



# **FAIR HOUSING FOR PEOPLE WITH DISABILITIES**

**A guidance manual for  
emergency shelter and transitional housing providers**

**February 2007**

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*Fair Housing for People with Disabilities*  
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*Mental Health Advocacy Services, Inc. (MHAS) is a private, non-profit organization whose mission is to protect and advance the rights of people with mental disabilities. MHAS assists both children and adults, with an emphasis on obtaining services and benefits, protecting rights, and fighting discrimination. MHAS also serves as a resource to the community by providing training and technical assistance to attorneys, housing and services providers, mental health professionals, consumer and family member groups, and other advocates.*

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## **Introduction to the Manual**

Fair housing and disability rights laws help individuals with disabilities find and keep accessible housing. These federal and state laws prohibit intentional discrimination, and they also demand that housing and shelter providers avoid policies and practices that might unintentionally discriminate against individuals with disabilities. In certain instances, the laws also demand that housing and shelter providers make individual exceptions to rules or policies if those rules or policies would otherwise have a discriminatory effect on an individual with a disability. Complying with the myriad of mandates put forth by these laws can seem difficult at first, but with a good understanding of what is expected, it needn't be daunting.

This manual was created to assist the providers of emergency shelter and transitional housing in understanding and implementing fair housing and disability rights laws. While fair housing laws protect people from discrimination based on race, color, religion, sex, national origin, marital status, ancestry, sexual orientation and disability, the focus in this manual is on how the laws are applied specifically to protect individuals with disabilities. In addition to fair housing laws, two additional federal laws that may apply to emergency shelters and transitional housing, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, Titles II and III, are also discussed in this manual.

Transitional housing must additionally comply with state landlord-tenant laws in order to preserve the rights of residents. To this end, information about California landlord-tenant laws will be included in this manual where relevant. This manual is not, however, intended as a general guide to California landlord-tenant law.<sup>1</sup>

The manual begins with a brief overview of fair housing and disability rights laws. It then examines key aspects of the laws that are essential to understanding transitional housing and emergency shelter providers' legal obligations. The brief overview is followed by an in-depth look at the three phases of the residency cycle: the application phase, the occupancy phase, and the termination of residency. Among other topics, the manual will discuss how to avoid conduct that is considered discriminatory and what constitutes legitimate grounds for denying/terminating housing. It will review potential questions for prospective residents and discuss whether such questions are permissible or impermissible and it will suggest approaches and practices for dealing with difficult behavior. Readers will learn how their housing and shelter programs can make available and effectively implement reasonable accommodations for residents and guests with disabilities. This section is written in question-and-answer format.

While this manual is written for both transitional housing providers and emergency shelter operators, the reader will find a greater emphasis on transitional housing. This is in large part because the bulk of fair housing law revolves around the concept of reasonable accommodation (a subject that will be discussed at length in this manual). Although both transitional housing and emergency shelters are subject to reasonable accommodation provisions in the laws, transitional housing programs are generally able, and therefore obligated, to provide reasonable

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<sup>1</sup> A complete guide to California Landlord-Tenant law, including important details on returning security deposits, may be found at [www.dca.ca.gov/legal/landlordbook/catenant.pdf](http://www.dca.ca.gov/legal/landlordbook/catenant.pdf).

***Fair Housing for People with Disabilities***

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accommodations more often than emergency shelters. Nonetheless, many of the questions and answers focusing on transitional housing should be useful to emergency shelter operators because they provide further illustration of how to comply with the law.

Questions and answers that apply to both transitional housing and emergency shelters, or to emergency shelters alone, are marked with an asterisk (\*), and paragraphs that deal specifically with emergency shelters begin with some variation of the special notation “***Emergency Shelters.***”

The legal authority providing the basis for the manual’s discussion is found in the appendices. Appendix A contains a short glossary of terms. Appendix B provides a review of the specific fair housing and disability rights laws. Appendix C explains why state landlord-tenant laws apply to transitional housing.

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 subtle nuance and, because individual scenarios vary greatly, it is important to seek the advice of an attorney with whom you can discuss your specific case if you need guidance on how to comply with the law.

## Introduction to Fair Housing Laws

For the last thirty years, federal and state legislators have created increasingly protective measures to safeguard equal access to housing for people with disabilities. While it is helpful to be aware of each of these laws, it is not essential for housing providers to know by rote to whom each law applies, in what circumstances each law applies, and exactly how each law is interpreted. Because all transitional housing programs and all emergency shelters are covered by at least one of the laws, and because each of the laws provides similar protections, what is most important for housing and shelter providers to understand is the basic common message: that both overt, intentional discrimination against people with disabilities, and unintentional discrimination, are not permissible in housing. To make sure that people with disabilities are not denied housing due to their difficulties complying with policies and practices, or due to physical inaccessibility, providers are mandated by law to provide reasonable accommodations to, and allow reasonable modifications by, individuals with disabilities to enable them to access housing for which they are otherwise qualified. The following concepts are essential to understanding fair housing laws.

### *Discrimination: Intentional and Disparate Impact*

Discrimination is more than just a refusal to serve someone because of his race, religion, disability, or other characteristics. Sometimes discrimination is intentional, such as when a landlord chooses not to rent to an applicant because the applicant is in a wheelchair. Frequently, however, the person or entity discriminating is not even aware of the discrimination. For example, a policy that forbids pets is not necessarily aimed at discriminating against people with disabilities, but unless an exception is made for service and emotional support animals, such a policy would have a disparate impact on people with disabilities who need such animals. This disparate impact is a form of discrimination.

**A landlord who fails or refuses to provide a reasonable accommodation is subject to the same penalties under the Fair Housing Act as a landlord who intentionally discriminates on the basis of disability.**

Other forms of discrimination that are prohibited by law include:

- treating different people differently<sup>2</sup> (for example, suggesting counseling services to a resident because she seems “different”),
- inquiring into disabilities (unless for the purpose of verifying eligibility for “disabled only” housing programs),
- failure to grant reasonable accommodations or allow reasonable modifications,
- not meeting building accessibility standards,
- steering (telling people of a certain ethnic group they would be more comfortable living on the other side of town, for example), and
- harassment.

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<sup>2</sup> An exception to this is the granting of reasonable accommodations (a form of treating people differently, explained below), which is required by fair housing laws.

## ***Disability Defined***

Disability is defined differently in federal law and state law. California's definition of the term is much broader and protects a wider range of people. Because this manual is designed for use in California, and because compliance with California disability law ensures compliance with federal disability law, this manual will focus on California's definition of disability.

California's definition of disability is "a mental or physical impairment that limits a major life activity."<sup>3</sup> A condition "limits" a life activity if it makes that activity difficult. Major life activities include physical, mental and social activities, and working. Disability in California is determined without looking at mitigating factors. For example, if a person has debilitating depression but is able to function well while on medication, she is still considered disabled even though her major life activities are not limited when she takes her medication.

Examples of disability in California include a diagnosis of emotional or mental illness (such as debilitating depression or schizophrenia), HIV/AIDS, deafness, blindness, inability to walk, mental retardation, organic brain syndrome, and tuberculosis, as well as medical conditions related to cancer and genetic characteristics.

Disability does not include the current use of illegal substances, sexual behavior disorders, compulsive gambling, kleptomania or pyromania. These conditions are specifically excluded from the definition and therefore people with these disorders are not protected on the basis of these disorders.<sup>4</sup>

## ***Reasonable Accommodation***

A reasonable accommodation is a change in rules, policies or procedures to help people with disabilities access housing or housing-related services. For example, a rental office that generally provides standard, printed rental applications could, as a reasonable accommodation to a person with a visual disability, provide a Braille version of the application, or provide assistance in filling it out. Fair housing laws require 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. There is no limit to the number of reasonable accommodation requests a person with a disability may make. However, if providing the requested accommodation would pose an undue financial or administrative burden on the shelter or housing provider, or if it would fundamentally alter the nature of the program, the request is not "reasonable" and does not need to be granted.

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<sup>3</sup> Disability also includes having a record or history of having a disability or being regarded as having a disability.

<sup>4</sup> For example, a compulsive gambler is not protected by fair housing laws with regards to the compulsive gambling; however, if he also has schizophrenia, fair housing laws protect him from discrimination based on the schizophrenia. In other words, he could be denied housing because of his proclivity for gambling, but any behavior attributable to the schizophrenia should be dealt with using reasonable accommodations.

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

- the person requesting it has a disability as defined by fair housing laws,
- the requested accommodation is necessary to afford the person an equal opportunity to use and enjoy the dwelling and related services,
- complying with the request poses neither an undue administrative nor financial burden on the housing provider or program, and
- complying with the request will not fundamentally alter the nature of the program.

