor overcome a disability-related barrier to obtaining, maintaining, or enjoying housing—is generally sufficient.

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If the disability or need for accommodation is not obvious or otherwise known to a housing provider, the provider may request verification, such as a letter from a doctor, caseworker, or health or service provider who has personal knowledge of the requestor sufficient to confirm the existence of disability and disability-related need. General information about symptoms can be helpful, to the extent that the information reveals the connection between the requestor's disability and need for accommodation. However, requestors do not need to submit medical records, diagnostic information, or details about treatment to establish that a disability exists.

If the disability is obvious or already known to the housing provider, and if the need for the requested accommodation is also obvious or known, then the provider may not request any additional information or documentation. In that event, any additional request for verification could be considered an illegal barrier to fair housing access.

For shelter, transitional housing, and permanent supportive providers that provide wraparound services, determining disability and nexus is likely to be the most straightforward aspect of the reasonable accommodation analysis. The disabilities underlying a request for reasonable accommodation are often the same conditions that qualify residents for the housing program, and the client's case file may have sufficient information to verify disability and disability-related needs or a staff member may have personal knowledge of that information. In these instances, the housing provider has no reason to ask for additional verification and should move to the next step in the analysis—assessing the “reasonableness” of the request.

### **Considering and Responding to Requests:**

#### **Determining What Is Reasonable**

A request for a reasonable accommodation is reasonable and should be granted if the following conditions are met:

- the requestor has a disability as defined by fair housing laws;
- the requested accommodation is necessary to afford the requestor an equal opportunity to use and enjoy the dwelling and related services;
- the request does not pose an undue administrative and financial burden for the housing provider; and
- the request will not fundamentally alter the nature of the housing provider's programs and services.

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If providing the requested accommodation would pose an undue financial and administrative burden on the housing provider, or if it would fundamentally alter the nature of its programs and services, the request is not “reasonable” and does not need to be granted. In that case, however, the housing provider must engage in an interactive process to identify a reasonable alternative accommodation. Under FEHA regulations, a failure to engage in the interactive process when the request cannot immediately be granted is equivalent to an outright denial of the request.

### The Limits of Reasonableness: Undue Burden and Fundamental Alteration

Whether a proposed accommodation is an “undue burden” or “fundamental alteration” can be a difficult question for housing providers, since the question is always contextual, and there is no explicit threshold or formula that can be applied. However, the following definitions and balancing factors provide some guidance.

#### *Undue Burden*

An undue burden is a significant difficulty or expense that a housing provider would face in implementing a requested accommodation. A housing provider is expected to bear some cost and inconvenience in providing a reasonable accommodation, so an accommodation that will merely cost money and employee time does not necessarily mean it is an undue burden. In determining whether an accommodation amounts to an undue burden, factors to be considered include:

- the nature and cost of implementing the requested accommodation;
- the financial and administrative resources of the housing provider;
- the structure and overall resources of any parent entity or organization, and the relationship of that parent to the program site;
- the benefits of the requested accommodation to the requestor;
- the availability of alternative accommodations that would meet the requestor’s disability-related needs; and
- whether the need for the accommodation arises from the housing provider’s failure to repair or maintain the property, or comply with related legal obligations.

The focus of this analysis is on the cost of the proposed accommodation, both fiscal and logistical, compared to the financial and administrative resources available—within the program itself as well as on an organization-wide level. As a result, a

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large corporation is expected to bear a greater burden than a small, non-profit organization because it has greater resources.

Whether a requested accommodation is an undue burden must be conducted on a case-by-case basis, taking into account the requestor's individual needs and the housing provider's actual financial and administrative resources at the time of consideration. Because a program's resources may change over time, an accommodation that is reasonable at one time may be an undue burden at another time. In some instances—for example, in the case of room or unit transfer requests—this will mean that accommodations may be granted on what effectively is a first-come, first-served basis. As a housing program's financial and logistical reserves change, including through allocating resources to prior reasonable accommodation requests, it may not be able to provide later requestors with the same accommodations that it could grant earlier ones. Conversely, as resources are replenished, the threshold for finding an undue burden will increase.

There is no fixed threshold or formula for determining when a burden becomes undue. However, with respect to financial burden, the U.S. Department of Housing and Urban Development's guidelines for subsidized multifamily housing programs offer some guidance. Through examples involving requests for extensive modifications, the guidelines suggest that when (a) projected income and residual receipts are insufficient to cover the cost of the alterations; (b) the replacement reserve cannot be replenished within one year if funds are withdrawn to cover the cost of alterations; and (c) the provider does not have sufficient administrative staff to explore other possibilities for obtaining funding, then an undue burden can be found. Although these guidelines do not apply outside their intended programs, they offer two helpful lessons. First, a housing provider can be expected to dip into its reserves, but not past the point where it cannot replenish those reserves within a reasonable period of time. Second, if a housing provider has staff who can explore other possibilities for obtaining funding, then they must do so once the provider determines that existing funds cannot cover the cost of an accommodation.

To account for fluctuating resources, organizations can also establish waitlists for accommodations that are not available immediately but are likely to become available in the future. Offering to place a requester on a waitlist may satisfy a housing provider's obligation to engage in an interactive process (discussed in greater detail below), and can be an appropriate alternative to offer in certain cases—such as room or unit transfer requests—when the supply of the requested resources is finite, difficult to redistribute without interfering with the fair housing

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or tenancy rights of other residents, and cannot be immediately supplemented, even by dipping into financial reserves or accessing additional sources of funding.

### *Fundamental Alteration*

A proposed accommodation fundamentally alters the nature of a housing program when it requires some act that is outside the scope of the program's mission or would undermine the reason for the program's existence. For example, if a resident requests assistance with personal hygiene care because their disability makes self-care impossible, granting this request would fundamentally alter the nature of a housing-only program and therefore be unreasonable. On the other hand, a request by the same resident to allow a live-in aide to stay with them would not be a fundamental alteration and likely be reasonable.

For shelter and housing providers that offer case management and on-site supportive services related to housing, the range of accommodation requests that would amount to a fundamental alteration is likely to be narrower than for a landlord that only provides housing. In some permanent supportive housing programs, for example, the above hypothetical request for personal care assistance would likely be reasonable. The provider's case management or other social services capacities could mean that requests for supported communication, mediation between residents in conflict, and other similar accommodations would also not be unreasonable. As with undue burden, a finding of fundamental alteration is contextual and requires an analysis of the nature and range of services offered by the program at the time of the request.

### **Interactive Process: A Legally Mandated Dialogue**

If a housing provider determines that a requested accommodation would amount to an undue burden or fundamental alteration, the provider may offer an alternative accommodation, as long as that alternative is no less effective than the requested accommodation at removing barriers to access. The housing provider must engage with the requestor in a legally mandated dialogue known as an "interactive process" in order to identify a reasonable alternative. Failure to engage in the interactive process when a reasonable accommodation request cannot immediately be granted may constitute disability discrimination.

When engaging in the interactive process, housing providers should make suggestions based on current program resources and anticipated future ones.



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Although the requestor is free to reject these suggestions, the parties can often find an acceptable solution through this process. For example, in the case of a unit transfer request where the housing provider has already depleted its discretionary funds and housing navigators are fully occupied with preexisting placement efforts, the housing provider can offer, as an alternative, to place the requestor on a waitlist until it can replenish its financial and administrative resources. In the meantime, the housing provider should brainstorm more immediate alternatives to address the requestor's disability-related need (e.g., installation of air filters to address concerns about air quality, assigning a staff member to mediate a noise complaint or other conflict between neighbors, etc.). In doing so, housing providers should think broadly and creatively about the full extent of their available program resources.

Importantly, a housing provider may not offer an alternative accommodation, even if the alternative would meet the requestor's needs, unless the original requested accommodation is an undue burden or fundamental alteration. An accommodation that is merely less convenient to the housing provider but preferred by the requestor must be granted.

### **Housing Provider as Disability-Related Services Provider: The Dual Role of Emergency Shelter and Transitional Housing Providers**

Many shelters and temporary housing programs offer case management and housing navigation support to help their client-residents access permanent housing. With respect to clients with disabilities, these programs are uniquely positioned on both sides of the reasonable accommodation dialogue—they are both housing providers and disability-related services providers. As housing providers, they are responsible for receiving, reviewing, and responding to reasonable accommodation requests regarding their own programs. As disability-related services providers, and particularly with respect to housing placement services, they are their clients' best ally when requesting reasonable accommodations from permanent housing providers.

By making sure that social services staff are familiar with fair housing laws, these programs can improve access to permanent housing for clients with disabilities. For example, if a client has a history of late rent payments or evictions caused by their disability that is now preventing them from securing housing, their transitional housing case manager can ask prospective landlords for a reasonable accommodation to disregard the negative rental history and consider other indications of tenant-worthiness.

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In providing reasonable accommodation support, program staff should always take their cues from clients. If the program follows the recommended practice of providing a notice of rights to all applicants and residents, then the client should already be aware of their right to reasonable accommodations in housing. If the client is encountering barriers to permanent housing, and if those barriers are caused by or related to disability, staff should remind the client that all housing providers are required to provide reasonable accommodations to remove disability-related barriers to housing. If the client is interested in requesting reasonable accommodations from a prospective landlord, staff can help them draft a request, or draft a request on their behalf, and prepare a disability verification letter based on the information in the client's file and the staff member's personal knowledge of the client.

Importantly, if a prospective landlord has knowledge of the requestor's disability and need for accommodation, a verification letter may not be necessary. For example, if the requestor has submitted prior reasonable accommodation requests and verification letters based on the same disability, further verification is usually not necessary. Similarly, if disability and need are obvious (e.g., the requestor uses a wheelchair and requests transfer to a ground-level unit), and the landlord has met or observed the requestor, then a verification letter is not required. However, when in doubt, or when a verification letter is easy to draft, it generally should be included with the request. Because housing providers may request verification if disability and need are not obvious or otherwise known, leaving out the verification can lead to delays, during which the unit may be rented to another applicant. Attaching a verification letter can also lend credibility to the request: It signals to the prospective landlord that the program stands behind the requestor, that the need for accommodation has already been confirmed by program staff, and that the request is necessary. In other words, it encourages the prospective landlord to take the request seriously.

### **Source of Income Discrimination**

Both California and federal law prohibit discrimination in housing based on a broad range of protected categories, including disability. However, California housing law expands on federal law by including additional protected classes. Under California law, recipients of housing subsidies, such as Section 8 Housing Choice Vouchers or disability benefits such as Supplemental Security Income, among other lawful sources of income, are protected from discrimination on that basis. As a result,

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housing providers in California cannot treat any tenant or housing applicant differently because of a protected source of income. This means that landlords cannot state a preference for applicants with earned income; cannot deny or terminate occupancy or limit access to housing amenities or benefits on the basis of housing subsidy use; and cannot otherwise create conditions that make it more difficult for qualified applicants and residents to access, use, and enjoy housing because of any lawful source of income.

People with disabilities are more likely than others to receive and rely on protected sources of income like disability benefits and housing subsidies. As a result, shelter, transitional housing, and permanent supportive housing providers should be aware of California's source-of-income discrimination protections. Even if these providers do not accept rent from residents or exclusively serve populations that rely on protected sources of income, understanding the protections will allow them to more effectively guide and advocate on behalf of their clients seeking permanent housing.

Like with other protected classes, both intentional and inadvertent source of income discrimination are prohibited. Thus, housing providers may not refuse to accept a lawful source of income and also may not create conditions of tenancy that exclude recipients of that source. For instance, if a prospective tenant receives a housing subsidy and the housing provider has a requirement that a tenant make three times the total rent, the provider may only consider the tenant's share of rent in determining whether the requirement is met. This means that if the rent is \$2,000 per month and \$1,500 will be covered by a housing subsidy, then the provider may only require the prospective tenant to show an income of \$1,500 (three times the tenant's \$500 share of rent).

### **Due Process**

Under the United States Constitution, anyone receiving government benefits, such as government-subsidized housing or shelter, has a constitutional right to due process of law before that benefit can be terminated. Under California law, due process protections extend even further and apply not only to the termination of benefits, but also to any deprivation of a statutorily conferred benefit or interest. This means that an individual has due process protections both when they are terminated from a housing program and when they are denied admission to a program or denied other program benefits, as long as they have met statutorily-defined criteria.

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To satisfy the minimal requirements of due process, before a person's benefit or interest can be terminated or denied, that person must be afforded: (1) timely and adequate written notice of the basis for the proposed action; (2) an opportunity to defend themselves by presenting their own arguments and evidence orally and by confronting any adverse witnesses; and (3) prompt written notice of decisions.

All shelter and housing providers should have protocols in place to inform participants of their rights and to satisfy the requirements of due process. Providers should have a formal, written document setting forth its rules of program entry, participation, and termination, and provide this to all residents and applicants. When providers seek to terminate or deny a program benefit or interest, they should provide clear written notice of the decision in accessible language. Vague statements or summaries do not meet this standard. Rather, the notice should provide as much information as possible about the specific underlying facts, the source of that information, and the reasoning behind the decision. As a matter of formal policy, providers should have mechanisms of review, including an opportunity to present evidence and arguments before an impartial decision-maker, which must be offered any time an adverse action is taken. Following this appeal, the housing provider should issue a timely written decision, in accessible language, that clearly articulates its supporting facts and reasoning.

### **Grievance Policy and Procedures**

Shelter, transitional housing, and permanent supportive housing providers should create a grievance policy for discrimination complaints. In addition to setting up a process to resolve complaints, these policies can benefit housing providers by helping to prevent discrimination, improve staff compliance with fair housing laws, and make residents feel supported and empowered in their housing programs.