If the disability is not obvious and the housing provider needs or prefers proof of disability, the provider may request it in the form of an SSI award letter or a letter from a doctor or caseworker. A letter from a medical or social services provider may also be requested to document that the accommodation is necessary.

Whether a proposed accommodation is an “undue burden” can be a difficult question for housing providers, as the concept has not been explicitly defined, either by statute or case law. A housing provider is expected to shoulder some cost in providing a reasonable accommodation, so the mere fact that an accommodation will cost money does not mean that it is an undue burden. Factors determining undue burden include the nature and cost of an accommodation, the financial resources of the entity, the size of the program, and the impact of granting the accommodation on the program’s resources and expenses. For example, a large corporation is expected to bear a greater burden than a small, non-profit organization because a large corporation has greater resources. The capabilities of a program are constantly changing, so the analysis of when a requested accommodation is reasonable must be conducted on a case-by-case basis.

A proposed accommodation “fundamentally alters” the nature of a program when it requests something outside the scope of the program’s mission or undermines the reason for the program’s existence. For example, if a resident requests assistance with personal hygiene care because his disability makes self-care impossible, granting this request would fundamentally alter the nature of a program that provides only housing, and so by definition the requested accommodation would not be reasonable. On the other hand, a request to allow a live-in aide to stay with the resident would not be a fundamental alteration, and therefore would likely be reasonable. Allowing an active alcoholic to drink whiskey in his “clean and sober” transitional living program would be an unreasonable accommodation if the program has sober living as a main goal because it would undermine the reason for the program’s existence.

A person requesting a reasonable accommodation might not use the term “reasonable accommodation.” Rather, a person might simply state “I need more time to complete this task because my disability makes it hard to do quickly,” or even more simply, “I need more time to do this.” Any statement that could be interpreted as a request for a reasonable accommodation should be taken as such. If it is not clear that a request is related to a disability, the housing provider could say to a resident, “I provide reasonable accommodations for people with disabilities and if you think that you are entitled to a reasonable accommodation, your request will be considered.” While there is no set time limit by which a housing provider must respond to a request for a reasonable accommodation, it is best to make decisions in a timely manner because a delay in responding may be interpreted as a rejection.

If the requested accommodation would prove too burdensome to the housing provider or would fundamentally alter the nature of the program, it is recommended that the provider and the person making the request engage in a dialogue to reach an agreement on an effective alternative accommodation. The housing provider may even make suggestions, although the person with the disability is free to reject a suggestion. By working together, the housing provider and the person requesting an accommodation can frequently find a solution acceptable to both parties.

### ***Reasonable Modification***

A modification is a physical change to the structure of a building, including a dwelling unit and common areas, such as installing a wheelchair ramp, bars in the showers, or Braille buttons in the elevators. A person with a disability may request permission to make a modification, and, just as with a reasonable accommodation request, it must be granted if it is reasonable. However, a modification differs from an accommodation in that the person making the request must pay for the modification (unless it is in a common area of the building or the program receives federal funding, in which case the housing provider must pay for the modification).<sup>5</sup> The tenant must also restore the residence to its pre-modification state before leaving if it would otherwise impede use by the next resident. A housing provider may also request a refundable money deposit to pay for the restoration of the premises to its original condition in the event that such restoration is necessary.

### ***Due Process***

Any person 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. To satisfy the minimal requirements of due process, before a government benefit can be terminated the person facing the proposed termination must be granted the following: (1) timely and adequate written notice of the basis for the proposed termination, (2) an opportunity to defend oneself against the allegations forming the basis of the proposed termination by presenting his own arguments and evidence orally and by confronting any adverse witnesses, and (3) prompt written notice of final appeal decisions. In an emergency shelter, the shelter staff is responsible for providing minimal due process when turning a guest out (see question # 73). In the transitional housing context the unlawful detainer action or the procedures allowed under the Transitional Housing Participant Misconduct Act serve as due process when a person's housing is at stake (see question # 74).

### ***The Importance of Documentation***

It is of the utmost importance to document requests for and attempts to provide reasonable accommodations, the behavioral issues that arise and the manner in which they are handled, and any attempts to have an individual leave a shelter or transitional housing program. Not only does thorough documentation help protect housing and shelter providers from allegations of misconduct, but it also helps provide residents and guests with a sense of fairness and equity.

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<sup>5</sup> See question #40 for more information about programs receiving federal assistance.

# Questions and Answers About Fair Housing Laws

## 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 that aim to reveal whether a person has a disability, or the extent of any disability, violate fair housing law.*

*\*1. Can we ask a prospective resident if he has a disability or what kind of disability he has?*

Fair housing laws prohibit landlords from requesting information about the presence of a disability or details regarding 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 (housing funded by the Housing Opportunities for People With AIDS, or HOPWA, is one example of such housing). Furthermore, a landlord cannot ask questions that might be aimed at revealing the existence of a disability or details regarding a disability. Examples of such prohibited questions include the following:

- Can you live independently?
- Have you ever been in a mental hospital?
- Do you attend any self-help groups?
- Are you currently taking medication?
- Have you ever been under the care of a psychiatrist?

Also, people seeking housing or shelter should not be asked questions related to any of the characteristics covered by fair housing laws such as sexual orientation, ethnicity, familial status, or religion (see Introduction to the Manual for an exhaustive list of protected classes).

In housing programs for people with disabilities, the housing provider may ask each applicant if she has a disability or if she has the specific disability required by the program, but the provider may not inquire about any details of the person's condition or treatment.

**Emergency Shelter** operators must comply with these same prohibitions on questioning prospective guests since shelters must serve all people equally, regardless of disability or other personal characteristics.

**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?***

A transitional housing provider, like any landlord, is free to ask the relevant questions which will let the provider know if the applicant is likely to be a desirable tenant such as: Will he pay his rent on time? Has he ever been evicted? Will he refrain from damaging the property or harassing other tenants? Will he refrain from impinging on the right of others to quiet enjoyment? Will he avoid any criminal activity that might involve drugs or threaten the health, safety or rights of others? Does he have a criminal record? The answers to these questions will indicate whether the applicant is likely to be a good tenant, regardless of whether the person has a disability.

The problem with asking an applicant whether he has a disability, beside the fact that it is against the law (see #1), 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 criterion for choosing a tenant. A person who has schizophrenia and hears voices may be a good tenant, and a person who is completely without disability can still be a poor tenant. The law requires, and efficiency and fairness demand, that questions posed to prospective residents be directed at discovering whether they would be responsible tenants.

**3. *Can we ask an applicant if he gets Supplemental Security Income (SSI)?***

While it is permissible for a housing provider to 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 because SSI payments are made only to people who have disabilities or are age 65 or older. Therefore, asking about SSI could reveal the presence of a disability and would not have any direct 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 for residency. After an applicant has been approved for residency, however, if the housing program includes supportive services (as transitional housing programs often do), it is permissible to ask the person about disability and other health-related issues. It is a good practice to have the post-acceptance questioning regarding disability and other supportive service needs conducted by a supportive services staff member instead of a housing management staff member.

**\*5. *How can we comply with the mandates of Homeless Management Information Strategies (HMIS) if we can't ask guests about their disabilities?***

***Emergency Shelters:*** Emergency shelter providers must refrain from asking questions about disability during the intake process until it has been made clear to the guest that he has 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 his ability to stay in the shelter.

**6. How do we verify that the person has a disability and is eligible for our housing 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 landlord may request verification in the form of an SSI 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 operator 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 does in fact have AIDS. A housing provider cannot request any information more specific than is required to determine eligibility for the program. For example, the housing provider cannot inquire into the current state of the person's health or what kind of treatment the person is receiving.

**Disability Defined in California –  
A physical or mental impairment that limits a major life activity, such as**

- **Physical activities**
- **Social activities**
- **Mental activities**
- **Working**

**7. Can we direct someone to another program that we think would be better for him because of his specific disability?**

Recommending certain other programs to an individual because he has 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 who has HIV applies to a specific program, it is likely that he thinks the program would best suit his individual needs. The

staff members at that program should not redirect him to an HIV-positive-specific program. If a housing provider's concern is that applicants to a program may not be aware of the other transitional housing opportunities available to them, he 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 to steer to another program is discriminatory.

**\*8. How can we protect our other residents if we can't turn away an individual with HIV?**

Because fair housing laws recognize HIV-positive status as a disability, any kind of discrimination against people with HIV or violation of their right to confidentiality is illegal. While you may be aware of one or more HIV-positive individuals, there could also be other individuals with HIV in your program. To prevent the spread of HIV, universal precautions against transmission should be taken at all times.

**\*9. If an applicant requests a reasonable accommodation or a reasonable modification when applying for housing, what may we ask about her 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 (see #6) and may

also request assurances from the person's healthcare worker or case manager that the requested accommodation or modification is necessary because of the disability.

## **Dealing with Criminal History and Substance Abuse**

*Alcoholism and past illicit drug use are considered disabilities under fair housing laws and are not a basis upon which to deny a person housing. Current illicit drug use and criminal history are legitimate grounds on which to deny housing.*

### ***10. Can we ask an applicant if she has a history of either alcohol abuse or illegal drug use?***

Unless this information is necessary to determine if someone is eligible for a specific housing program, such a question violates fair housing laws and must not be asked. Both past alcohol addiction and past illegal drug addiction are considered disabilities and therefore asking about them is prohibited (see # 1 for exceptions). If information about past alcohol abuse or illegal drug use comes to light as the result of an applicant explaining a past incident of criminal history or poor tenant history, the applicant should be given an opportunity to explain why such an incident is unlikely to recur (such as she is no longer using drugs or alcohol.)

### ***11. If an applicant reveals that he has a history of drug or alcohol abuse, may we inquire if he is in treatment or require him to prove he is no longer using?***

No. Asking an applicant with a history of past drug or alcohol abuse to prove that he is not still using is illegal. Fair housing laws prohibit questions about treatment or requests for verification that a person is no longer using. Past drug or alcohol abuse is a disability, and disabilities may not be inquired into (see #1 for exceptions). Furthermore, stereotypes about people with disabilities (such as "once a user, always a user") must not be used to make decisions about access to housing.

### ***12. Can we ask an applicant if she is currently using drugs or alcohol?***

Current illegal drug use is a permissible topic about which a housing provider may question an applicant, but only if the same question is posed to each applicant. This is because current illegal drug use is not a protected disability under fair housing laws. However, a landlord cannot single out certain individuals for questions about current illegal drug use. On the other hand, a landlord may not inquire into current alcohol use unless the program has a clean and sober requirement. Programs with a sober living requirement may ask about current alcohol and drug use (see # 37 for more information).

### ***13. If a tenant is an active alcoholic or drug abuser, do we still have to let him in?***

The law treats active alcoholism and drug abuse very differently. Alcoholism is considered a protected disability, and it is not a basis to exclude a person from housing. That said, a program with a clean and sober requirement may demand that its residents not drink (i.e., alcoholics must be in recovery). Current illegal drug abuse, however, is not considered a disability. Therefore, it is legal to deny someone housing on the basis of his current illicit drug use, even if he is an addict.

However, fair housing laws do protect *former* drug addicts, so housing should never be denied to a person on account of his status as a former drug addict.

**14. What exactly constitutes “current” use?**

“Current illegal use of drugs” means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuous use is a real or ongoing problem. It is determined on a case-by-case basis. The law is reasonably clear that someone who has used drugs as recently as six weeks ago is a current user, and someone who hasn’t used for at least a year is not a current user.<sup>6</sup> When the last drug use took place more than six weeks ago and less than a year ago, however, the law is not clear as to whether it should be considered current or past use. Factors that would justify a reasonable belief that the drug use is not current include whether the person is currently in recovery (for example, actively participating in an addiction recovery program) and whether the person voluntarily sought treatment.

**15. May we ask an applicant if she has used illegal drugs within a certain period of time, such as six months?**

Current illegal drug use may be inquired about, but past illegal drug use should not be, as it could reveal the presence of a disability. Unfortunately the law does not set a sharp dividing line between past and current use (see #14). One way to handle this is to limit questions about current drug use to “have you used illegal drugs within the past six weeks?” and “do you currently use illegal drugs?”

Many transitional housing programs have a clean and sober requirement and demand that an applicant has not used illicit drugs within a longer time frame, such as six months. While this is a common practice that has not been challenged legally, it is problematic because the law effectively prohibits asking about past drug use. A program that has a “clean and sober for 18 months” requirement should be prepared to waive it as a reasonable accommodation to a person whose disability and overall commitment to sobriety suggest that a shorter time period is adequate preparation for admission to the program.

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

Yes, it is permissible to inquire about a person’s criminal convictions as long as all applicants are asked the same question or questions. It is important, however, that a housing provider reject an applicant for a criminal record only if the provider uniformly rejects all applicants with the same criminal history (except in those cases in which a reasonable accommodation has been granted; see #18). Otherwise, the housing provider is open to the accusation that the rejection is actually due to illegal discrimination on some prohibited basis, such as disability or ethnicity, and that the criminal record is just a pretext.

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<sup>6</sup> This is the only available guidance based on case law but there has been no clear pronouncement as to what constitutes “current” use.

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

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

***18. Can we reject an applicant because of his criminal record if he says it is caused by a disability?***

If an applicant with a criminal record requests that a policy barring applicants with criminal records be waived as a reasonable accommodation because his criminal act was related to his disability, the housing provider should consider the request.

In analyzing the reasonableness of a request, the housing provider may request evidence that the person has a disability (such as a doctor's letter). The housing provider may also ask the applicant to explain how the disability influenced him to commit the crime, and why the threat of recurrence no longer exists (for example, his symptoms are under control). The housing provider should consider several factors: how long ago the criminal activity occurred, whether the crime, if repeated, would have any relevance to the tenancy (i.e., was it murder or embezzlement), how convincing the evidence is that the crime will not recur, and what the potential liability of the housing provider is if the individual is allowed into the housing.

***19. May we ask an applicant if she has ever spent time in a treatment facility?***

No, this is not a permissible question because it aims to uncover an applicant's disability. Landlords and other housing providers may only ask questions about a person's ability to be a good tenant. Stripped of any impermissible inferences regarding stereotypes about people with mental disabilities, information about time spent in mental hospitals or treatment facilities does not speak directly to a person's ability to be a good tenant.

***20. If an applicant has revealed that he has a history of drug or alcohol abuse or has been under psychiatric treatment, may we ask him to show that he would still be a good tenant?***

No. Any questioning that stems from a presumption that a person would be a poor tenant because of a disability, including past drug abuse or past or current alcohol abuse is illegal. However, a housing provider may always ask questions aimed at determining who would make a good tenant (see #2), as long as the housing provider asks the same questions of all residents, regardless of their disability status.

## **Reasonable Accommodation in the Application Stage**

*Sometimes a housing/shelter provider must grant a change in policies – called a reasonable accommodation – to allow a person with a disability equal access to housing, shelter, or a housing-related service.*

**\*21. How will we know what kind of reasonable accommodation to offer a person if we can't ask about his disability?**

Generally, it is the responsibility of the person who needs an accommodation to make the request for reasonable accommodation. For example, if a person has a learning disability that makes reading the application forms difficult, she would need to ask the shelter or housing provider for assistance in filling out the forms. Regardless of how she asks, the provider is informed of the request, even if not informed of the disability itself. If the staff member does not understand why the accommodation is necessary, he may ask the person to explain why she needs the requested accommodation. When asking, he should indicate that he is not seeking specific information about the nature or severity of the disability.

In transitional housing, there is an exception to the general rule that any discussion of a reasonable accommodation is to be initiated by the tenant. If a tenant's behavior is so problematic that she is in danger of having her 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 such a discussion, the tenant may raise the provider's failure to do so as an affirmative defense to the eviction.

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

**\*22. 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 accommodations that might be discussed when a person is applying for housing and discussing program participation rules include allowing the use of an emotional support animal in spite of a no-pets policy, allowing a resident to perform an alternate chore, and allowing a 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 he 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 would include allowing service or support animals and granting permission to sleep late or stay inside during the day.

**\*23. Do emergency shelters have an obligation to inform applicants of their right to request a reasonable accommodation?**

It is best to inform all applicants of the availability of reasonable accommodations to people with disabilities as part of your obligation to abide by fair housing laws. Most federal and state funding sources require programs receiving their funding to comply with all fair housing and civil rights laws and take steps to affirmatively further fair housing. Informing participants of their rights is a form of furthering fair housing. It is a good practice to include a written statement about the right to reasonable accommodation on the application itself, and to verbally inform all applicants of this right as well.

**\*24. How can we verify that a person requesting a reasonable accommodation really does have a disability and that the accommodation requested is necessary?**

A housing provider wishing to verify the applicant's assertion regarding the existence of a disability and the need for an accommodation may request a letter from the person's caseworker or medical professional explaining that the person requesting the accommodation does in fact have a disability as defined by law and that the requested accommodation is necessary.

**Emergency Shelters:** In an emergency shelter, providing verification may prove more difficult. A person coming in off the street is unlikely to have a letter from her doctor or caseworker handy to verify her disability and the need for a 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 the telephone and fax machine for this purpose if this would facilitate the process.