Notice of grievance procedures should be given to all applicants and residents. At a minimum, the notice should include the process for filing a grievance; the time frame for an initial decision; and the process for appealing the decision. The notice should also mention that reasonable accommodations are available for the grievance process, including alternate methods of filing and time extensions to provide additional information. As with the notice of rights, staff should be prepared to read the notice to individuals upon request or if necessary to ensure understanding of the notice.

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Grievance policies should be maintained as a formal, written document. At least one staff member (and preferably several) should serve as disability coordinator(s) and have access to tools and resources necessary to receive, review, and resolve or redirect complaints. Grievance investigations should always begin with a thorough review of the complaint, the individual's file, and the housing provider's grievance policy, nondiscrimination policy, and other policies or procedures at issue in the complaint. Investigations should also involve interviews with any staff who witnessed or were involved in the conduct alleged in the grievance, as well as an interview with the individual, if they are willing.

The grievance decision should be in writing and set forth the factual findings, reasoning, and basis for the decision. If the decision is favorable to the individual, it should describe the reasonable accommodations or other relief to be granted; the steps to be taken in implementing that relief; and the individual's recourse if the relief is not implemented. If the decision is unfavorable to the individual, it should provide information regarding the appeals process. The decision should be made available to the individual in an accessible format, with a record maintained by the disability coordinator.

## **Questions and Answers about Fair Housing Laws**

The preceding sections have discussed essential legal principles, best practices, and practical frameworks for ensuring that emergency shelter, transitional housing, and permanent supportive housing resources are accessible for people with disabilities. This next section will apply and expand on these concepts using a range of hypotheticals presented in question-and-answer format.

### **Q&A: The Application and Intake Stage**

#### **Questioning Applicants About Disabilities**

Generally speaking, questions posed by a housing provider to a prospective resident must be aimed solely at determining whether the applicant would make a good tenant. With limited exceptions, questions aimed at revealing whether a person has a disability, or the extent of any disability, violate fair housing law.

1. Can we ask a prospective resident if they have a disability or what kind of disability they have? What about other protected characteristics like gender identity?

Fair housing laws prohibit housing providers from requesting information about the presence of a disability or details about a disability unless the applicant is applying for housing restricted by the funding source to individuals with disabilities or to individuals with a specific kind of disability (e.g., housing funded by the Housing Opportunities for People with AIDS, or HOPWA). Furthermore, a landlord cannot ask questions aimed at revealing the existence of a disability or details regarding a disability. Examples of prohibited questions include:

- Can you live independently?
- Do you attend any self-help groups?
- Are you currently taking medication?
- Have you ever been under the care of a psychiatrist?
- Do you have trouble using stairs?

Housing providers should also not ask applicants or prospective guests questions related to any other protected characteristic under state or federal fair housing laws. As with disability, housing programs that are restricted by funding source may ask questions relating to other protected characteristics for the limited purpose

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of determining program eligibility. For example, a veterans' housing program may inquire about veteran status if that is a requirement for admission.

In shelter, transitional, or other housing programs for people with disabilities, the housing provider may ask applicants if they have a disability or if they have the specific disability required to qualify for the program, but the provider may not ask about any details of the person's condition or treatment.

**Emergency Shelters:** Shelter operators are required to comply with these rules since shelters must serve all people equally, regardless of disability or other personal characteristics. If a shelter is gender-segregated, it must permit residents to use the facility that corresponds to their gender identity.

2. How can we figure out who would be an appropriate resident without asking about a person's disability? What kinds of questions can I ask?

The problem with asking an applicant whether they have a disability, beside the fact that it is against the law, is that the presence of a disability is neither a reliable indicator of how good a tenant the person will be, nor is it a fair standard for assessing a tenant. The law requires instead that questions posed to prospective residents be directed at discovering whether they would be responsible tenants.

A transitional or supportive housing provider, like any landlord, is free to ask neutral, relevant questions that will let the provider know if the applicant is likely to pay rent, keep the property in good condition, and refrain from interfering with the rights, health, and safety of other tenants. However, the housing provider must be careful when asking about past rent payment, or behavioral or criminal history. These questions, which may seem neutral, may actually disparately impact people with disabilities—and can be subject to reasonable accommodation—when there is a nexus between question and the applicant's disability. For example, if a prospective resident has a history of late rent payments resulting from depression, they may be able to request that a housing provider look to other factors of tenant-worthiness, especially if they are now receiving support that makes future late payments unlikely.

3. Can we ask an applicant if they get Supplemental Security Income (SSI) or Social Security Disability Income (SSDI)?

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While a housing provider may request proof of an applicant's income (because it is relevant to whether a person will be able to pay rent), a provider cannot ask directly if an applicant receives SSI or SSDI because these benefits are available only to people who have disabilities or are age 65 or older. Therefore, asking about SSI or SSDI could reveal the presence of a disability and would not have any bearing on whether the person would be a good tenant.

4. How can we provide participants with the appropriate supportive services if we cannot ask applicants about disability?

Because disability is a prohibited basis on which to deny housing, fair housing laws prohibit a housing provider from asking about disability when evaluating an applicant. After an applicant has been approved for residency, however, if the housing program includes supportive services (as transitional housing programs often do), it can ask the resident if they would like to volunteer information about disability and other health-related issues in order to receive services. When possible, these interviews should be conducted by a supportive services staff member rather than a housing management staff member.

5. How should we go about helping a person who needs assistance with the application process but does not request it?

While it would be discriminatory to ask only people who seem to have a disability if they need help when they have not asked for it, there is nothing wrong with offering assistance to everyone. It is also a good practice to inform all applicants of your willingness to provide assistance with the application process.

6. How can we comply with the mandates of Homeless Management Information Strategies (HMIS) if we cannot ask guests about their disabilities?

**Emergency Shelters:** Emergency shelter providers cannot ask questions about disability during the intake process until it has been made clear to the guest that they have been admitted into the shelter. After the initial intake process is complete, shelter workers should inform each guest that answering the HMIS questions is voluntary and that any information gathered is for HMIS purposes only and will not affect their ability to stay in the shelter.



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7. How do we verify that the person has a disability and is eligible for our program?

If the disability is not obvious and the housing program is required by its funding sources to verify the existence of a disability, the provider may request verification in the form of a disability benefits award letter or a letter from a doctor or caseworker confirming that the person has a disability. If more specific information is needed regarding the nature of the disability in order to comply with the funding source's rules, the program may request a letter from the doctor or caseworker verifying the nature of the disability. For example, a HOPWA program might request a letter from a professional stating that the person has an HIV-positive diagnosis. A housing provider cannot request more information than what is required to determine eligibility for the program. For example, it cannot inquire into the current state of the person's health or the kind of treatment the person is receiving.

8. Can we direct someone to another program that we think would be better for that person because of their specific disability?

Recommending certain other programs to an individual because they have a disability is called steering, and it is just as illegal as telling people of a certain race that they might be more comfortable in another part of town. For example, if a person with HIV applies to a particular program, it is likely that they think the program will suit their individual needs. Staff at that program should not redirect that person to an HIV-positive-specific program. If a housing provider's concern is that applicants to a program may not be aware of other transitional housing opportunities available to them, the provider may offer all applicants a list of other available programs with a short description of each. To single out any individual because of a disability or physical condition and steer that individual to another program on the basis of disability amounts to discrimination.

9. If an applicant requests a reasonable accommodation or a reasonable modification when applying for housing, what may we ask about their disability?

Once an applicant has requested a reasonable accommodation or modification, a transitional housing or emergency shelter provider may ask for verification of the disability only if the disability is not obvious or otherwise known to the provider. If it is not clear how a person's disability makes an accommodation necessary, a

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provider may also request assurances from the person's healthcare worker, case manager, or disability services provider that the requested accommodation or modification is necessary because of the disability. The housing provider cannot require that the verification come from a specific type of professional and cannot demand to know the specific diagnosis or see medical records.

### **Criminal and Substance Use History in the Application Process**

Alcoholism and past illegal drug use are considered disabilities under fair housing laws and are not a permissible basis upon which to deny a person housing. Current illegal drug use can be a permissible basis for denying housing, but may also be subject to reasonable accommodation in some circumstances. Depending on the nature of the crime, the length of time that has passed, and the applicant's changed circumstances, criminal history may be a permissible basis for denying housing, but may also be subject to reasonable accommodations and other nondiscrimination mandates.

10. Can we ask an applicant if they have a history of either alcohol or illegal drug use?

Unless this information is necessary to determine if someone is eligible for a specific housing program, these questions violate fair housing laws and cannot be asked. Alcoholism and past illegal drug use disorders are both considered disabilities, and asking about them is therefore prohibited (see #1 for exceptions). If information about past alcohol or illegal drug use comes to light as the result of an applicant explaining a past incident of criminal history or negative tenant history, the applicant should be given an opportunity to explain why this incident is unlikely to recur (for example, the applicant is in recovery and no longer uses the substances in question).

11. If an applicant reveals that they have a history of alcohol or illegal drug use, may we inquire if they are in treatment or require them to prove they are no longer using?

No. Asking an applicant with a history of past alcohol or drug use to prove that they are not still using is illegal. Fair housing laws prohibit questions about treatment or requests for verification that a person is no longer using. Past illegal drug and alcohol use are considered disabilities, and inquiries regarding disabilities are not

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permitted (see #1 for exceptions). Furthermore, stereotypes about people with disabilities cannot be used to make housing decisions.

12. Can we ask an applicant if they are currently using illegal drugs or alcohol?

Because current illegal drug use is not a protected disability under fair housing laws, a housing provider can ask about it, as long as the same question is asked to every applicant. In contrast, a housing provider may not ask about current alcohol use unless the housing program has a sobriety requirement.

13. If an applicant is actively using alcohol or other substances, do we still have to let them in?

The law treats active alcohol use very differently from active illegal drug use. Alcoholism is considered a protected disability and is not a permissible basis for excluding a person from housing. A program with a sobriety requirement may of course require that its residents refrain from alcohol use.

Current illegal drug use, on the other hand, is not considered a disability. Therefore, it is legal to deny someone housing on that basis. However, fair housing laws do protect *former* illegal drug use, so housing should never be denied because of someone's prior substance use.

Moreover, there is general consensus among funders and service providers that the Housing First model—a model in which housing is offered to people experiencing homelessness without preconditions like sobriety—is the most effective and humane way to address the problem of homelessness.

14. What exactly constitutes “current” use?

“Current” drug use means use that has occurred recently enough to justify a reasonable belief that the use is ongoing. It is determined on a case-by-case basis. The law is clear that someone who has used illegal substances as recently as six weeks ago is currently using, and that someone who has not used for at least a year is not currently using. When the last use took place more than six weeks ago and less than a year ago, the law is not clear as to whether it should be considered current or past use. Factors that justify a reasonable belief that drug use is not current include whether the person is in recovery (for example, actively participating in an addiction recovery program).

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15. Can we ask an applicant if they have used illegal drugs within a certain period of time, such as six months?

Housing providers can ask applicants about current, but not past, illegal drug use. Unfortunately the law does not set a sharp dividing line between past and current use (see #14). One way to handle this is to simply ask, “Do you currently use any illegal drugs?”

Some transitional housing programs require applicants to have refrained from use for a specific amount of time, such as six months. Because the law may not be clear on whether that time frame constitutes current or past use, programs should be prepared to waive these requirements as a reasonable accommodation when someone’s disability and commitment to sobriety suggest that a shorter time period should be used.

Increasingly, transitional housing programs are adopting a Housing First approach, providing interim housing without preconditions like sobriety. Once people are housed, they may be better able to address physical, mental, and behavioral health challenges.

16. Can we ask about a person’s criminal history?

Housing providers can ask about a person’s criminal convictions as long as all applicants are asked the same questions. Providers can also conduct criminal history checks on all prospective tenants but cannot reject an applicant based on just any criminal conviction. Federal law requires consideration of individuals on a case-by-case basis, so housing providers must take into account factors such as the nature and severity of the crime and length of time since the crime was committed. Housing providers must make a determination based on actual facts and evidence, and cannot reject applicants due to a perceived threat based on general criminal history. In California, a housing provider cannot reject an applicant based on a criminal conviction unless the conviction would have a direct negative effect on a substantial, legitimate, and nondiscriminatory interest of the housing provider.

Although housing providers can ask questions about criminal history, they should be careful to ask the same questions of all applicants, apply criteria uniformly, and offer opportunity for explanation and accommodation whenever possible. In 2022, the U.S. Department of Housing and Urban Development issued strong guidance regarding the discriminatory effects of criminal history use in housing decisions and potential liability for housing providers under three theories of discrimination—

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disparate treatment, disparate impact, and failure to grant reasonable accommodations. Housing providers that use criminal history as a factor in their application process should proceed at risk and reexamine the practice, taking measures to safeguard against both intentional and unintentional discrimination.

17. Can we ask if an applicant has ever been convicted of the manufacture or distribution of illegal substances?

Yes. These questions, like all questions regarding criminal history, are permissible, as long as all applicants are asked the same questions.

18. Can we reject an applicant because of their criminal record if they say it is caused by a disability?

If an applicant with a criminal record requests that a criminal records policy be waived as a reasonable accommodation because their criminal act was related to disability, the housing provider should grant the request unless it is unreasonable. In analyzing the reasonableness of a request, the housing provider may request verification of disability unless the disability is obvious or already known to the provider. The housing provider may also ask the applicant to explain the connection between the disability and the crime, and why the threat of recurrence no longer exists (for example, the applicant's symptoms are under control). The housing provider can also consider the following factors: how long ago the criminal activity occurred; whether the crime, if repeated, would have any relevance to the tenancy; and any indications that the crime is likely to recur.