**No Magic Words**  
**If you can possibly interpret a statement as a request for an accommodation – interpret it as such!**

**\*25. 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 those people who seem to have a disability if they need help when they

haven't 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.

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

Oftentimes an applicant with a disability will have a non-traditional housing history, including stays in hospitals, time on the street and staying with friends. If a housing provider insists on

accepting only those 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 her non-traditional housing history is due to a disability and that she needs to use people other than landlords as her 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 might be able to vouch that an applicant has demonstrated the ability to manage money wisely, and hospital staff may be useful references to find out how someone gets along with others.

***27. If an applicant has a poor tenant history do we still have to let him in?***

Whether the housing provider has to accept an applicant with a poor tenant history depends on whether the bad tenant 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 poor tenant history.

If the poor 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 assaulting a neighbor or vandalizing property five years ago and his disability began two years ago, the poor tenant history is not disability-related and the housing provider may reject his application without further consideration.

If, on the other hand, the poor tenant history is related to a disability, the housing provider will need to do a reasonable accommodation analysis to decide whether to accept the applicant. For example, if an applicant has an eviction on his record for non-payment of rent, the provider generally would not have to accept him. If the applicant explains, however, that he has bipolar disorder and was evicted after a manic episode which caused him to misspend all his money eight years ago, but that he has since stabilized, is now on medication and has not had any credit problems since then, the housing provider would likely be expected to make a reasonable accommodation by waiving the general policy of rejecting applicants with eviction histories.

The law does not require that the applicant give this much detail – he does not have to explain that his disability is bipolar disorder. If the applicant simply requests that the poor tenant history be overlooked as a reasonable accommodation because it was caused by disability-related behavior and can provide a doctor's letter to this effect, the request should be granted.

***\*28. What should we do if an applicant requesting a reasonable accommodation provides a doctor's letter stating that she has a disability and needs a certain 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 does not feel

adequately convinced of the need for an accommodation, it is the provider's responsibility to ask the person requesting the accommodation for additional information from the doctor or caseworker. It is important to remember to only ask for the details necessary to substantiate the assertion that the requested accommodation is necessary in light of the disability; it is not appropriate to second-guess the doctor's opinion or to delve into the applicant's personal information.

***29. If an applicant with a poor tenant history states that with a certain reasonable accommodation she could be a good tenant, but her history shows that the same reasonable accommodation did not work in the past, do we still have to accept her?***

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 simply not effective, and therefore not necessary to provide the person with an equal opportunity to use and enjoy a dwelling. However, there may be extenuating circumstances that explain why the same accommodation that proved ineffective in the past may now be effective, and the housing provider should allow the person with a disability an opportunity to explain if this is the case. If there is no plausible explanation and the housing provider does not believe that the suggested accommodation will work, the housing provider should suggest that the applicant come up with an alternative accommodation. If no reasonable accommodation is acceptable to both parties, the housing provider does not need to accept the applicant.

***\*30. What if an applicant wants to have his cat (or other animal) stay with him 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 has a disability and the cat serves as an emotional support animal and helps the person function, then the cat is considered a service animal, similar to a seeing-eye dog. It is not considered a pet and should be allowed in spite of a no-pets policy. If the cat is more of a "pet" (i.e., the man enjoys the cat's company but can function quite well without it), then the housing provider may deny the cat residence.

Furthermore, a housing provider may not request an extra security deposit for an emotional support animal. The provider may, however, charge for repairs for any damage caused by the animal.

<p style="text-align: center;"><b>Undue Burden: Factors to Consider</b></p> <ul style="list-style-type: none"><li>• <b>Cost of the accommodation</b></li><li>• <b>Financial Resources of the entity</b></li><li>• <b>Size of the program</b></li><li>• <b>Impact on the program if accommodation is granted</b></li></ul>
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***Emergency Shelters:*** Emergency shelters may be more limited in their ability to provide this accommodation because of space limitations. If one person has severe cat allergies and another needs his emotional support cat, it may be impossible to accommodate the person who needs the cat. One possible solution would be to situate the guest with the cat and the guest with the allergies on opposite ends of the shelter. Shelter staff should work with the guest requesting the

accommodation to create an innovative solution. If it is unreasonable to grant the request due to the shelter's limited resources, however, it need not be granted.

***\*31. How can we verify that an animal is an emotional support animal and not just a pet?***

An emotional support animal, like any other service animal, does not need any specific training to qualify as an emotional support animal. A housing or shelter provider may choose to trust the person who asserts that the animal is for his emotional support, or the provider may request a letter of verification from a professional such as a doctor or a caseworker. This letter should confirm that the individual needs the animal for emotional support and that the animal aids in the person's ability to live in the community.

***\*32. What should we do if our shelter is not wheelchair-accessible and someone who uses a wheelchair comes to us?***

***Emergency Shelter:*** If an emergency shelter receives public funds it must take steps to ensure that its programs and activities, when viewed as a whole, are accessible to people with disabilities unless it can show that providing access would impose an undue financial burden or fundamentally change the nature of the program offered by the shelter.

Frequently a shelter can be made at least somewhat accessible with a relatively inexpensive portable ramp. Grab bars can be added to bathrooms, and items usually stored up high can be stored at a more accessible level. If part of the shelter facility is accessible the program itself can sometimes be made accessible by moving program activities into the more accessible areas.

If making the building accessible would be an undue financial burden due to budget constraints and the program cannot be made accessible, the best solution would be to find a nearby shelter that is accessible and offer to assist the person to get to it.

The specific physical accessibility requirements of the law are beyond the scope of this manual. However, more information can be found at:  
<http://www.hud.gov/offices/fheo/disabilities/accessibilityR.cfm> and [www.fairhousingfirst.org](http://www.fairhousingfirst.org)

## **Confidentiality in the Application Process**

***Fair housing laws require that information related to a resident's or guest's disability be kept confidential.***

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

Fair housing laws demand that all information a housing provider receives from an applicant regarding a disability must be kept in confidence. Records regarding tenancy should be handled by property management staff, and the supportive services staff should have their own separate records. Information about disability should only be gathered in the first place if it is necessary to verify eligibility for a program specifically for people with disabilities or if the applicant volunteers it (usually for the purpose of requesting a reasonable accommodation).

Information regarding tenancy history, criminal history, or any other non-disability-related subject may be shared with staff members, as long as other rules do not prohibit it. These rules regarding confidentiality include those set forth in HIPAA (the federal health information privacy law) and various other federal and state laws, as well as in funding program requirements. While these other laws are beyond the scope of this publication, housing providers should be familiar with them and should check with funding sources to ascertain any additional confidentiality requirements.<sup>7</sup>

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

***34. 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 provide written authorization for the release of information to the supportive service staff. Release of information forms should indicate what specific information is to be released and to whom and should specify the limited duration for which the release is valid. If it is not possible to obtain this information in writing, the staff member should make a written note of any oral permission granted.

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<sup>7</sup> Information about HIPAA is available at <http://www.hhs.gov/ocr/hipaa/>.

## The Tenancy Stage and Shelter Stay

### 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.*

*\*35. Can we restrict our shelter to a certain homeless population that we think needs the services most?*

**Emergency Shelters:** It is possible for an emergency shelter to 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, and 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.<sup>8</sup> If a shelter operates a large room with cots where privacy cannot be ensured between the sexes or if a shelter has well-documented concerns about safety, a court would be more likely to uphold segregation based on gender or familial status in spite of the federal Fair Housing Act (see # 32 for discussion of excluding individuals in wheelchairs).

*36. 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, would be discriminatory. A general requirement that everybody participate in some level of program activities would not be discriminatory. The practice of mandatory programming has not been challenged in court, leaving no clear direction for housing providers. Generally, landlords are not allowed to mandate that tenants maintain a certain lifestyle; however, a third party (such as a funding source) offering to pay someone's rent may condition the payment of rent on participation in a certain program.

Unless the funding source requires mandatory supportive services, the safest option, legally speaking, is to make supportive services voluntary and available to all residents who choose to participate.<sup>9</sup> One approach that minimizes the legal problem invoked by mandatory

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<sup>8</sup> *Cnty. House, Inc. v. City of Boise*, 2006 US App. Lexis 27703. In another case, a man challenged the practice of several domestic violence shelters to refuse service to men; the case was dismissed because the plaintiff did not have standing to bring the case as he had not personally been harmed by the practice. *Blumhorst v. Jewish Family Services of Los Angeles*, 126 Cal. App. 4<sup>th</sup> 993 (2005).

<sup>9</sup> There is growing awareness in the therapeutic community that services on demand (client demand) may prove to be more beneficial in the long term than mandatory services.

programming while ensuring some level of program participation is to offer residents a variety of supportive services and require an unspecified level of participation, allowing residents to determine the level at which they wish to participate and to choose the specific activities they find most beneficial.<sup>10</sup>

***37. Can we have a clean and sober requirement in transitional housing?***

Many transitional housing programs have a clean and sober requirement. This practice has not been challenged in any published legal opinion, nor has there been any significant movement in the legal community to challenge it.

That said, it is clearly illegal under landlord-tenant common law for a landlord to direct his tenants' lifestyle choices. Just as a landlord cannot tell tenants how to dress or what to eat, he cannot tell them what they can or cannot drink. Fair housing laws also raise doubts about the legality of a clean and sober requirement, as it is obviously more difficult for alcoholics to comply with and therefore has a discriminatory impact on people with the disability of alcoholism. A housing provider is expected to waive a requirement that has a discriminatory impact, as a reasonable accommodation, but waiving a clean and sober requirement would effectively render it nonexistent.

**A landlord who fails or refuses to provide a reasonable accommodation is subject to the same penalties under the Fair Housing Act as a landlord who intentionally discriminates on the basis of disability.**

A transitional housing program will have an easier time defending its clean and sober requirement in the event that it is challenged if the program holds itself out as a clean and sober rehabilitative program. This way, when a resident with alcoholism violates the rule and requests that it be waived as a reasonable accommodation, the program operator can deny the request as unreasonable because it would fundamentally alter the nature of the program.

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

The law is not explicit on this issue. Random drug testing in transitional housing is currently unchallenged. However, drug testing by publicly-funded entities raises the issue of a resident's constitutional right to privacy. This means that should the practice be challenged in court, it would be upheld by a court only if it were shown that the government (or program receiving government funding) had an overriding interest in doing the testing, such as public safety. A program that receives purely private funding does not face the same legal dilemma.

Regardless of whether the housing in question is publicly or privately funded, any transitional housing program that wishes to perform random drug testing should inform residents before

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<sup>10</sup> This is the approach taken by the federally-funded Shelter Plus Care program (a special form of Section 8 assistance for homeless people with disabilities.)

they move in that random drug testing is part of the program. Residents should not be charged for the tests. Furthermore, residents should be specifically informed as to what substances will be tested for, and the samples should be used only to test for the presence of those specific substances. Because of the high rate of false positives, any specimen that tests positive should be sent out for additional testing to confirm results. It is also recommended that any individual whose housing is threatened by a positive result should be permitted an informal hearing before any formal eviction process is commenced against him in order for him to hear the evidence and have a chance to refute it.

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

A landlord has an obligation to ensure equal access to common areas of the building. For example, if a step impedes access to the lobby area, it is the housing provider's responsibility to provide the modification if needed by a resident who uses a wheelchair.

## **Reasonable Accommodations During a Shelter Stay or Transitional Tenancy**

*It is never too late for a person with a disability to request a reasonable accommodation, and there is no limit to the number of different reasonable accommodation requests a person may make.*

**\*40. *A resident did not tell us that he had a disability when he applied for our program. Now that he is a resident, he has revealed that he has a disability and has requested as a reasonable accommodation to be allowed to pick up his mail a few times a week instead of every day. Do we have to consider this request even though he didn't tell us about his disability from the beginning?***

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 his tenancy, regardless of whether he alerted the housing provider to the existence of his disability when he moved into the housing.

**\*41. *We have a resident whose mental disability causes him to bang on the walls at night, disturbing other tenants. We suggested, as a reasonable accommodation, that he bang on the walls with a Styrofoam stick, to avoid making noise. The resident refuses to do this, insisting that we soundproof the walls of his unit instead. May we require that he use a Styrofoam stick?***

No, a housing provider cannot force a person to accept a reasonable accommodation. At the same time, however, the housing provider is not obligated to provide every accommodation proposed by the resident, such as soundproofing the unit, if doing so would pose an undue financial burden or otherwise be unreasonable. If the resident does not suggest an alternative accommodation and his behavior is such that he is violating his obligations as a tenant, then he

might need to be evicted. It is always up to the resident whether to accept a reasonable accommodation, but a landlord does not have to tolerate unacceptable behavior.

**\*42. *We have a resident who doesn't appear to have any disability, but she claims to have a disability that makes it difficult to perform physical activity and she wants to get out of certain chores. How do we know that a person who says she has a disability really has one?***

A person should not be denied a reasonable accommodation merely because she does not appear disabled. Many disabilities are not apparent, but they are just as real as the more visible forms of disability. If the disability is not obvious and the housing provider does not accept the resident's assertion of disability, the housing provider may ask for proof in the form of an SSI award letter or a letter from a doctor or caseworker stating that the person does in fact have a qualifying disability. The housing provider may also request that the doctor's letter or caseworker's letter also state the need for a particular accommodation.

***Emergency Shelters:*** In an emergency shelter, it may be harder for the resident to provide proof of his disability. In these cases, it is usually best to accept the resident's assertion of disability, at least until he has been given time to acquire evidence.

**\*43. *A resident keeps complaining about having to sit through group meetings, saying that her medication makes it difficult to sit still for long periods and that she may have to drop out of the program if attendance at these meetings is required. Is this a request for a reasonable accommodation?***

In a situation in which a resident or guest is not explicitly asking for a change in policies but is making a complaint that indicates that an accommodation may be necessary, the housing provider should ask the person if there is a reasonable accommodation that could alleviate the situation. People do not always understand their legal right to a reasonable accommodation, even if they have been informed of it, so they might not make explicit requests. Providers should ask for clarification any time a resident's statement could be interpreted as a request for a reasonable accommodation.

**\*44. *A resident has requested that we provide assistance with cooking and cleaning as a reasonable accommodation. This seems like a lot of work and not really what we planned on providing. 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, and so the accommodation requested is not reasonable.

Housing providers faced with such a request could suggest, as an alternative reasonable accommodation, to assist the person with a disability in applying for in-home supportive services.

**\*45. 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 inquiries promptly.

**46. If a resident needs physical modifications to a unit because he uses a wheelchair, who pays for them?**

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. In all 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 should that be necessary.

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 would both be subject to Section 504, but a landlord who accepts individual federally-funded Section 8 vouchers would not, even though he is accepting federal money, because the voucher is given directly to the ultimate beneficiary of the funding (the tenant).<sup>11</sup>

**NOTE:** Be aware that if the building is structurally out of compliance with fair housing laws, for example, it does not have ramps, and if the building was built for first occupancy after March 13, 1991, the housing provider risks sanction if the provider does not bring it into compliance.

**47. After we allowed a person to move in with a cat (he had a doctor's letter saying he needed it for emotional support), we had several residents with doctors' letters stating they needed a pet 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 (as might the presence of a pit bull), a person with a disability who needs an emotional support animal and

Fair Housing doesn't always mean treating everyone exactly the same – for individuals with a disability, it can mean waiving policies and practices that would otherwise bar a person from enjoying an equal opportunity to housing.

<sup>11</sup> A list of HUD programs subject to § 504 is available in the Federal Register, Vol. 71, No. 145/Friday, July 28, 2006/Notices p. 43002.

has a doctor's or caseworker's letter to prove it has the right to keep an emotional support animal with him.

***\*48. If the resident with an emotional support animal becomes unable to care for her animal, do we have to care for the animal?***

No. Transitional housing programs and emergency shelters are not animal-care facilities. Rather, they are in the business of providing housing or shelter and some supportive services. To require housing or shelter staff to care for an animal would fundamentally alter the nature of the program and place an undue burden on the staff. Therefore, such a request would not be reasonable and need not be granted.

If a resident loses her ability to care for a support animal, possible reasonable accommodations to allow the resident to continue to keep her animal would include having the resident's personal care attendant care for the animal or perhaps allowing another resident to care for the animal as an alternate chore.

***49. 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?***

Certain disabilities necessitate that people sleep during the day or have 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 people 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 would be around, then it is likely not reasonable to allow people to stay inside as an accommodation. Instead, such a guest might be better served at a different shelter. During the intake process, when the shelter operations are explained and the availability of reasonable accommodation is discussed, it is possible that the guest will indicate her daytime needs so that the shelter can address these needs at the outset.

***\*50. 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?***

Reasonable accommodations are to make sure that people with disabilities aren't denied shelter or housing on account of their disabilities. If a guest works at night because he cannot find a day job, or because he enjoys working at night, the shelter is not legally obligated to allow him to sleep inside during the day as an accommodation, *even if he has a disability*. On the other hand, if the guest needs to work during the night *because he has a disability* and that disability makes it impossible for him to work during the day, then the shelter should allow him to sleep in during the day as an accommodation, if reasonable (see # 49). An accommodation request is legally mandated only if the requested accommodation is necessary because of a disability.