19. Can we ask an applicant if they have ever spent time in a treatment facility?

No, this is not a permissible question because it aims to uncover an applicant's disability, and information about time spent in treatment facilities does not speak to an applicant's ability to be a good tenant.

20. If an applicant has revealed that they have a history of drug use or have been under psychiatric treatment, can we ask them to show that they would still be a good tenant?

No. Any questioning that stems from a presumption that a person would not be a good tenant because of a disability—including past illegal drug use or past or current alcoholism—is illegal.

## Questions about Tenancy History

Housing providers must ensure that questions about tenancy history do not have a discriminatory effect on applicants with disabilities.

21. If an applicant has no tenant history, how can we check for references?

Often an applicant with a disability will have a non-traditional housing history, including periods in hospitals, time on the street, and stays with friends. If a housing provider accepts only applicants with established tenant histories, the provider is effectively denying housing opportunities to many people with disabilities. Housing providers can avoid this discriminatory effect by making the reasonable accommodation of accepting non-landlord references for any applicant who explains that their non-traditional housing history is due to a disability and that they need to use people other than landlords as their references. The qualities that make for a good tenant, such as paying rent on time (being responsible with money) and respecting the rights of others, can be investigated by checking with non-housing references. For example, a caseworker may be able to confirm that an applicant manages money wisely, while a homeless outreach worker may be able to confirm that an applicant gets along with others.

22. If an applicant has a negative tenant history, do we still have to let them in?

Whether a housing provider has to accept an applicant with a negative tenant history depends on whether the negative history is due to a disability. While a housing provider should not ask whether an incident was disability-related, an applicant may volunteer this information when explaining negative tenant history.

If the negative tenant history is not related to a disability, the housing provider does not have to accept the application. For example, if the applicant was evicted for nonpayment of rent five years ago and their disability began one year ago, the negative tenant history is likely not disability-related, and the housing provider may reject the tenant's application without further consideration.

If, on the other hand, the negative tenant history is related to a disability, the housing provider needs to do a reasonable accommodation analysis to decide whether to accept the applicant. For example, if an applicant was evicted after they spent all their money during a manic episode, but has since stabilized, is now on medication, and has not had any problems paying rent since, the housing provider

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should make a reasonable accommodation by waiving its general policy of rejecting applicants with eviction histories.

The law does not require that the applicant give a lot of detail—for example, they do not need to disclose a bipolar disorder diagnosis. If the applicant simply requests that the negative tenant history be overlooked as a reasonable accommodation, explains that their disability temporarily prevented them from paying rent, and can provide a verification letter in support of the request, the housing provider should grant the request.

23. If an applicant with a negative tenant history states that with a certain reasonable accommodation they could be a good tenant, but their history shows that the same reasonable accommodation did not work in the past, do we still have to accept them?

If the person has a history of requesting and receiving the same accommodation, and it has not worked, it may be that the accommodation is not effective, and therefore not necessary to provide the person with an equal opportunity to use and enjoy housing. However, there may be extenuating circumstances that explain why the same accommodation that was ineffective in the past may now be effective, and the housing provider should allow the person with a disability an opportunity to explain if that is the case. If there is no plausible explanation and no reason to believe that the suggested accommodation will work this time, the housing provider should suggest that the applicant come up with an alternative accommodation, or suggest an alternative to the applicant. If no reasonable alternative accommodation can be found, the housing provider does not need to accept the applicant.

### **Confidentiality in the Application Process**

Fair housing laws require housing providers to keep confidential any information related to the disabilities of an applicant, resident, or guest.

24. Do we have to keep information that we receive from an applicant confidential?

Fair housing laws require housing providers to keep confidential all information received from an applicant regarding their disability. Information regarding the applicant's disability should be disclosed to the minimum number of staff members necessary to evaluate the applicant's request, and should be kept separate from the applicant's general file.

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**Emergency Shelter:** Information from guests in an emergency shelter regarding disability must also be kept confidential except to the extent that sharing is permitted by the guest or required by law. It is a good practice to only input a guest's personal information into the Homeless Management Information System (HMIS) database with the guest's written consent. Guests should be informed to whom the HMIS information will be shared and for what purpose, and must be informed of their right to revoke consent at any time.

25. How can we share information regarding disability that is revealed in the application process with program staff in an efficient manner without violating confidentiality?

Housing staff may request that applicants sign authorizations for the release of information to support service staff. Release of information forms should indicate what information will be released, to whom, and how long the release is valid. If it is not possible to obtain consent in writing, staff should make a written note of any oral permission granted. Information should not be shared without the applicant's express permission.

## **Q&A: Shelter Stay and Tenancy Stage**

### **Allowable and Problematic Practices**

Some common practices in emergency shelters and transitional housing programs actually violate fair housing and other laws, even when they are adopted for the best of reasons.

26. Can we restrict our shelter to a certain homeless population that we think needs the services most?

**Emergency Shelters:** Emergency shelters can be sued for gender discrimination or familial status discrimination that violates fair housing laws, and courts may rule differently in different situations. In one case, a shelter that served men, women, and families was sued for trying to move the women and families to a different location so that it could have a men-only shelter. The court held that this violated the Fair Housing Act. The court reasoned that it was discriminatory to have a men-only shelter and there was no well-documented, safety-related reason that would justify the separation of the sexes, especially since the shelter offered private rooms for men, women, and children. If a shelter operated a large room



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with cots where privacy could not be ensured or had well-documented concerns about safety, a court would be more likely to find that the shelter could legally separate people based on gender or familial status.

27. Can we require a transitional housing resident to take part in group activities or accept supportive services?

Requiring certain activities for certain individuals, such as psychotherapy for one person and job training for another, is discriminatory, although a general requirement that everybody participate in some program activities is not discriminatory. Furthermore, although landlords cannot require that tenants maintain a certain lifestyle, a third party (such as a funding source) offering to pay someone's rent may condition the payment of rent on participation in a mandatory program.

Research indicates that voluntary services are more beneficial in the long term than mandatory services and that many people engage more with supportive services once they are permanently housed. Unless a funding source requires mandatory supportive services, the safest option is to make supportive services voluntary and available to all residents.

28. Can we have a sobriety requirement in transitional housing?

Some transitional housing programs have a sobriety requirement, and this practice has generally not been challenged. However, landlord-tenant law does not allow a landlord to direct a tenant's lifestyle choices, including what they can or cannot drink. In addition, sobriety requirements can have a discriminatory impact on people with alcoholism who may find it harder to comply than people without that disability. A housing provider must make reasonable accommodations to requirements that have a discriminatory impact on people with disabilities, but waiving a sobriety requirement on an ongoing basis for someone with alcoholism would make that requirement meaningless.

A transitional housing program may have an easier time defending its sobriety requirement if it holds itself out as a rehabilitation program. That way, ongoing waiver of the rule would amount to a fundamental alteration of the program and be unreasonable. Even if the program holds itself out as a rehabilitation program, it should still make reasonable accommodations for residents who only occasionally violate the rule. As long as a resident tries to follow the requirement

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and supports the sobriety of fellow residents, a one-time or occasional lapse is unlikely to amount to a fundamental alteration.

### **29. Is it permissible to have random drug testing in transitional housing?**

Although current illegal drug use is not a disability under fair housing law, drug testing by publicly-funded entities may violate a resident's constitutional right to privacy. This means that a program receiving government funding must show an overriding interest in the practice, such as public safety. A program that receives purely private funding does not face the same legal issue. However, even these programs should keep in mind that illegal drug use can be caused by an underlying disability (e.g., self-medicating the physical or mental pain caused by a disabling condition), and that reasonable accommodations may be necessary on a case-by-case basis for residents with positive drug test results.

Any transitional housing program that wishes to perform random drug testing should inform residents before move-in that random drug testing is part of the program. Residents should not be charged for tests, and programs should offer some alternate scheduling and flexibility as to when the tests are administered, particularly when forcing a resident to test at a particular time would interfere with the resident's disability-related care. Furthermore, programs should inform residents as to the specific substances they will be tested for. Because of the high rate of false positives, any specimen that tests positive should be sent out for additional testing to confirm the results. Residents should be provided with a copy of their test results upon request, and results should otherwise be confidential, on a need-to-know basis among program staff.

Reasonable accommodations should be available to any resident whose housing or housing privileges are threatened by a disability-related positive result. Additionally, any resident who tests positive (whether or not disability-related) should be afforded notice and the opportunity to hear and refute the evidence at an informal hearing before the provider starts the formal eviction process or the resident loses certain privileges.

### **30. Can we ask about a resident's condition if they are not acting like their usual self but are not violating any program rules?**

If a resident seems unhappy, stressed, or angry, providers can politely ask if everything is okay, as long as the same question would be asked of all residents—not just residents with disabilities. If the resident is willing to talk, this question

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may lead to a productive conversation about ways the provider can help the resident. If the resident does not want to talk, however, the housing provider must respect the resident's privacy.

### **Reasonable Modifications and Physical Accessibility**

Housing providers must allow reasonable modifications and, in some cases, also pay for them.

31. If a resident needs a physical modification to a common area of the building, such as the lobby, because of a disability, who pays for the work?

Housing providers have an obligation to ensure equal access to common areas of the building. For example, if a step restricts access to the lobby area, the housing provider must provide a modification if needed by a resident with limited mobility.

32. If a resident needs a physical modification to their unit because of a disability, who pays for the work?

In housing programs receiving federal assistance and thus subject to Section 504 of the Rehabilitation Act, the housing provider must pay for reasonable physical modifications. Additionally, for covered multifamily buildings constructed after March 13, 1991, the Fair Housing Act requires that certain minimal accessibility standards be met, meaning that housing providers must cover the cost of upgrades to meet these standards if requested as a reasonable modification. In most other housing, the resident must pay for the modifications or find some alternative way to pay for them, such as city or charitable donation funds. The housing provider must allow the resident to make the changes, although the provider may require that the resident pay a refundable deposit to restore the unit to its original condition.

Housing is subject to Section 504 when it is even partially supported by federal funding, unless the federal support is attached only to the ultimate beneficiary of the funding. For example, a HUD-funded non-profit developer of low-income housing and a HUD-funded public housing authority are both subject to Section 504, but a landlord who accepts individual federally-funded Section 8 vouchers is not. In that case, even though the landlord is accepting federal money, the voucher belongs to the ultimate beneficiary of the funding (the tenant). However, if the building in question does not already meet the accessibility standards required by the Fair Housing Act for newer covered multifamily dwellings, then the landlord

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must pay for any reasonable modifications necessary to bring the building up to those minimum standards.

33. What should we do if our shelter is not wheelchair-accessible and someone who uses a wheelchair comes to us?

**Emergency Shelters:** Virtually all emergency shelters are required to comply with ADA accessible design guidelines, which require retrofitting for access by wheelchair users. Often a shelter can become at least somewhat accessible with a few relatively inexpensive changes: portable ramps, grab bars in the bathrooms, and shelving at lower levels. Furthermore, if part of the shelter facility is accessible, the program itself can sometimes become accessible by moving program activities into those areas of the facility.

If an emergency shelter is not wheelchair accessible and cannot become accessible in time for a guest who uses a wheelchair, the shelter's best course of action is to find a nearby shelter that is accessible, offer to assist the guest with transportation, and take steps to ensure ADA compliance as soon as possible.

34. What can we do to make our facility more accessible to people with physical disabilities if we do not have the funding to remodel?

Federal or state funds may be available to address inaccessibility in housing, and shelter providers should explore this possibility. Short of major structural modifications, interim options such as moveable ramps and rearrangement of furnishings and fixtures may provide a partial solution. Relocating portions of the program can also provide access in some instances. For example, if only one part of the facility is accessible, program activities can be scheduled in that part of the building.

35. We have a resident whose disability causes them to make excess noise, which disturbs residents in adjoining rooms. The resident has requested that we soundproof the walls, as a reasonable modification, but we think that this will be too expensive and have suggested that the resident simply limit the disturbance to daytime hours as an alternative. The resident has refused.

Can we require them to accept and comply with the alternative accommodation that we have offered?

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No, a housing provider cannot force a resident to accept an alternative accommodation under any circumstances and cannot deny an otherwise reasonable accommodation or modification merely because a less expensive alternative is available. Any shelter or transitional housing program that receives federal funding must pay for reasonable modifications to their premises needed by residents and prospective residents with disabilities. Although a housing provider does not need to grant a requested modification if it would pose an undue financial and administrative burden, any alternative proposed by the housing provider must meet the requestor's disability-related needs and be acceptable to the requestor. For this reason, housing providers should be prepared to think creatively and have multiple alternatives ready to offer when the requestor's preferred accommodation or modification is not feasible. Interim housing providers must be prepared to shoulder reasonable costs in implementing necessary modifications and should not deny a modification merely on the basis that it would require the program to dip into its reserves.

In this case, the alternative that has been offered probably does not meet the requestor's disability related needs, since it may not be possible for the requestor to conform their behavior to the restricted time frame. Furthermore, since housing providers are expected to bear some cost in implementing reasonable accommodations—and, if they receive federal funds, modifications—the fact that soundproofing the walls would be expensive does not mean it would amount to an undue burden. The housing provider should brainstorm alternatives that might be acceptable to the requestor. For example, even if the housing provider cannot afford to install soundproofing between walls, it can still investigate less expensive sound barriers, such as wall panels, carpeting, or door sweeps.

### **Reasonable Accommodations: Preliminary Questions**

Housing providers must grant reasonable accommodations to facilitate equal access for people with disabilities. It is never too late for someone with a disability to request reasonable accommodations, and there is no limit to the number of different reasonable accommodation requests a person can make.
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36. How will we know what kind of reasonable accommodation to offer a person if we can't ask about their disability?

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Generally, the person who needs a reasonable accommodation must make the request. For example, if a person has a learning disability that makes reading documents difficult, that person must indicate that they are having trouble accessing and understanding information about their housing program. Housing providers should make efforts to inform residents and prospective residents of their right to request reasonable accommodations so that individuals request reasonable accommodations when necessary.

Although housing providers cannot single out individual residents based on assumptions about their disability-related needs, providers can give all residents information about the availability of reasonable accommodations within their programs. It is a good idea to provide all residents—and all prospective residents and applicants—with a notice of rights that includes the applicability of disability protections, the availability of reasonable accommodations, and the existence of a grievance process. Housing providers should also be aware of the communication needs of their residents and be prepared to deliver this information verbally, in sign language, or through a translation service as needed.

### Sample Notice of Rights

In accordance with federal and state law, including Title II of the Americans with Disabilities Act of 1990, the Fair Housing Act of 1968, and the Fair Employment and Housing Act, [Program Name] will not discriminate against individuals with disabilities on the basis of disability in its services, programs, or activities.

This means that if you are a person with a disability, you are entitled to reasonable accommodations to ensure that you have an equal opportunity to access our programs and services. Reasonable accommodations can include:

- A change in a rule or the way we do things;
- A change in the way we communicate with you or give you information;
- A change in the services you receive from us, including services related to your housing;

And many other kinds of changes to help you benefit from our programs and services.

Information from disclosure of a disability will be kept confidential within [Program Name] unless you give us permission to share it with persons outside of our organization, and it will only be used to determine if you are

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entitled to some type of change in program rules or requirements, or another form of reasonable accommodation or aid.

**If you are not sure whether you have a disability or need accommodation, you can talk about it with us. We will work with you to try and find a way to help.** If you request an accommodation, we will give you an answer within [initial response time] days, unless there is a problem getting the information we need or unless you agree to a longer time. We will let you know if we need more information or verification from you or if we would like to talk with you about other ways to meet your needs. If we turn down your request, we will explain the reasons and provide you with the opportunity to give more information.

Complaints that any of our programs, services, or activities are not accessible to persons with disabilities should be directed to [Name and contact information for designated employee].

37. Do emergency shelters have an obligation to inform applicants of their right to request reasonable accommodations?

Emergency shelters should inform all applicants of the availability of reasonable accommodations to people with disabilities as part of their fair housing obligations. Most federal and state funding sources require programs to comply with all fair housing and civil rights laws and take steps to affirmatively further fair housing, including by providing a notice of rights to all applicants and residents. Informing participants of their rights is a form of furthering fair housing, and it is a best practice to provide a notice of rights, include a written statement about the right to reasonable accommodation on the application itself, and verbally inform all applicants of the right as well.

38. We received a reasonable accommodation request from one of our residents three days ago and have sent it over to our fair housing coordinator to review. The resident keeps calling the front desk to check on the status of the request.

How do we reassure this applicant that their request has been received and is under consideration?

As a best practice, housing providers should provide written acknowledgment of a reasonable accommodation request. The acknowledgment should inform the requester that the request has been received and provide a time frame for the initial

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response. The acknowledgment should also provide the contact information for the housing program's fair housing coordinator or other designated employee responsible for receiving and reviewing requests.

### Sample Acknowledgment of Reasonable Accommodation Request

Dear [Requestor]:

[Program Name] has received your [date of receipt] request for reasonable accommodation regarding [set forth description of the accommodation requested]. We have begun our initial review of your request and will provide you with a response by [anticipated date of preliminary response].

If we are unable to grant your request through our initial review and response, we will explain the reasons, give you the opportunity to provide us with more information, and, with your participation, begin an interactive process to identify any alternative accommodations that may also meet your needs.

We look forward to working with you to help you access our programs and services. If you have any questions or concerns, please reach out to [Name and contact information for designated employee].

Sincerely,

[Name and title]

39. A resident did not tell us that they had a disability when they applied for our program. Now that they are a resident, they have revealed that they have a disability and have requested as a reasonable accommodation to be allowed to pick up mail a few times a week instead of every day.

Do we have to consider this request even though this resident didn't tell us about their disability when they applied?

Yes, the request must be considered, and if it is necessary and reasonable, it must be granted. A person may request a reasonable accommodation at any stage of their tenancy, regardless of whether the housing provider was alerted to the disability prior to move-in.



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40. How can we verify that a person requesting a reasonable accommodation really does have a disability and that the accommodation requested is necessary?

If the disability of an applicant, guest, or resident is not obvious or already known to the housing provider, the housing provider may request a verification from a provider of health or disability-related services explaining that the person requesting the accommodation does in fact have a disability and that the requested accommodation is necessary.

**Emergency Shelters:** In an emergency shelter, obtaining verification may be more difficult. A person coming in off the street is unlikely to have a letter from their doctor or caseworker handy to verify their disability and the need for reasonable accommodation. Shelter staff should proceed as if the disability and need for the accommodation have been verified, request that the verification be provided within a reasonable time, and allow the use of a telephone, fax machine, or computer to facilitate the process.

41. What should we do if a resident requests a reasonable accommodation and provides a doctor's letter stating that the resident has a disability and needs the accommodation because of that disability, but we have lingering doubts about the need for the accommodation?

A housing or shelter provider should never deny a request merely because the provider is not convinced that the person requesting the accommodation needs it. If the provider is not convinced of the need for an accommodation, the provider must ask the person requesting the accommodation for additional information. It is important to only ask for the information necessary to substantiate the need for accommodation; it is not appropriate to second-guess the verifying provider's opinion or to delve into the applicant's personal health information.

42. What kinds of reasonable accommodation requests—and how many—may a person make?

There is no limit to the number of reasonable accommodation requests a person may make, and the range of possible reasonable accommodations is as broad as the human imagination. Examples of common reasonable accommodation requests during the application phase include allowing an emotional support animal despite a no-pets policy, allowing a resident to perform an alternate chore, and allowing a

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resident to pursue subsidized permanent housing and government assistance instead of job-readiness activities. Any change in policy or practice that will enable a person with a disability to have access to housing that they otherwise would not have can serve as a reasonable accommodation, as long as it does not place an undue burden on the housing provider or fundamentally alter the nature of the program.

**Emergency Shelters:** Common reasonable accommodations in an emergency shelter include allowing assistance animals and granting permission to sleep late or stay inside during the day.

43. Is it acceptable for us to provide a certain reasonable accommodation for one person but not for another who makes the same request?

As long as this is not done for any discriminatory purpose or with any discriminatory effect, it is generally acceptable—and in some instances necessary—for housing providers to grant the same reasonable accommodations in one instance and deny them in another. This is because the reasonable accommodation analysis must be made on a case-by-case basis, taking into account the requestor’s individual needs and the program’s resources at the time the request is made. In other words, each time someone makes a reasonable accommodation request, the housing provider must ask and answer the same questions based on the facts:

- Does this person have a disability as defined by fair housing laws?
- Is the accommodation necessary to afford the person an equal opportunity to use and enjoy the dwelling?
- Would it be an undue administrative or financial burden to provide this accommodation?
- Would it fundamentally alter the nature of our program and services?

Because every individual is different, the answers to the first two questions could be different; and, because programs change over time, the answers to the last two questions could also be different.

For example, two residents might request a room transfer, one on the basis that the behavior of neighboring residents is exacerbating their symptoms of PTSD, and the other, six months later, on the basis that they simply do not like their neighbors, although symptoms of their major depressive disorder remain well controlled. In the first instance, the program needs to acknowledge the existence of a disability and a

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nexus between the disability and the requested accommodation before moving on to the “reasonableness” stage of the inquiry. In the second instance, the absence of a nexus or need ends the inquiry, allowing the housing provider to deny the request.

If the second resident can demonstrate a disability-related need for a room transfer (for example, the long-term stress of a strained relationship with neighbors is causing their previously controlled symptoms of depression to worsen), the housing provider may still have grounds to deny the requested accommodation based on resources availability. For example, in the six months since the housing provider granted the first resident’s request for a room transfer, total program occupancy may have increased so much that the program is now full with residents whose individual needs prevent a room swap. In that event, the program may not be able to grant the request and needs to offer an alternative accommodation—for example, placing the resident on a room transfer waitlist and appointing a staff member to monitor and mediate disagreements between the resident and their neighbors.

44. When a resident requests an accommodation that isn’t obviously easy to grant and we need some time to think about whether the requested accommodation is “reasonable,” how long do we have to decide whether to grant the accommodation request?

The law does not set a specific time period within which a reasonable accommodation request must be granted; however, a delay may be interpreted as a denial, so it is important to respond to requests quickly. As a best practice, unless more information is needed and there are delays in obtaining it, housing providers should try to provide a response to a non-urgent reasonable accommodation request within 10 days. Housing providers should respond to urgent requests within a shorter time frame.

45. What should we tell a resident who insists on knowing why another resident doesn’t have to follow the same rules as everyone else?

Confidentiality rules prohibit transitional housing and emergency shelter providers from disclosing information relating to a resident or guest’s disability, even though other residents and guests may press for information. The housing provider should advise residents who ask about a co-resident’s accommodations that privacy rules prevent the housing provider from sharing that information. If the inquiring resident indicates that the same exception would make it easier for them to manage

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their own disabilities, the housing provider should remind them that reasonable accommodations are available.

### **Reasonable Accommodation Scenarios: In-Home Support**

46. A resident has requested that we provide assistance with cooking and cleaning as a reasonable accommodation. Although we have a maintenance crew to handle building repairs, our staff do not normally provide assistance with such matters. Is this reasonable?

A requested accommodation is not reasonable and does not have to be granted if it would involve staff performing duties that are fundamentally different from what the program is designed to provide. In this case, providing assistance with cooking and cleaning would involve the program staff in an activity fundamentally different from what the housing program is in the business of providing. Therefore, the accommodation requested is not reasonable.

Housing providers faced with requests like these can suggest, as an alternative reasonable accommodation, that the resident apply for in-home supportive services, and can offer to assist the resident with the application if appropriate.

47. Do we have to allow a person to have a live-in personal care attendant (PCA)?

Yes. Unless the housing provider can somehow show that allowing a PCA would constitute an undue burden or fundamental alteration (which would be unlikely), the housing provider must provide this reasonable accommodation to all residents who need it.

48. Do we have to give someone more space if they must have a live-in attendant?

Yes, unless it would constitute an undue burden.

49. May I choose who the PCA will be?

The housing provider may not choose who the PCA will be but can screen the prospective PCA using nondiscriminatory criteria.

50. Is the resident responsible for the PCA's behavior when the PCA is in the building?

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A resident is as responsible for a PCA's behavior as the resident would be for any guest.

51. How do we deal with a resident in transitional housing whose behavior is a problem in part because they cannot administer their own medication?

Unless a housing program is licensed by the state and that license permits the administration of medications, it is illegal for staff to administer medications. If a client is having trouble taking their medicine, one approach is to offer to assist the resident in finding appropriate health or disability services support. This could include helping the resident determine their eligibility for general or medical case management services, applying for In-Home Supportive Services, or transitioning to a program that employs staff licensed to administer medication.

### **Reasonable Accommodation Scenarios: Program Participation**

52. A resident keeps complaining about having to sit through group meetings, saying that their medication makes it difficult to sit still for long periods and that they may have to drop out of the program if attendance at these meetings is required. Is this a request for reasonable accommodation?

Although the resident has not explicitly asked to be granted an exception to the group meeting requirement, this request should be interpreted as a possible request for reasonable accommodation. If a resident or guest does not explicitly ask for an exception to a rule or policy but makes a complaint indicating that accommodation may be necessary, the housing provider should seek clarification, remind the resident that reasonable accommodations are available, and ask if there is any accommodation that the resident needs with respect to the group meeting requirement.

53. How should we proceed when a guest in an emergency shelter refuses to participate in a required chore?

If a resident refuses to participate in a required chore because a physical or mental disability makes the activity impossible or extremely difficult, the shelter provider should suggest an alternative chore (if the resident does not suggest an alternative first) as a reasonable accommodation. If there is absolutely no chore that the

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individual is able to perform, the requirement to perform a chore itself should be waived as a reasonable accommodation.

54. Our program includes a job-readiness component. How should we handle residents who are unable to work?

Generally, a transitional housing program with a job-readiness component can, as a reasonable accommodation, allow a resident whose disability prevents work to substitute other activities for job-readiness activities. Since the main goal of most transitional programs is to prepare residents for permanent housing, activities like applying for SSI/SSDI and housing subsidies, and looking for low-income permanent housing may be substituted for job-readiness activities.

55. We are a program with a sobriety requirement. If we catch a resident drinking alcohol or using illegal drugs on the premises, how can we deal with this?

Because alcoholism is a disability and a prohibited basis for discrimination, when a person with alcoholism is caught drinking alcohol, the shelter or housing provider should, if possible, hold the resident's bed while allowing them to attend an inpatient addiction treatment program, or allow them to attend an outpatient treatment program and keep their bed at night, as a reasonable accommodation.