**\*51. *Sometimes we get a request at our shelter to allow a person to keep a shopping cart full of belongings next to his 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?***

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 reasonable accommodation should be suggested.

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, shelter staff may offer to allow the owner to check on his 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. The transitional housing or shelter staff should explain why they cannot grant the request and should propose an alternate accommodation (which the resident is not obligated to accept) or invite the guest to suggest another accommodation. Through this interactive process, the shelter or housing provider and the resident will hopefully come to a mutually acceptable agreement. In the event that a mutually acceptable agreement is not reached, the shelter or housing provider will have likely met its burden in addressing the request and should document its efforts. It is important that a housing or emergency shelter provider never provide any reasonable accommodation that has been rejected by the resident.

**\*52. *Is it acceptable for us to provide a certain reasonable accommodation for one guest but not for another guest who makes the same request?***

As long as this is not done for any discriminatory purpose, it is acceptable. This is because the reasonable accommodation analysis must be made on a case-by-case basis. In other words, each time a person makes a request for a reasonable accommodation, the housing provider must ask the same questions anew: 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 the program? 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 be different as well.

**53. *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 accessibility in housing, and shelter providers should explore this possibility. Short of making structural modifications, there are other

options, including installing moveable ramps, removing obstacles that are not building fixtures, etc. Relocating portions of the program can also provide access in some instances. For example, if only one part of the facility is accessible, hold activities in the accessible part.

**\*54. *What is the appropriate action to take if a person's behavior is not appropriate for the living situation (i.e., he is acting in a manner that would merit eviction were it not for the disability) but he refuses 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. It is possible that the person needs a different living environment with more supports, and it is the role of caseworkers to assist in that review.

Putting aside the law, extra effort in effective communication can often circumvent the need for warnings and reasonable accommodations. Sometimes a person will act inappropriately or belligerently if he is confused about what is expected of him. If supportive service staff members sense that this may be the case, they may try to communicate with the resident in a way that the resident can understand. If a person has a cognitive disability, it may help to keep language simple and present information in different ways over a period of time to see what works best. Expecting residents to have good intentions while simultaneously accepting that they may have difficulty understanding what is expected of them can be a very helpful approach.

**A requested reasonable accommodation must be granted when the following conditions are met:**

- **Person requesting has a disability**
- **Requested accommodation is necessary**
- **Not an undue burden**
- **Does not fundamentally alter the nature of the program**

**55. *How do we deal with a resident in transitional housing whose behavior is a problem in part because he cannot administer his own medication?***

Unless a housing program is licensed by the state and that license permits the administration of medications, it is illegal for the staff to administer medications. If a client is having trouble taking his medicine, one approach would be to assist the resident in finding a mental health professional who can help him get back on track. In some cases, the resident may need to be referred to another program that is licensed to administer medications, such as a licensed residential care facility or a transitional housing program in which staff members are licensed to administer medication.

**56. *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. This, however, would be unlikely.

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

Yes, unless it would constitute an undue burden.

**58. 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 criminal records and references.

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

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

**\*60. 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 or painful, the shelter provider should suggest an alternative chore (if the resident doesn't suggest an alternative first) as a reasonable accommodation. If there is absolutely no chore that the individual is able to perform, the requirement to perform a chore itself should be waived as a reasonable accommodation.

**61. 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 precludes work to substitute other activities for job-readiness activities. Since the main goal of most transitional programs is to prepare residents for permanent housing, applying for SSI and looking for low-income permanent housing are analogous to and may be substituted for job-readiness activities.

Some transitional housing providers are adamant that job-readiness is a fundamental aspect of their program and will not waive it as a requirement, and therefore do not allow people who cannot work due to disability to participate at all in their programs. Housing providers who are tempted to do this should be very clear about the fundamental nature of their program before refusing to allow a participant with a disability a reasonable accommodation such as applying for government benefits and searching for subsidized permanent housing instead of job-readiness activities. A mere assertion that job-readiness is a fundamental aspect of a transitional housing program does not make it so. Factors to consider include how the program is advertised, what its mission statement proclaims to be its main goal, what the requirements of its funding sources are, and whether any exceptions to the job-readiness requirement have been made in the past. Unless they have clear evidence to the contrary, most transitional housing programs are fundamentally about assisting people in moving into permanent housing and not job-readiness.

***\*62. 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 at all feasible, hold the resident's bed while allowing her to attend a rehab program, or allow her to attend a day treatment program and keep her bed at night, as a reasonable accommodation. If neither of these options is feasible, then neither is reasonable.

Current illegal drug use is not considered a disability, so transitional housing programs and emergency shelters can take a zero-tolerance approach to illicit drug use on the premises, as long as appropriate measures are taken when removing the offending individual from the housing or shelter (see # 73 and 74).

***63. Do we have to allow an alcoholic resident to act belligerently and disturb the running of the operation? Would it be discriminatory to evict him?***

If a person without a disability would be evicted for engaging in the same belligerent behavior (i.e., if the eviction is not based on the disability itself) it would not be illegal to evict an alcoholic who was behaving this way. However, if the resident asked for the reasonable accommodation of being allowed a second chance, perhaps after a period at a rehab program, she should be allowed the second chance if it would not constitute an undue administrative or financial burden.

It is important to note that if a resident with alcoholism or any other mental disability is merely acting unusually, but not interfering with the rights of others, he should not be evicted, as this would be illegal discrimination.

***64. If a person has to be hospitalized during his 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 could offer to return a pro-rated share of the unused rent (rent for the rest of the month, during which the person will not be living there) and/or offer to put the person at the top of the wait-list for admission to the housing program, so that upon being discharged from the hospital she can relatively quickly resume residency at the program. If the hospitalization is short-term, the program operator could offer to hold a bed for the resident.

***\*65. May we inquire into a resident's condition if he appears to be acting out of the ordinary but is not violating any program rules?***

It is always acceptable to politely ask a person how he is feeling. If the individual is experiencing some difficulty and is willing to talk about it, such an inquiry might initiate a helpful conversation in which the resident and housing provider or supportive services staff come up with a solution to whatever is troubling the resident. If the person does not wish to

talk about his private situation, however, the housing provider or supportive services staff must respect his wish for privacy.

A person has a right to act unusually; no one should be evicted, threatened with eviction, or harassed for unusual behavior such as talking to herself, making strange gestures, etc. Behavior that constitutes a direct threat is altogether different, however, and should be handled differently (see # 66 and 71-74).

***\*66. When a resident or guest acts in a dangerous, threatening or violent manner toward other residents or staff due to disability, can we evict him or would that be discriminatory because he has a disability?***

This depends in part on whether the behavior in question 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 a continued tenancy would cause substantial damage to the facility or the property of other tenants. This exception is aptly termed "the direct threat exception."

Under the direct threat exception, a shelter or housing provider must attempt a reasonable accommodation to enable the individual with a disability to remain in his housing, *unless* the provider can show that no reasonable accommodation would eliminate the threat.

While case law has not developed a clear definition of "direct threat," a guiding principle is that the person's behavior must consist of actual abuse or an actual threat. A direct threat can exist even in the absence of actual harm to other residents. 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. Provoking fear in others and behavior that merely makes others uncomfortable, such as acting strangely, are not grounds to deny housing to a person with a disability, nor is speculation or stereotype about a particular disability or disabilities in general. Examples of behavior that courts have considered direct threats include actual physical injury to another person, threats of harm, child molestation, and activity that is criminal in nature. Causing minor damage to the property is not a direct threat.

Depending on the context and type of abusive or threatening behavior, different types of accommodations might be reasonable. For example, a person who threatens to hurt a neighbor might be removed for short-term hospitalization (if his psychiatric condition warrants it) with a second chance at tenancy after he has had time to stabilize his condition with proper medication.

While it is generally the responsibility of the resident with the disability to request a reasonable accommodation, the courts are not uniform on this matter. There is case law that holds that a landlord who either knows of a resident's disability or should know of it has an obligation to initiate a discussion of reasonable accommodation before evicting a tenant for disability-related threats. There is also case law that maintains that the person who needs the reasonable accommodation has the responsibility to request it (as is the case in most reasonable

accommodation scenarios). When dealing with a resident who poses a direct threat, a housing provider should initiate a discussion about possible reasonable accommodations before attempting to evict the resident.

If no reasonable accommodation can eliminate the threat or if the resident refuses all proposed reasonable accommodations and the direct threat continues, a housing provider may move to evict the resident as a last resort (see #71).