Current illegal drug use is not considered a disability, so housing and shelter programs and emergency shelters may not run afoul of fair housing laws if they take a zero-tolerance approach to illicit drug use on the premises. However, housing providers must ensure that reasonable accommodations—including warnings, second chances, or the opportunity to attend an addiction treatment program without losing housing—are available for any residents whose drug use is related to disability.

56. If a resident's use of alcohol is causing them to disturb other residents and disrupt program administration, would it be discriminatory to evict this person?

If the resident's problematic behavior is connected to their disability, accommodations should be granted as long as they are reasonable. Although recurrent alcohol use with no efforts to achieve sobriety may eventually make accommodation unreasonable, the resident should be given sufficient opportunity to pursue treatment without losing their housing.

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57. If a person has to be hospitalized during their allotted time period at a transitional housing program, what kind of reasonable accommodation can we offer?

If it looks like the hospitalization will be long-term, a program operator can offer to return a prorated share of the unused rent and offer to put the person at the top of the waitlist for readmission to the housing program, so that they can quickly resume residency upon discharge. If the hospitalization is short-term, the program operator should offer to hold a bed for the resident.

### **Reasonable Accommodation Scenarios: Assistance Animals**

58. What if an applicant wants to have their cat (or other animal) stay with them, but we have a no-pets policy?

The answer to this question depends on the nature of the applicant's relationship with the cat. If the applicant enjoys the cat's company, but has no disability and can function well without the cat, then the housing provider may deny the request. However, if the applicant has a disability and the cat helps them manage that disability by providing emotional support, then the cat is an assistance animal, and the applicant's request is subject to reasonable accommodation. An assistance animal is not a pet, so the no-pets policy cannot be applied.

A housing provider may not request an extra security deposit for an assistance animal. The provider may, however, charge for repairs for any damage caused by the animal.

**Emergency Shelters:** Emergency shelters may be more limited in their ability to provide this accommodation because of space limitations. If one resident has severe cat allergies and another resident needs their emotional support cat, it may be difficult to accommodate the person who needs the cat. One possible solution is to situate the guest with the cat and the guest with the allergies on opposite ends of the shelter. If the shelter is too small to allow for that, shelter staff should reach out to other shelters to find a facility that can reasonably accommodate the guest, or consider creative solutions such as allowing the guest to leave the cat in the shelter's office or break room overnight.

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59. How can we verify that an animal is an emotional support animal and not just a pet?

A housing or shelter provider may choose to trust the person who says the animal is for their emotional support, or the provider may request a letter of verification from a doctor, therapist, case manager, or services provider who is familiar with the requestor's disability. This letter should confirm that the animal provides emotional support and is necessary for the person to fully use and enjoy their housing.

60. What is the difference between a service animal, an emotional support animal, and an assistance animal?

A service animal is an animal that is trained to do work or perform tasks for the benefit of a person with a disability to alleviate one or more identified effects of that person's disability. Dogs and miniature horses are the only legally recognized animals that can qualify as service animals under the ADA. An emotional support animal is an animal that provides emotional support to alleviate one or more identified effects of a person's disability. Emotional support animals do not need to have any training, and fair housing law allows any animal to qualify as an emotional support animal as long as it does not pose an undue burden for a housing provider. "Assistance animal" is an umbrella term that encompasses both service animals and emotional support animals.

61. After we allowed a person to move in with a dog (they had a doctor's letter saying they needed it for emotional support), we had several residents with doctors' letters stating they needed emotional support animals because of their disabilities. Do we have to allow everyone with a doctor's letter saying they need to have an emotional support animal to bring one?

In most cases, yes. Unless the animal's presence would cause an undue burden (for example, a large exotic animal or animal with recent bite history), a person with a disability who needs an assistance animal and has verification supporting that need has the right to that reasonable accommodation.

62. If the resident with an emotional support animal becomes unable to care for their animal, do we have to care for the animal?

In most instances, no. Emergency shelters, transitional housing, and permanent supportive housing programs are generally in the business of providing housing or shelter and some supportive services, which does not usually include animal care.



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Requiring these programs to provide care for an animal would fundamentally alter the nature of the programs and potentially pose an undue administrative burden. Unless the program's supportive services are so comprehensive that animal care could be within their scope, such a request would not be reasonable and would not need to be granted.

If a resident loses their ability to care for a support animal, possible reasonable accommodations to allow the resident to continue to keep the animal include having the resident's personal care attendant care for the animal, or allowing another resident to care for the animal as an optional alternative to chores or regularly scheduled programming.

63. One of our residents has asked permission to keep an emotional support dog as a reasonable accommodation. We are willing to permit the resident to keep the dog in their room, but not to bring it into common areas of the building. Are we allowed to impose this limitation?

No, a housing provider generally must allow a resident to have their emotional support animal with them in common areas of the building if doing so is necessary to afford the tenant equal access to program amenities and services. The housing provider cannot impose restrictions on an assistance animal if they would deny equal access to housing or related services, such as using the kitchen, laundry room, or mail room.

64. What if another one of our residents is extremely allergic to the dog?

A housing provider can only prohibit an assistance animal from entering common areas if the animal's presence in those areas amounts to an undue burden or fundamental alteration—for example, by posing a direct threat to the health and safety of staff or other tenants. However, the housing provider should be prepared to implement additional accommodations to minimize the need for this restriction.

In this case, if another resident is extremely allergic to the assistance animal and may suffer actual harm being near the animal, then some restrictions may be appropriate. However, the housing provider should first consider whether additional accommodations—for example, air filters, more frequent common room cleanings, or a plan for distancing between the two residents—may eliminate the need for restrictions. If no additional accommodations would reduce the need for restrictions, then the housing provider should consider scheduling specific, daily

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time intervals when the resident can bring their assistance animal into common areas.

65. We granted the first resident a reasonable accommodation to keep their emotional support animal with them in all areas of the building, but the second resident has informed us that the dander is still triggering their allergies and making it hard to sleep, work, and think.

The second resident has now requested that we keep the first resident's dog out of common areas as a reasonable accommodation? How do we handle these conflicting requests?

While it can be difficult to navigate conflicting accommodation requests, housing providers must try to find a solution that meets both requesters' needs. A housing provider can be expected to shoulder reasonable costs, to dip into reserves, and to seek out additional resources and sources of funding in meeting a residents' disability-related needs. In this case, the housing provider should carefully examine the accommodations in place and see if there is room for improvement. Are there carpets or upholstered items that can easily be removed from common areas? Would a higher quality air filter or vacuum make a difference? Can the first resident be required to bathe the dog regularly to keep dander under control? Housing providers should think critically and problem solve creatively.

66. Three months ago, we denied a resident's request for an emotional support animal because they couldn't substantiate that the accommodation was actually necessary or in any way connected to their disability. Eventually they admitted that they and their therapist disagree about whether or not an emotional support animal would actually benefit them, and that they would not be able to provide any verification for the foreseeable future, although they still insist that the emotional support animal is necessary, and they have even filed a fair housing complaint against us.

Trust is an important part of our program, and we no longer feel that this resident is a good fit. Can we ask them to leave?

It is unlawful for a landlord to coerce, intimidate, threaten, or interfere with a tenant's exercise or enjoyment of their fair housing rights. This means a landlord cannot threaten or interfere with a tenant's enjoyment of a unit simply because that tenant has exercised their right to request reasonable accommodations. Retaliation

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in the form of threatened eviction, harassment, or taking away amenities associated with the unit is itself a violation of fair housing laws. Moreover, a landlord cannot intimidate, threaten, or retaliate against a tenant for filing a fair housing complaint or encouraging other tenants to exercise their fair housing rights.

In this case, the resident exercised their right to request a reasonable accommodation, as well as their right to file a fair housing complaint after their reasonable accommodation request was denied. Since they were not able to provide verification of their disability-related need for accommodation, the denial of the request was not improper, and the fair housing complaint is not likely to succeed. Nonetheless, based on their status as a person with a disability and their belief that an emotional support animal is necessary to accommodate that disability, this tenant had every right to make a reasonable accommodation request. Similarly, based on their good faith belief that the request was wrongfully denied, this tenant had every right to file a fair housing complaint. Asking the tenant to leave because they made a request that they were unable to verify, or because they filed a complaint, would amount to unlawful retaliation.

Housing providers should also keep in mind that disabilities change, and that one provider's treatment opinion is not definitive. A different therapist may have a different professional opinion regarding the benefits of an emotional support animal for this tenant, or the opinion of the tenant's current therapist may change as the tenant's symptoms change. It is best not to make assumptions about a tenant's trustworthiness or their good faith belief in their need for accommodations, even if it is not yet verified.

### **Reasonable Accommodation Scenarios: Belongings**

67. Sometimes we get a request at our shelter to allow a person to keep a shopping cart full of belongings next to their cot. Given the space limitations between cots, health and safety concerns, and the fact that it is illegal to have shopping carts that belong to a store, we feel that this accommodation would be very difficult for us to grant. What should we do?

**Emergency Shelters:** Any requested accommodation that would pose an undue administrative or financial burden given the size and resources of your operation is not, by definition, reasonable. Therefore, it does not need to be provided. Instead, an alternative accommodation should be offered.

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As an alternative to allowing shopping carts in the sleeping area, a shelter might offer to provide a large bag to keep belongings in, and store it in a designated storage area in the shelter. If anxiety about losing one's belongings is part of the disability involved in the accommodation request, staff may offer to allow the resident to check on their belongings several times a day.

Whenever a person with a disability requests an accommodation that the shelter or housing provider deems unreasonable, it is best to make a note of the person's request and the organization's reason for not granting it. Staff should explain why they cannot grant the request and propose an alternate accommodation, which the resident does not have to accept, or invite the guest to suggest another accommodation. Through this interactive process, the shelter or housing provider and the resident can often come to a mutually acceptable solution.

68. One of our residents has an issue with hoarding, and it's starting to create real health and safety concerns. Their unit is so cluttered that first responders would not be able to get through in an emergency, there are boxes stored on top of the stove, and we are concerned that there might be a leak and infestation originating in the unit, but there isn't enough space for us to investigate.

In accordance with our policy to address these types of issues, we told them that they have 60 days to clean up, and that after that we will need to empty the apartment as a condition of continued residency. Now the resident has told us that 60 days isn't enough time, and they have made a reasonable accommodation request for a further 60-day extension. Do we need to grant this request?

Maybe. The decision to grant or deny a reasonable accommodation request must account for the unique, disability-related needs and circumstances of each individual requestor, as well as the potential for the requested accommodation to result in an undue burden or fundamental alteration for the housing provider. There is no limit on the number of reasonable accommodation requests a person can make, and policies regarding accommodations (e.g., a default 60-day grace period to clean) must themselves be subject to reasonable accommodation or risk violating fair housing laws.

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In this case, evaluation of the reasonable accommodation request should account for the nexus between the resident's disability and the need for more time, both with respect to the resident's inability to clean up within the time allowed, and with respect to the benefits of another extension. Although hoarding is an independent mental health diagnosis in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5), hoarding-type behaviors can also present in several mental health conditions, including depression and chronic post-traumatic stress disorder (PTSD). This is because hoarding is often associated with traumatic life events. Many people who struggle with housekeeping and clutter are also older and may have physical disabilities due to aging and declining physical health.

Because hoarding behaviors may come from trauma and often occur in individuals who also have mobility limitations, they can take significant time and effort to remediate. Therefore, while 60 days may be enough time for some individuals to declutter and clean, others may need much more time. Granting the request may not only enable the resident to actually perform the cleanup, but may also alleviate anxiety or other symptoms that the looming deadline may exacerbate. It may also allow the resident enough time to secure cleaning support from government agencies, mental health organizations, friends, family, religious groups, and/or for-profit cleaning services.

If a housing provider is concerned that a resident has made little progress during the initial time allotted, the housing provider may have grounds to offer an alternative accommodation that conditions an extension on acceptance of cleanup support from staff or other programs. In offering this alternative, housing providers should make sure that the conditions set forth do not create additional burdens that will make it more difficult for the person to clean up. For example, an extension conditioned on the requestor finding and funding their own cleanup support may not be feasible and therefore not an adequate alternative.

Housing providers should also keep in mind that the interactive process is a dialogue. If the requestor turns down the first alternative offer, the housing provider should come up with other alternatives that may better meet the requestor's disability-related needs. For example, if the housing provider offers to have one staff member assist with cleanup, and if the requestor does not feel comfortable having that particular staff member participate, the housing provider should try to find a different support person with whom the requestor feels more comfortable.

**Reasonable Accommodation Scenarios:  
Schedules and Sleep**

69. Some guests in our shelter have complained that they are too sleepy to get out of bed in the morning because of their medication, and they want to stay inside and sleep. Must we allow this?

**Emergency Shelters:** Certain disabilities may cause people to sleep during the day or need constant access to a toilet. If a shelter has a few staff members working inside the shelter during the day, then it is likely reasonable to allow residents with a documented, disability-related need to stay in the shelter during the day. If, on the other hand, the shelter is completely closed during the day, and no staff member is around, then it is likely not reasonable to allow people to stay inside as an accommodation. If it is not possible for the shelter to provide daytime access, then it can offer an alternative accommodation, such as contacting other area shelters and assisting with the guest's transition to a facility that can accommodate their needs.

70. One of our guests works the night shift and wants to sleep during the day. Do we have to allow this as a reasonable accommodation?