***Emergency Shelter:*** The concept of the direct threat exception is also relevant in the emergency shelter setting, although the closer proximity of the clients, the shorter length of stay and the limited resources may sharply curtail the range of possible reasonable accommodations.

## **Considerations of Confidentiality**

***Confidentiality rules prohibit transitional housing and emergency shelter providers from disclosing information relating to a resident's or guest's disability, even though other residents, guests, and even prospective future landlords may press for information.***

***\*67. What should we tell other residents who insist on knowing why one resident doesn't have to follow the same rules as everyone else?***

One approach is to explain to questioners that in certain situations the program/shelter is able to grant accommodations and that any resident needing an accommodation is welcome to request one, but since every resident's situation is confidential the reasoning for granting an accommodation will not be divulged. Another approach is to simply state, "Certain laws require us to do this." Whatever approach is taken, the housing provider must not mention disability as the reason for the action.

Sometimes a person with a disability chooses to reveal her disability as a way to avoid confrontations with those who feel she is unfairly getting special treatment. If this is the case, the housing provider should make sure the resident understands that she does not need to reveal such information and that there are other ways to deal with the situation.

***68. How should we handle inquiries from prospective landlords when a resident is looking for permanent housing or after a resident leaves our facility?***

A transitional housing provider is allowed to share any information regarding a resident or former resident that any landlord is entitled to share – for example, length of stay, whether the resident paid his rent on time, and whether he was a good tenant (did he cause damage to the property or disturb his neighbors), but must not mention anything regarding the resident's disability. The only exception to this would be if the resident has given permission granting the housing provider authority to disclose the existence of a disability. A resident might choose to grant the housing provider such permission for a limited time to disclose otherwise confidential issues with prospective landlords to aid in the process of procuring permanent housing, even

***Fair Housing for People with Disabilities***  
by Mental Health Advocacy Services, Inc.

though it is illegal for prospective landlords to ask for such information. This authorization should be documented.

## Final Stage of Tenancy/Guest Stays

### Terminating Residency and Asking a Guest to Leave

*Fair housing laws, state laws and even the federal Constitution all demand that people leaving transitional housing programs and emergency shelters be treated with dignity and fairness.*

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

Yes, a resident is always allowed to request a reasonable accommodation, even when moving out. For example, a resident with a disability might request extra time to get out of the unit or find a new place to live, or she might need to terminate the lease prematurely if her disability makes it impossible for her to continue her residence.

**70. 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,<sup>12</sup> the tenant is generally liable for the entire month's rent. However, the landlord is also obligated to mitigate his damages and find a replacement tenant. If a replacement is found, the vacating tenant is only liable for a pro-rated 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, there is some question as to whether the landlord is required to waive the tenant's future unpaid rent as an accommodation, when reasonable, even if a replacement tenant cannot be found. At least one court has held that continuing to bill a former tenant after he terminates his lease early due to mental disability can be a violation of fair housing laws.<sup>13</sup>

Reasonableness in this context includes factors such as the difficulty of re-renting the unit, the amount of rent, and the resources of the landlord. In a transitional housing program, there is generally a list of people waiting to move in and the resident's portion of the rent is relatively low, therefore it would usually be reasonable to waive rent as an accommodation if the resident must move out early due to disability and the housing provider will suffer little or no financial loss.

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<sup>12</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-days 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.

<sup>13</sup> Samuelson v. Mid-Atlantic Realty Co., Inc., 947 F. Supp. 756 (D. Del. 1996)

***71. 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 her before making her leave a transitional housing program?***

A transitional housing provider may not legally order a resident to leave, regardless of whatever transgression the resident has committed. 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 (see # 72, 74 and 75).

First, the housing provider must serve the resident with an eviction notice. Usually a tenant is entitled to 30-day or 60-day notice,<sup>14</sup> but sometimes a three-day notice will suffice. If a tenant fails to pay the rent he is 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 legally proceed with the eviction. It is usually recommended that an attorney be hired 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 (see # 74).

***72. If a transitional housing resident is threatening another resident or staff member, can we throw him out?***

Even if a resident of a transitional housing program is threatening another resident or staff member, legal procedures must be followed. If someone is dangerous and out of control and the wait to have her legally removed would jeopardize the safety of others, program operators can call the police and seek a restraining order. If the person is dangerous as a result of a mental disability the program may contact law enforcement or the mental health department in order to initiate a 72-hour involuntary treatment hold in a psychiatric hospital. While the resident is hospitalized, the housing provider can also petition the court for a temporary restraining order to stay at least 200 feet away from the program using the Transitional Housing Participant Misconduct Act (see # 74). If, during the 72-hour hold, it is determined that the resident should be hospitalized for a longer period, the housing provider should hold her bed as an accommodation if it is reasonable (if circumstances permit), in case she is able to return to the program upon her release from the hospital.

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<sup>14</sup> Beginning in January 2007, tenants who have resided in a unit for more than a year 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.

**\*73. What is the proper way to end the stay of a guest in an emergency shelter?**

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 oneself, and an opportunity to appeal the decision. Depending on the reason the guest is being asked to leave, the minimal due process can take different forms. All guests at emergency shelters should be given a list of conditions for staying in the shelter when they are admitted. The following sets forth good practices that comply with minimal due process requirements.

If a guest in an emergency shelter commits a gross violation of the conditions that poses a threat to the health and safety of other guests or staff, such as using drugs or threatening to attack a person, he may be asked to leave immediately, and he should be given a written notice explaining in adequate detail why he is being told to leave and informing him of his right to return at a later date to appeal the earlier decision so that he may stay in the shelter again.

If a guest commits minor violations, it is recommended that she be given at least two written warnings and an opportunity for a meeting to discuss the alleged violations. If the violations continue she should be given written notice that she is being asked to leave. The written notice should inform the guest of the reasons for being asked to leave, the right to request a reasonable accommodation, the right to meet with both the person who alleges that the violations have taken place and a decision-maker, and the right to have an advocate present at that meeting. The notice should be signed by a person with the authority to deal with the matter. The guest should be given an opportunity to appeal the decision and be allowed to stay while the decision is being appealed.

If possible, the guest should be given a referral to an alternate shelter and assistance in getting to that shelter.

**74. What is the Transitional Housing Participant Misconduct Act?**

**A housing provider is free to discriminate against an individual on account of his current illegal drug use because current illegal drug use is not considered a disability under fair housing laws.**

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 the abuse or forbidding the 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

\* relevant to emergency shelters

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, which is available from www.USCourtForms.com).

In extreme cases of abuse, where 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 strikes or sexual assaults, as well as attempts, threats, and actual attacks on other participants, program employees, or immediate neighbors of the program site. Abuse may be intentional or merely reckless and it includes placing another person in reasonable apprehension of imminent serious bodily injury. Misconduct under the THPMA includes selling or using drugs, theft, arson, and destroying another person's property, as well as violence or threats of violence and harassment. Drunkenness is also included as misconduct under the THPMA but programs should be cautious about using the THPMA here because fair housing laws protect alcoholism as a disability.

***75. At what point is an apartment in a transitional housing program considered abandoned and when is the landlord 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 the program staff reasonably believes that the resident has abandoned the property, the program operator should send a "Notice of Belief of Abandonment" to the resident at his last known address and any other address at which the resident may reasonably be expected to receive it. The notice should state substantially the following:

*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 (state location of the property by 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 (here insert a date not less than 15 days after this notice is served personally or, if mailed, not less than 18 days after this notice is deposited in the mail) 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.*

*Dated:* \_\_\_\_\_

\_\_\_\_\_  
*(Signature of landlord)*

\_\_\_\_\_  
*(Type or print name of landlord)*

\_\_\_\_\_  
*(Address to which tenant is to send notice)*

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

In those 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 property has been abandoned. If “rent” is paid in the form of chores or services rendered by the resident to the program, it might be reasonable to construe fourteen days of failure to perform chores (concurrent 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 references to rent due.

In situations in which the transitional housing in question 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 days, and the resident does not respond to informal telephone and written requests inquiring if she is still living at the premises – 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).

***76. 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 his place in the program indefinitely?***

If it is possible to obtain the resident’s consent, one option would be to request that the resident sign a termination agreement stating that although he is informed that he has a right to maintain the legal possession of the room until he is lawfully evicted, he chooses instead to terminate his tenancy in exchange for being placed at the top of the program’s wait-list so that he may return

as soon as the first space opens up after he is released from the hospital. If at all possible, his belongings should be stored at the program facility as a reasonable accommodation, or program staff should assist him with other storage arrangements. This is the easiest option for the housing providers, and it protects the resident from having an eviction on his record.

If it is impossible to get the resident's consent and the housing provider reasonably believes the resident is not coming back for an indefinite period, the housing provider may post a Notice of Belief of Abandonment and follow the protocol outlined in # 75.