**Emergency Shelters:** Reasonable accommodations are to make sure that people with disabilities are not denied shelter or housing because of their disabilities. If a guest works at night because they cannot find a day job, or because the shift pays more, the shelter is not legally obligated to allow them to sleep inside during the day as an accommodation, even if they have a disability. On the other hand, if the guest needs to work at night because they have a disability and that disability makes it difficult for them to work during the day, then the shelter should allow them to stay during daytime hours as an accommodation, as long as the shelter has staff on-site during the day. An accommodation request is legally mandated only if the requested accommodation is necessary because of a disability.

71. Our program has strict designated visiting hours—weekdays from 10 am to 12 pm. Outside of those times, residents are not permitted to invite non-residents onto the property.

One of our residents requested that we allow their mother to visit from 11 pm to 1 pm, since she has physical and occupational therapy every morning

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and cannot arrive in time for the designated visiting hours. Do we have to allow this?

Yes. Fair housing protections for people with disabilities extend to guests of residents. Unless it would somehow result in an undue burden or fundamental alteration, housing providers must grant exceptions to policies and procedures that create barriers to access for a resident's lawful guests.

### **Reasonable Accommodation Scenarios: Difficult Questions**

72. One of our residents is behaving in a manner that could get them evicted from our program. How can we find out if they need reasonable accommodations if we are not allowed to raise the subject?

In transitional and permanent supportive housing, there is an exception to the general rule that any discussion of a reasonable accommodation must be initiated by the tenant. If a tenant's behavior is so problematic that they are in danger of having their tenancy terminated and the housing provider has reason to believe that the behavior is due to a disability, the law suggests that the provider must initiate a discussion with the tenant about reasonable accommodation. If a housing provider does not initiate a discussion, the tenant may raise the provider's failure to do so as an affirmative defense to the eviction. To broach the subject, the housing provider should start by simply alerting the tenant to the availability of reasonable accommodations if the problematic behavior is caused by a disability. With that invitation, the tenant can then initiate the request.

**Emergency Shelters:** Similarly, in an emergency shelter, a guest with problematic behavior should be alerted that their behavior is unacceptable, and shelter staff should initiate a discussion of possible accommodations that would allow the guest to stay.

73. What action should we take if a resident's behavior is not appropriate for the living situation—i.e. the resident is acting in a manner that would merit eviction were it not for the disability—but they refuse any offers of reasonable accommodation?

Most providers have a system for providing warnings to residents whose behavior would justify eviction. Both the warnings and the reasonable accommodation offers should be documented prior to proceeding with an eviction. A supervisor should

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review each warning and offer to ensure that the information is delivered with adequate explanation and in a format and manner that meets the resident's communication needs.

This means, at a basic level, that the basis of each warning and reasonable accommodation offer (including an explanation of why the behavior is problematic and the intended purpose and rationale behind the proposed accommodation) should be expressed clearly, directly, in the resident's language of choice, and in two formats—verbally (or using sign language, as needed) and in writing. In some instances, the timing of the communication may be important. One resident may be better equipped to receive information in the morning, when they have the most energy; another may be more lucid later in the day. Other residents may need to hear the information several times, over the course of multiple meetings with staff, before they are able to fully understand the nature of the warning and reasonable accommodation offer. The onus is on the housing provider to make sure that the resident's communication needs are met.

74. When a resident acts in a threatening or violent manner toward other residents or staff due to disability, can we evict them or would that be disability discrimination?

This depends in part on whether the behavior constitutes a direct threat. While fair housing laws generally protect people with disabilities from being evicted because of disability-related behavior, there is an exception to this rule when the resident's behavior threatens harm to or actually harms another person, or when continued tenancy would cause substantial damage to the facility or the property of other tenants. A housing provider must make an individualized assessment considering the nature, duration, and severity of the potential injury, as well as the probability that injury will actually occur. This so-called "direct threat exception" applies only when the threat of harm is substantial and likely to occur, and when there is no reasonable accommodation that would reduce or eliminate the threat. Generalized expressions of anger, and behavior that merely makes others uncomfortable or provokes stereotype- or discrimination-based fears, are not grounds to deny housing to a person with a disability.

75. We are a transitional housing provider with a mission of serving individuals in recovery. A number of our residents smoke and have indicated to us that they are not prepared to quit during the initial stages of their sobriety.



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For this reason, although we have limited outdoor space, we allow smoking in the one area of our yard that is sufficiently far away from building entrances to satisfy applicable distancing requirements under state and local law. However, not all of our residents smoke, and one of our residents has indicated to us that the smoke is infiltrating their room and triggering their asthma.

We can't move the non-smoking resident to a different room as they have a physical disability and require the accessibility features of their current room. They have asked that we either move the designated smoking area, or designate the building a nonsmoking facility to accommodate their disability.

How do we handle this request?

This is a difficult question. In this case, the requested accommodation could potentially amount to a fundamental alteration with respect to the program's mission of serving residents in recovery, since multiple residents have indicated that being prevented from smoking could threaten their sobriety. The accommodation could also amount to an undue burden with respect to relocation of the designated smoking area if there is no legally viable alternative under state law or local ordinance. However, the housing provider must nonetheless either grant the accommodation or attempt to find an alternative that will meet the requestor's disability-related needs.

In attempting to find a workable solution, the housing provider should begin by gathering more information and taking a critical look at its actual limitations and resources. Without disclosing the request, the housing provider should meet with the residents who smoke and find out if the designated on-site smoking area is actually serving a purpose in their recovery. Depending on local laws, the neighborhood layout, and the program's relationship with neighboring property owners and occupants, it is possible that residents could lawfully and comfortably smoke at a nearby off-site location (e.g., an adjoining sidewalk area located on the opposite side of the building from the requestor's unit). With the requestor's permission, the housing provider should also inspect their room or unit and determine if there are any reasonable modifications, such as recaulking, weatherstripping, or air filters, that would reduce smoke infiltration and improve air quality.

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76. We receive a lot of reasonable accommodation requests for unit transfers, most of which we cannot grant immediately due to lack of vacancies. For this reason, we maintain a unit transfer waitlist, which operates on a first-come, first-served priority basis (the longer a resident has been waiting for a transfer, the higher they are on the list). One of our residents has now requested that they be allowed to jump to the top of the list as a reasonable accommodation. How do we handle this?

When two or more valid requests compete for a reasonable accommodation that is subject to limited availability, priority may be established using procedures such as a waitlist. However, procedures for prioritizing reasonable accommodation requests must themselves be flexible and subject to reasonable accommodation. Any policy or practice can be the subject of a reasonable accommodation request, including a policy or practice that itself pertains to reasonable accommodations. Thus, a tenant with a disability can request that a housing provider make an exception to its practice of considering reasonable accommodation requests in the order they were received.

If a tenant asks to be moved to the top of the waitlist as a reasonable accommodation, the housing provider must consider that request just as it would consider any other reasonable accommodation request—by first evaluating the tenant’s disability and the nexus of that disability to the requested accommodation need, and then evaluating whether the request would amount to an undue burden, including with respect to other waitlisted residents.

The analysis will center on the question of fundamental alteration—specifically, whether allowing the requestor to move ahead of other waitlisted residents fundamentally alters the nature of the housing provider’s delivery of services to those residents. In some cases, it may not—for example, if a client previously assigned a spot on the unit transfer waitlist is managing well with an interim accommodation, then granting the waitlist exception may be less likely to fundamentally alter the program’s ability to serve that previously waitlisted client. On the other hand, if a previously waitlisted resident remains in urgent need of a new unit, then granting the waitlist exception is more likely to result in a fundamental alteration.

Depending on the composition of the waitlist and the circumstances of its various members, the housing provider may be able to grant the request for waitlist exception; or it may be able to place the requestor part way up the list, ahead of

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some previously waitlisted clients but behind others (an alternative accommodation). In some cases, however, the housing provider may need to deny the request on the grounds of fundamental alteration to the delivery of essential housing-related services to other residents on the list.

### **Q&A: Conclusion of Residency or Stay**

#### **Terminating Residency and Asking a Guest to Leave**

Fair housing laws, state laws, and both state and federal constitutions all demand that people leaving emergency shelters, transitional housing programs, and permanent supportive housing programs be treated with dignity and fairness.

77. Is a resident allowed to request reasonable accommodation during the termination of the tenancy?

Yes, a resident is always allowed to request reasonable accommodations, even when moving out. For example, a resident with a disability might request extra time to move out of the unit or find a new place to live, or they might need to terminate the lease prematurely if their disability makes it impossible to continue their residency.

78. If a person moves out suddenly because of a necessary hospitalization or other disability-related reason, can we still charge for the entire month if our program charges rent?

Under state landlord-tenant laws, if a tenant moves out suddenly without giving the required 30-day notice, the tenant is generally liable for the entire month's rent.<sup>1</sup> However, the landlord is also obligated to mitigate damages by attempting to find a replacement tenant. If a replacement is found, the vacating tenant is only liable for a prorated portion of the rent for the time the unit was vacant.

Under fair housing laws, if a tenant has to leave suddenly without notice due to disability, the landlord should waive the tenant's future unpaid rent as an accommodation, when reasonable, even if a replacement tenant cannot be found. Continuing to bill a former tenant after they terminate their lease early due to

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<sup>1</sup> In a periodic tenancy, the tenant must give notice that is equal in time to the period of the tenancy, but no more than 30 days. For example, a tenant in a month-to-month tenancy (the most common tenancy), 30-day notice to vacate is usually required. If the rent is due every two weeks, however, only a two-week notice would be required. An exception to this general rule is that some lease agreements specifically stipulate that notice to terminate may be given any time not less than seven days before the expiration of the term.

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disability may constitute disability discrimination. As with any reasonable accommodation request, the question of reasonableness hinges on the housing provider's ability to shoulder the cost of accommodation without assuming an undue burden. Reasonableness in this context includes factors such as the difficulty of re-renting the unit, the amount of rent, and the financial and administrative resources of the landlord.

In most transitional and permanent supportive housing programs, there is generally a backlog of interested applicants waiting to move in, and an individual resident's portion of rent is usually relatively low. In these circumstances, it will almost always be reasonable to waive rent as an accommodation if a resident must move out early due to disability.

79. If a person's conduct is a serious problem and we have been unable to resolve it using reasonable accommodations, how much notice do we have to give that person before evicting them from our transitional housing program?

A transitional housing provider may not legally order a resident to leave, regardless of what the resident has done. Because a resident of a transitional housing program has all the rights and privileges of any other California tenant, the housing provider must go through all the steps a landlord must take to evict a tenant, except in special circumstances. Transitional housing tenancies may also be protected by just cause requirements mandated by a funding source or a local rent control ordinance, which can limit the bases for eviction.

The first step in the eviction process is for the housing provider to serve the resident with an eviction notice. Usually a tenant is entitled to a 30-day or 60-day notice<sup>2</sup>, but sometimes a three-day notice will suffice. If a tenant fails to pay the rent they are obliged to pay, materially damages the property, substantially interferes with other tenants, or uses the property for an unlawful purpose, such as selling illegal drugs, the housing provider may give a three-day notice. In all other cases, a 30-day or 60-day notice is required.

If the resident fails to vacate by the end of the notice period, the housing provider must then file an unlawful detainer action in court to proceed with the eviction. The

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<sup>2</sup> In California, tenants who have resided in a unit for a year or more are entitled to a 60-day notice before being evicted. Tenants who have lived in a residence less than one year are entitled to 30-day notice. For tenancies protected by just cause eviction protections, a 30- or 60- day notice that does not list a permissible just cause to terminate the lease will not support eviction.

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provider should usually hire an attorney to do this. If the judge rules in favor of the housing provider, the provider may then have the sheriff forcibly remove the tenant. Removing a tenant without going through this process is considered self-help, which is illegal.

Another option transitional housing providers have for removing a very difficult program participant is the Transitional Housing Participant Misconduct Act, which allows for a more speedy, but still court-supervised, removal from the program in limited circumstances.

### 80. What is the Transitional Housing Participant Misconduct Act?

The Transitional Housing Participant Misconduct Act (THPMA) was enacted in 1991 to circumvent the lengthier unlawful detainer process to legally remove a participant from a transitional housing program. It allows a transitional housing program operator to file for a temporary restraining order (TRO) requiring the resident to stop their misconduct. After a hearing on the matter, the TRO may be replaced by a permanent injunction lasting up to one year. If the resident violates the TRO or permanent injunction, the program operator can file for a modification of the order removing the resident from the program.

In order for the program operator to use the THPMA, the resident must have been in the program for less than six months, unless a previous action is pending against the resident or a TRO is already in effect and subject to further orders. Also, the transitional housing program must have entered into a contract with the resident that contains the program's rules and regulations, a statement of the program operator's right of control over and access to the program unit occupied by the participant, and a restatement of the requirements and procedures created by the THPMA (form TH-190).

In extreme cases of abuse, when the program operator convinces the judge that before a hearing can be held there is a risk of imminent serious bodily injury to another resident, an employee, or someone who lives within 100 feet of the program site, a TRO may order the resident to vacate the premises immediately and remain at least 200 feet away from the facility.

Abuse, under the THPMA, includes attempts, threats, and actual physical or sexual assaults on other participants, program employees, or immediate neighbors of the program site. Abuse may be intentional or merely reckless and includes placing

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another person in reasonable apprehension of imminent serious bodily injury. Misconduct under the THPMA includes selling or using drugs or alcohol, theft, arson, and destroying another person's property, as well as violence or threats of violence and harassment. Although alcohol use is included as misconduct under the THPMA, programs should not attempt to use the THPMA to circumvent fair housing laws that protect alcoholism as a disability.

81. What is the proper way to end the stay of a guest in an emergency shelter?

**Emergency Shelters:** Guests at government-subsidized emergency shelters are entitled to due process of law before being forced to leave, including written notice of the reason for the expulsion, an opportunity to defend themselves, and an opportunity to appeal the decision. All guests at emergency shelters should be given a list of conditions for staying in the shelter when they are admitted, and the notice of termination should reference the rule(s) they have violated and the specific factual basis for determining that a violation occurred. Depending on the reason the guest is being asked to leave, minimal due process can take different forms. The following sets forth good practices that comply with minimal due process requirements.

If a guest in an emergency shelter acts in a way that poses a threat to the health and safety of other guests or staff, such as threatening to attack a person, the guest may be asked to leave immediately, as long as there is no reasonable accommodation that would eliminate the likelihood of that threat. In that event, the guest should be given a written notice explaining in adequate detail why they are being asked to leave and informing them of their right to return at a later date to appeal the earlier decision so they can stay in the shelter again. When possible, the guest should also be reminded of their right to request reasonable accommodations that would improve their chances of being allowed to return to the shelter again.

If a guest commits minor violations, they should be given at least two written warnings and an opportunity for a meeting to discuss the alleged violations. If the violations continue, they should be given written notice, which should include the reasons they are being asked to leave, the right to request reasonable accommodations, the right to meet with both the person who alleged that the violations occurred and a decision-maker, and the right to have an advocate present at that meeting. The guest should also have an opportunity to appeal the decision and be allowed to stay pending the appeal.

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If possible, all guests who have been forced to leave should be given a referral to an alternate shelter and assistance in getting to that shelter.

82. At what point is an apartment in a transitional housing program considered abandoned such that the housing provider is allowed to re-enter?

If a resident is at least 14 consecutive days late with the rent (in those programs in which residents pay rent), and program staff reasonably believes that the resident has abandoned the property (i.e., the resident cannot be located or appears to have moved to another location), the program operator should send a “Notice of Belief of Abandonment” to the resident at their last known address and any other address at which the resident may reasonably be expected to receive it.

Sample Notice of Belief of Abandonment

To: [Name of resident/tenant]  
[Address of resident/tenant]

This notice is given pursuant to Section 1951.3 of the Civil Code concerning the real property leased by you at [address or other sufficient description]. The rent on this property has been due and unpaid for 14 consecutive days and the landlord believes that you have abandoned the property.

The real property will be deemed abandoned within the meaning of Section 1951.2 of the Civil Code and your lease will terminate on [date at least 15 days after the notice is personally delivered or, if mailed, at least 18 days after mailing] unless before such date the undersigned receives at the address indicated below a written notice from you stating both of the following:

Your intent not to abandon the real property.

An address at which you may be served by certified mail in any action for unlawful detainer of the real property.

You are required to pay the rent due and unpaid on this real property as required by the lease, and your failure to do so can lead to a court proceeding against you.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Housing signature and printed name]

[Address to which tenant is to send notice]

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If no response is received within the allotted time granted in the notice, the program operator may re-enter the unit and rent it to another resident.

In transitional housing programs in which tenants do not pay any portion of the rent, the law is not explicit as to how to determine if a property has been abandoned. If “rent” is paid in the form of chores or services rendered by the resident to the program, it may be reasonable to construe fourteen days of failure to perform chores (along with the absence of the resident from the premises) as failure to pay rent. The program operator should follow the above-described protocol, sending the “Notice of Belief of Abandonment” as described above, modifying the references to rent.

In situations in which the transitional housing program does not require rent either in the form of money or chores, the law is even less clear. Even in these programs, however, it is advisable to follow the above-described law as closely as possible (see Appendix C). For example, if program staff reasonably believe the unit has been abandoned—no one has seen the resident in several weeks, and the resident does not respond to telephone and written messages—a staff member should post a modified “Notice of Belief of Abandonment” (excluding references to rent and instead explaining briefly the reason for the belief of abandonment).

83. If a resident is in the hospital for an indefinite stay, what are our options for dealing with that resident’s room if we cannot hold their place in the program indefinitely?

If holding the resident’s space beyond a definite period of time (30 days, for instance) would constitute an undue burden or fundamentally alter the program, the housing provider can offer to skip the formal eviction process, enter into a voluntary termination agreement, and place the resident at the top of a waitlist to return to the program as soon as they are released from the hospital. If at all possible, the resident’s belongings should be stored at the program facility as a reasonable accommodation, or program staff should assist with other storage arrangements. This is the easiest option for housing providers, and it protects the resident from having an eviction on their record.

If it is impossible to get the resident’s consent and the housing provider reasonably believes the resident will not be returning in the foreseeable future, the housing provider may send a Notice of Belief of Abandonment. A third option would be to



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wait until rent is late and proceed with a formal eviction, but this can be time-consuming and costly for the housing provider, can hurt the resident in future housing searches, and should be avoided whenever possible.

### 84. What should we do with the things that a person leaves behind?

When personal property is left behind at a unit in a transitional housing program after a resident leaves, the program operator, like all landlords, must follow a set protocol for attempting to return it to the former resident. The program operator must have a “Notice of Right to Reclaim Abandoned Property” personally delivered to the former resident or mailed to their last known address, which may be the transitional housing program itself if no forwarding address was given. If there is another address where the program operator believes the former resident is more likely to receive the notice (for example, their caseworker’s address), a copy of the notice should be sent there as well.

#### Sample Notice of Right to Reclaim Abandoned Property

To: [Name of the person believed to be the owner of the property]

Address: [Forwarding address or last residence]

When you vacated the premises at [address, including apartment or room number, if any], the following personal property remained: [description of property]. Unless you pay the reasonable cost of storage and take possession of the property to which you are entitled not later than [date at least 15 days after the notice is personally delivered or, if mailed, at least 18 days after mailing], this property may be disposed of pursuant to Civil Code Section 1988. Before this date, you may pick the property up at [address where property may be claimed].

Date: \_\_\_\_\_

\_\_\_\_\_  
[Housing signature and printed name]

Personal property that has been left behind should be kept in a safe and inexpensive storage location. Housing providers must mitigate damages, meaning that the personal property must be stored in a reasonable manner that incurs the least expense. Whenever possible, items should be stored onsite, at no additional cost, and only moved offsite as a last resort. If the former resident does not reclaim the property within the time allotted, and the property is reasonably believed to be worth less than \$700, the landlord can choose to keep or dispose of it. If the

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property is worth more than \$700, the housing provider must hold a public sale at competitive bidding to sell it in compliance with Civil Code §1988.

State laws governing the disposition of personal property left behind after a resident leaves are very complicated, and they involve figuring out whether the property was “lost” or “abandoned,” with a slightly different procedure for handling “lost” property. Many landlords do not follow the law explicitly on this matter. If a housing operator has any concerns, it is best to consult a lawyer.

While the law requires the resident to be given at least 15 days from the time of being personally served a Notice of Right to Reclaim Abandoned Property, it does not prohibit setting a longer time period. In the transitional housing context, in which residents may be hard to find after leaving, it may be helpful to inform residents in writing that they will have a set period of time (e.g., 30 days) from leaving to reclaim any possessions left behind, and that after the expiration of the set limit the objects will no longer be kept. If a resident leaves anything behind, the program operator may mail them a notice informing them of the number of days remaining to reclaim their possessions. If the resident did not leave a forwarding address, notice may be sent to a caseworker or emergency contact that the program operator reasonably believes might have contact with the individual.

When a former resident’s disability makes it extremely difficult for them to reclaim their possessions within the time normally granted, they may request an extended period of time as a reasonable accommodation. For example, if a resident vacates their residence and is placed in a psychiatric hospital, they, or their caseworker, a friend, or relative on their behalf, may request that the program operator, as a reasonable accommodation, hold their property for a longer time period. The program operator would then have to decide whether the requested time period is reasonable, based on available storage space, the amount and nature of property needing to be stored, and the program’s resources.

**Emergency Shelters:** Emergency shelters are not governed by landlord-tenant laws and therefore do not need to follow the above-outlined protocol. However, it is recommended that shelters establish a procedure to simplify the return of personal property to its owner, avoid becoming liable for conversion, and reduce housing barriers for people with disabilities. For example, a shelter may post a notice that guests’ belongings will be held for a limited amount of time (e.g., 14 or 30 days) before being discarded.

## **Supporting Residents and Guests in Transition**

85. We are a transitional housing program with a supportive services element that includes case management and housing navigation for residents who are transitioning out of our program. One of our transitioning residents has a very low credit score and numerous collections events on their credit report resulting from a time many years ago when their disability prevented them from paying their bills. Although our resident is now managing well and has substantial income from SSDI to cover market rent, they have been rejected several times as a result of their credit score and report.

Beyond finding additional listings to which this resident can apply, how can we support them in their search for housing?

A transitional housing provider can help its graduating residents make reasonable accommodation requests to prospective landlords for an exception to the landlord's requirements, including credit score requirements. The housing provider can begin by reminding the resident of their right to reasonable accommodations and by offering to assist the resident with making a request to prospective landlords. With the resident's permission, the assisting housing provider can then draft a simple request, prepare accompanying verification based on the information within the resident's file, or, if necessary, help the resident obtain verification from another health or disability-services provider.

### **Sample Reasonable Accommodation or Modification Request**

[Date]

Dear [Name of Prospective Landlord/To Whom It May Concern]:

I am writing on behalf of [Requestor], a [tenant/applicant for tenancy] at [premises address] to request that you grant the following as a reasonable [accommodation/modification] for [Requestor's] disabilities:

[Set forth description of accommodations/modifications being requested]

[Requestor] is a person with disabilities, because of which [describe symptoms or limitations that form the basis for request]. As a result of this [disability-related symptom/limitation], [Requestor] requires [description of accommodations/modifications] to achieve full use, benefit, and enjoyment of

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[their/her/his] housing. [If nexus remains unclear, provide further generalized explanation of how the requestor's disability-related symptoms of limitations necessitate the accommodations/modifications being requested].

[Requestor's] [doctor/social worker/other provider of health care or disability-related services] has determined that the aforementioned [accommodations/modifications] are necessary in light of [Requestor's] disabilities. Please see the attached letter from [provider of health care or disability-related services].

Federal and state law require housing providers to reasonably accommodate persons with disabilities where necessary to provide them with equal opportunity to use and enjoy housing. As a housing provider, you are subject to these laws.

Please respond to this request by [date]. Feel free to contact me at [phone number/e-mail address] if you have any questions.

Sincerely,

[Name and Title]

### Sample Verification Letter

[Date]

To [Housing Provider]:

I am the [physician/psychiatrist/psychologist/therapist/social worker/case manager/other knowledgeable professional] for [Requestor], and am familiar with [their/her/his] condition. [Requestor] has a disability that causes certain functional limitations, including [list functional limitations that require the requested accommodation].

[The requested accommodation/modification] is necessary for [Requestor] to live in the community and use and enjoy [their/her/his] dwelling by [describe how the accommodation/modification will assist or support the requestor].

Thank you for providing this reasonable accommodation for [Requestor].

Sincerely,

[Name and Title]

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86. Our resident's reasonable accommodation request worked, and they found a landlord that is willing to waive their credit score requirement for purposes of our resident's application. However, our resident was just granted a Section 8 Housing Choice Voucher after many years on the waitlist, and now they want to use the new voucher to cover rent. The landlord says that they no longer accept Housing Choice Vouchers due to the headache of dealing with our local public housing authority. How can we convince this landlord to change their mind?

California fair housing laws prohibit discrimination based on source of income, making it illegal for a landlord to refuse to accept a Section 8 Housing Choice Voucher from an otherwise qualified tenant. While many landlords find it difficult to navigate Housing Choice Voucher Program rules and housing authority bureaucracies, the law is clear that this is not a valid excuse for source-of-income discrimination. A transitional housing provider advocating on behalf of a graduating resident can gently remind prospective landlords that refusing to accept a housing subsidy is just as illegal as refusing to accept an applicant based on any other protected characteristic. To help graduating residents start out on a good foot with new landlords and to help landlords navigate the process, transitional housing providers can also offer intensive support to residents as they complete the Request for Tenancy Approval and any other paperwork and processes necessary to place their voucher with a new landlord.

## **Appendix A**

### **A Short Glossary of Terms**

This short glossary is provided to clarify the legal definitions of a few additional terms that are relevant to the programs and facilities discussed in this manual.

#### **Homeless**

As defined by the U.S. Department of Housing and Urban Development (HUD), the term *homeless* refers persons experiencing any one of the following forms of housing instability:

1. Any individual or family that lacks a fixed, regular and adequate nighttime residence;
2. any individual or family whose primary nighttime residence is one of the following:
  - a. a supervised, publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);
  - b. an institution, other than a prison or detention center, that provides a temporary residence for individuals intended to be institutionalized; or
  - c. a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (including a car, park, abandoned building, bus or train station, airport, or camping ground); and
  - d. a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (including a car, park, abandoned building, bus or train station, airport, or camping ground).<sup>3</sup>

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<sup>3</sup> 41 CFR 102-75.1160; *see also* 24 CFR 91.5.

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This definition is expansive and encompasses both persons who live entirely without shelter built for residential purposes, as well as persons who are able to reside temporarily in shelters, institutions and transitional housing programs, but without a permanent place to call home. For purposes of eligibility for homelessness assistance, HUD regulations also provide that the term includes any individual or family who will imminently lose their primary nighttime residence, without any subsequent residence having been identified and with no resources or support networks to obtain other permanent housing.

Although there is a growing movement to substitute terms such as “houseless” or “unhoused” for “homeless” in everyday speech, the term “homeless” continues to carry substantive legal meaning and is referenced as a definitional concept by most existing state and federal laws enacted to address homelessness.

### **Emergency Shelter**

*An emergency shelter* is a facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for persons experiencing homelessness.<sup>4</sup> In practice, homeless shelters may provide shelter on a night-by-night basis, on a weekly basis, or on a 30-day, 60-day or 90-day basis. Emergency shelters generally provide a cot or a bed, rather than a private room.

### **Transitional Housing**

*Transitional housing* describes housing meant to facilitate the movement of individuals and families from homelessness to permanent housing, usually within 24 months.<sup>5</sup> In most cases, transitional housing programs intake residents from emergency shelters, rather than from other homelessness contexts.

In California, transitional housing programs must include a structured living environment as well as comprehensive social service programs with individualized case management services designed to assist residents in obtaining the skills necessary for independent living in permanent housing. These social service programs may include outpatient health services, substance use recovery treatment, life skills training, employment and training assistance services, and other education or independent skills development elements. Transitional housing programs must establish rules and regulations that specify an occupancy period of

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<sup>4</sup> 24 CFR 91.5

<sup>5</sup> 42 USCS § 11384 (b)

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at least 30 days and not more than 24 months, and continued participation in a transitional housing program must be made contingent on compliance with the program rules and regulations.<sup>6</sup>

### **Permanent Supportive Housing**

*Permanent supportive housing* is permanent housing in which housing assistance and supportive services are provided in tandem to assist households with at least one member with a disability in achieving housing stability.<sup>7</sup> Housing assistance can include long-term leasing or rental assistance. Supportive services can include case management, mental health services, outpatient health services, substance use recovery treatment, education services, job readiness training, life skills training, and any other services necessary to enable residents to live as independently as possible throughout their program participation.<sup>8</sup> Permanent supportive housing is frequently funded through HUD's Continuum of Care Program.

### **Continuum of Care and Coordinated Entry System**

*Continuum of Care (CoC)* refers to a grant program administered by HUD under the McKinney-Vento Homeless Assistance Act, as well as to housing and supportive services programs that are funded thereby for the purpose of helping individuals and families overcome homelessness to obtain and maintain permanent housing. CoCs are mandated to utilize *Coordinated Entry Systems (CES)*, also known as Coordinated Assessment Systems, designed provides an initial, comprehensive assessment of the needs of individuals and families that the CoC serves.<sup>9</sup>

### **Homeless Management Information System**

*Homeless Management Information Systems (HMIS)* are used by CoCs, in accordance with HUD requirements, to collect voluntary data from individuals and families who are receiving services from the CoC.

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<sup>6</sup> California Health and Safety Code §50582.

<sup>7</sup> 24 CFR 578.37(a)(1)(i).

<sup>8</sup> See generally 24 CFR § 578.53.

<sup>9</sup> 24 CFR § 578.7.



## **Appendix B**

### **Summary of Fair Housing and Disability Laws**

The following is a summary explanation of each of the major fair housing and other disability laws pertinent to the programs and facilities addressed by this manual.

#### **Federal Fair Housing and Other Laws Protecting Housing Opportunities for People With Disabilities**

##### **The Rehabilitation Act of 1973 – Section 504**

Any housing program that receives federal funds is subject to Section 504 of the Rehabilitation Act of 1973.<sup>10</sup> This law prohibits discrimination against people with disabilities and is intended to ensure that people with disabilities are not excluded from participation in, or denied benefits of, any program or activity receiving federal financial assistance. Pursuant to Section 504, housing providers that receive federal funds, including emergency shelters and transitional and permanent supportive housing programs, are responsible for ensuring that their programs are both physically and programmatically accessible for people with disabilities.

##### **The Fair Housing Amendments Act of 1988**

In 1968 Congress passed the Fair Housing Act, which offered protection against discrimination in housing based on race, color, religion, sex, or national origin.<sup>11</sup> In 1988 Congress acted to add people with disabilities and families with minor children to these protected classes by passing the Fair Housing Amendments Act of 1988 (FHAA). The FHAA prohibits discrimination on the basis of all these characteristics in the sale or rental of all housing, and with respect to the all terms, conditions, or privileges thereto, regardless of whether the housing provider receives federal funding. Therefore, it applies to transitional housing programs, and it has also been interpreted to apply broadly in the context of emergency shelters, depending on the expectations and intentions of those staying at the

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<sup>10</sup> 29 USC § 794.

<sup>11</sup> 42 USC. §§ 3601 *et seq.*

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shelter, the length of stay, and whether the protected individual considers it their residence.<sup>12</sup>

### The Americans with Disabilities Act (ADA) – Titles II and III

The Americans with Disabilities Act (ADA) was signed into law in 1990. Like the federal Fair Housing Amendment Act and Section 504, the ADA is intended to provide further opportunities for people with disabilities by eliminating discrimination and mandating access. This law does not apply to residential housing in general, but it does pertain to certain types of housing and shelter.

#### *Title II*

Title II of the ADA extends the mandates of Section 504 to all state and local government entities. It states that, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>13</sup> Title II applies to any transitional housing or emergency shelter that is operated by or receives funding from a state or local government, and it prohibits discrimination that would operate to exclude an otherwise qualified person from participating in programs or activities because of their disability. To forestall such discrimination, Title II mandates that covered entities make reasonable accommodations in policies and practices and reasonable modifications in building structures to reduce barriers to access. Title II also mandates that housing providers who receive state or local funding pay for certain reasonable physical modifications.<sup>14</sup>

The ADA requires that persons with disabilities be allowed access to programs and housing in the most integrated setting possible.<sup>15</sup> It states that, “a public entity shall administer services, programs, and activities in the most integrated setting

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<sup>12</sup> *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941 (9th Cir. 1996) (homeless shelter); *Woods v. Foster*, 884 F. Supp. 1169, 1174 (D. Ill. 1995); *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123, 134 (D. Conn. 2001).

<sup>13</sup> 42 U.S.C. § 12132.

<sup>14</sup> 28 C.F.R. Part 35.150(c).

<sup>15</sup> *Olmstead v. L.C.*, 527 US 581(1999). The Supreme Court’s decision in *Olmstead* interpreted the ADA to mandate that states are required to place persons with disabilities in community settings rather than in institutions when the State’s treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with disabilities.

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appropriate to the needs of qualified individuals with disabilities.”<sup>16</sup> The most integrated setting is defined as “. . . a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”<sup>17</sup>

### *Title III*

Title III of the ADA prohibits discrimination against people with disabilities or those who are affiliated with people with disabilities in any privately owned places of public accommodation, including homeless shelters. Public accommodations also include libraries, medical care offices, museums, day care centers, public transportation stations, offices of any service provider, and rental offices or program headquarter offices, or other places that are open to the public.

In addition to requiring housing programs to provide reasonable accommodations to people with disabilities, Title III also requires that a public accommodation, such as an emergency shelter or the offices or public spaces of a transitional housing program, remove all physical barriers in every building to the extent such removal is readily achievable and not an undue burden.<sup>18</sup>

## **California Fair Housing Laws**

### **The Fair Employment and Housing Act (FEHA)**

Like the federal fair housing laws, California’s Fair Employment and Housing Act (FEHA) and its implementing regulations prohibit discrimination in employment or housing based on mental or physical disability, as well as all other protected categories under the FHAA, and an additional seven categories (marital status, ancestry, sexual orientation, gender identity, gender expression, genetic information, and source of income).

Like the FHAA, FEHA sets forth reasonable accommodation and reasonable modification requirements for covered employers and housing providers.<sup>19</sup> However, as noted above, California’s definition of disability is broader than the federal definition. FEHA applies to permanent supportive housing programs, transitional housing programs, and any emergency shelter in which a person has resided for considerable time.

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<sup>16</sup> 28 C.F.R. §130(d).

<sup>17</sup> 28 C.F.R. pt. 35, App. A, p. 450.

<sup>18</sup> 28 C.F.R. part 36

<sup>19</sup> Cal. Gov’t. Code § 12900 *et. seq.*

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### The Unruh Civil Rights Act

The Unruh Civil Rights Act mandates that all people, regardless of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation, or any similar personal characteristic are entitled to full and equal accommodations and protected from discrimination on the basis of those characteristics in all business establishments, including housing and public accommodations.<sup>20</sup> Any violation of the ADA is also considered a violation of the Unruh Act.<sup>21</sup>

### Government Code Section 11135

California Government Code Section 11135 and its implementing regulations function as a state law analogue to Section 504 of the Rehabilitation Act by prohibiting disability discrimination by any program that receives state funding.

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<sup>20</sup> Cal. Civ. Code § 51-53.

<sup>21</sup> Cal. Civ. Code § 51(f).

## **Appendix C**

### **Landlord-Tenant Law in Transitional Housing**

There is widespread belief among transitional housing providers that transitional housing programs, for various reasons, do not have to follow California's state landlord-tenant laws. This belief is incorrect, as explained in the following question-and-answers.

1. Our transitional housing program doesn't use a lease agreement and we refer to our clients as "program participants," not "tenants," so why are we subject to landlord-tenant law?

California Civil Code § 1940(a) clearly states that Chapter 2 of the Civil Code, in which the bulk of the state's landlord-tenant laws are found, applies to "*all persons who hire dwelling units located within this state including tenants, lessees, boarders, lodgers and others, however denominated*" (italics added). This means that the words used by a housing program to describe its clients will not alter the nature of the landlord-tenant relationship. There are a number of exceptions given in § 1940(b), such as hotels with maid service, but transitional housing programs are not among the exceptions.

2. But the clients in our program don't pay rent, so why should they be considered renters?

The exchange of money is not the only form of rent. Rent can also take the form of chores performed, so any program in which participants contribute to the community as part of the agreement to live there is, in effect, "accepting rent."

3. What if residents don't do chores and an agency pays their full rent? Are they still considered renters?

Under California law, transitional housing is not defined by any requirement that residents pay, and the Transitional Housing Participant Misconduct Act (see # 74) makes clear that eviction laws apply to all transitional housing programs regardless of whether rent is paid.<sup>22</sup> Furthermore, landlord-tenant law generally applies to all hiring of real property, regardless of whether rent is paid by the tenant or a third-party. Housing providers should assume that landlord-tenant

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<sup>22</sup> Cal. Health & Safety Code § 50582(c)

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laws are broadly applicable to legal issues arising in the transitional housing context, unless there is a conflicting law that specifically applies to transitional housing.

4. Okay, so California landlord-tenant law does apply to transitional housing programs. But can't we make it a term of the program agreements that residents will be terminated immediately for violating program rules?

No. No landlord, transitional housing provider, other housing provider, or tenant may opt out of or waive a tenant's right to notice and hearing. California Civil Code §1953 lists several rights that California considers so important that they may not be modified or waived by lease or rental agreement, and the rights to notice and hearing are among those listed.

5. If a participant is asked to leave a transitional housing program within the first 30 days, do we still need to follow the standard eviction process?

Generally speaking, yes, all landlords, including transitional housing providers, must follow the eviction process set forth in the civil code, even if the resident has lived there for less than 30 days, when the housing provider and resident have entered into an agreement for occupancy of the dwelling unit.

The notion that it takes 30 days to establish tenant status is a popular myth that seems to trace back to California Civil Code §1940 and §1940.1 in conjunction with California Revenue and Taxation Code §7280. Taken together, these statutes state that, although in general the residents of residential hotels are not tenants, if individuals stay more than thirty days, they are tenants. There is no other mention in the statutes of any requirement that a person must live somewhere for thirty days before becoming a tenant (except with regard to mobile homes).

6. So what do we do if we have a program participant who is misbehaving in such a way that they are interfering with the administration of our program or actually threatening people?

There are two ways to legally evict a resident from a transitional housing program in California: through the standard unlawful detainer process, or using the Transitional Housing Participant Misconduct Act. As always, if the resident's problematic behavior is due to a disability, the housing provider should make reasonable accommodations to allow the resident to remain in their housing.

## **Appendix D**

### **Regional HUD Offices in California**

The following is a listing of regional offices in California. Further information regarding fair housing laws may be obtained at any of the offices.

#### **San Francisco Regional Office**

One Sansome Street, Suite 1200  
San Francisco, CA 94104  
Phone: (415) 489-6400  
Fax: (415) 489-6419  
TTY: Dial 7-1-1 (Not available in all areas.)

**Jurisdiction:** San Francisco, Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Modoc, Monterey, Mendocino, Merced, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Mateo, Santa Clara, Sonoma, Solano, Santa Cruz, San Benito, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties.

#### **Los Angeles Field Office**

300 North Los Angeles Street, Suite 4054  
Los Angeles, CA 90012  
Phone: (213) 894-8000  
Fax: (213) 894-8107  
TTY: (213) 894-8133 or Dial 7-1-1 (Not available in all areas.)

**Jurisdiction:** Los Angeles, San Bernardino, Riverside, Orange, Ventura, Santa Barbara, San Luis Obispo, Kern, Mono, Inyo, San Diego and Imperial Counties

#### **Santa Ana Field Office**

34 Civic Center Plaza  
Room 7015  
Santa Ana, CA 92701-4003  
Phone: (213) 894-8000  
Fax: (202) 485-5705

**Fair Housing for People with Disabilities**

by Mental Health Advocacy Services, Inc.

TTY: (213) 894-8133 or Dial 7-1-1 (Not available in all areas.)

**Jurisdiction:** Orange, San Bernardino, and Riverside Counties

**Email for All Offices:** [CA\\_Webmanager@hud.gov](mailto:CA_Webmanager@hud.gov)