A third option would be to wait until the rent is late and then proceed with a formal eviction, but this is time-consuming for the housing provider, hurts the resident in his future search for housing (by giving him a bad record), and is generally unnecessary.

***\*77. 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 his 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, his caseworker's address), a copy of the notice should be sent there as well. A notice should include the following information:

*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 of the premises, including apartment number or room number, if any), the following personal property remained: (insert a description of the property). Unless you pay the reasonable cost of storage and take possession of the property to which you are entitled not later than (insert date not less than 15 days after the notice is personally delivered, or, if mailed, not less than 18 days after notice is deposited in the mail), 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).*

*Dated: (The date mailed or posted)*

*(Signature of the landlord)*

*(Type or print the name of the landlord)*

*(Telephone number)*

*(Address)*

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The personal property should be kept wherever it is safe and inexpensive to store. Reasonable costs are not defined by statute; however, it is understood that a small object that can fit on a shelf in the front office is not costly to store, while a bicycle or other large object may be more difficult to store. If a housing program does not have a place to store objects, an arrangement must be made to store the object at another location. Storage costs are not an opportunity for a housing provider to acquire extra cash. Also, a housing provider must mitigate damages, meaning that he must store any personal property left behind in a reasonable manner that incurs the least expense.

If the former resident does not reclaim the property within the time allotment given, and the property is reasonably believed to be worth less than \$300, the landlord can choose to keep or dispose of it. If the property is worth more than \$300, 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 discerning 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 wise to consult a lawyer.

While the law mandates that the resident be given at least 15 days from the time of being personally served a Notice of Right to Reclaim Abandoned Property, the law does not prohibit setting a longer time period. It may be helpful in the transitional housing context, in which residents may be hard to find after leaving, to inform residents in writing upon entrance to a program that they will have 30 days from leaving to reclaim any possessions left behind, and that after the expiration of 30 days the objects will be thrown out/sold in the thrift shop/etc. Then, if a resident leaves anything behind, the program operator may mail him a notice informing the resident of the number of days remaining to reclaim his 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 continuing contact with the individual.

When a former resident’s disability makes it extremely difficult for her to reclaim her possessions within the time normally granted, she may request an extended period of time as a reasonable accommodation. For example, if a resident vacates her residence and is placed in a psychiatric hospital, she, or her caseworker, a friend, or relative on her behalf, may request that the program operator, as a reasonable accommodation, hold her 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. If it is a small bag, it would likely be reasonable to store for an extended time. However, if the property includes a couch, a bicycle and three large, stuffed duffle bags, it would likely pose an administrative or even financial burden to store, depending on whether extra space had to be procured to keep it.

***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

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shelters establish a procedure to simplify the return of personal property to its owner and to avoid becoming liable for conversion. For example, a shelter may post a notice that guests' belongings will be held for a limited amount of time such as two weeks or thirty days, before being discarded.

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## APPENDICES

### Appendix A

#### A Short Glossary of Terms Used in the Manual

The legal definitions of some of the terms used in this manual may differ from their colloquial usage. This short glossary is provided to clarify the legal definitions of facilities and programs.

#### **Emergency Shelter**

*An emergency shelter* is a facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.<sup>15</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* is safe and sanitary housing meant to facilitate the movement of homeless individuals and families to permanent housing, usually within 24 months.<sup>16</sup> In ordinary usage, a transitional housing program is one that takes people from emergency shelters and not directly from the streets.

In California, a transitional housing program must include a structured living environment as well as comprehensive social service programs designed to assist homeless persons in obtaining the skills necessary for independent living in permanent housing. These social service programs may include individualized case management, alcohol and drug abuse treatment, independent skills development, as well as employment and training assistance services. Continued participation in a transitional housing program must be dependent on the resident's compliance with the program rules and regulations. Furthermore, each transitional housing program must include a rule or regulation specifying an occupancy period of at least 30 days and not more than 24 months.<sup>17</sup>

#### **Homeless**

The term "*homeless*" as defined by the U.S. Department of Housing and Urban Development refers to (1) any individual or family that lacks a fixed, regular and adequate nighttime residence, or (2) any individual or family whose primary nighttime residence is one of the

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<sup>15</sup> 24 CFR 91.5

<sup>16</sup> 42 USCS § 11384 (b)

<sup>17</sup> California Health and Safety Code §50582(g)(3)

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following: 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), an institution that provides a temporary residence for individuals intended to be institutionalized, or a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings. People who are in prison or otherwise detained under an act of the Congress or a state law are not included as homeless.<sup>18</sup>

This definition includes people who are traditionally thought of as homeless, such as those living on the street, in make-shift abodes on public property and those squatting in abandoned buildings, as well as people who are less frequently considered homeless: those already receiving care in shelters, institutions and transitional housing programs, but without a permanent place to call home.

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<sup>18</sup> 41 CFR 102-75.1160

## Appendix B

### Summary of Specific Fair Housing and Disability Laws

The following is a summary explanation of each of the various fair housing and other disability laws pertinent to transitional housing and shelters.

#### **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>19</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, including emergency shelters and transitional housing programs, that receive federal funds 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>20</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, regardless of whether the housing provider receives federal funding. Therefore, it applies to transitional housing programs. It has also been interpreted broadly to frequently apply in the context of emergency shelters, depending on the expectations and intentions of those staying at the shelter, the length of stay, and whether the guests/residents consider it their residence.<sup>21</sup>

Furthermore, the FHAA prohibits any discrimination with respect to the terms, conditions, or privileges of any sale or rental of a dwelling, or in the provision of any services or facilities in connection with the dwelling.<sup>22</sup> This includes a prohibition against any practice or policy in the tenant selection process that would have a discriminatory effect on people with disabilities (or families with small children).

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<sup>19</sup> 29 USC § 794

<sup>20</sup> 42 U.S.C.A. §§ 3601 et.seq.

<sup>21</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>22</sup> See 13.

The FHAA prohibits not only discrimination due to a buyer's or renter's disability, but also discrimination based on the disability of a buyer's or renter's family member who would be expected to live in the dwelling.

### **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>23</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 in the form of excluding a qualified person with a disability (i.e., a person who would qualify for the program or activity but for their disability) from participating in programs or activities. To this end, title II mandates that housing providers make reasonable accommodations in policies and practices and reasonable modifications in building structures to ensure that such discrimination does not take place. Title II also mandates that housing providers who receive state or local funding pay for certain reasonable physical modifications.<sup>24</sup>

The ADA requires that a person with a disability be allowed access to programs and housing in the most integrated setting possible.<sup>25</sup> It states that, “a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”<sup>26</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>27</sup>

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<sup>23</sup> 42 U.S.C. § 12132

<sup>24</sup> 28 C.F.R. Part 35.150(c)

<sup>25</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.

<sup>26</sup> 28 C.F.R. §130(d)

<sup>27</sup> 28 C.F.R. pt. 35, App. A, p. 450

### *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 “public accommodations,” 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 that are open to the public. This list is not exhaustive.

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>28</sup>

## **California Fair Housing Laws**

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

Like the federal fair housing laws the Fair Employment and Housing Act (FEHA) prohibits people in California from discrimination in employment or housing based on mental or physical disability, as well as other prohibited bases, and it contains reasonable accommodation and reasonable modification requirements.<sup>29</sup> In addition to prohibiting discrimination on the basis of race, color, religion, sex, national origin, familial status or disability, as federal law does, FEHA also prohibits discrimination based on marital status and sexual orientation. As noted above, California’s definition of disability is broader than the federal definition (see page 12). FEHA applies to transitional housing programs and to any emergency shelter in which a person has resided for considerable time.

### **The Unruh Civil Rights Act**

The Unruh Civil Rights Act mandates that all people, regardless of sex, race, color, religion, ancestry, national origin, disability, or medical condition, are entitled to full and equal accommodations in all business establishments.<sup>30</sup> “Business establishments” has been interpreted broadly to include all businesses whatsoever. Furthermore, the Unruh Civil Rights Act states that any violation of the ADA is a violation of the Unruh Act.<sup>31</sup>

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

<sup>29</sup> Cal. Gov’t. Code § 12900 *et. seq.*

<sup>30</sup> Cal. Civ. Code § 51-53

<sup>31</sup> Cal. Civ. Code § 51(f)



## Appendix C

### **Transitional Housing Programs Must Comply with Landlord-Tenant Laws:**

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 erroneous, as explained in the following question-and-answer segment.

***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 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).<sup>32</sup> 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, such as hotels with maid service, but transitional housing programs are not among the exceptions.<sup>33</sup>

***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."

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

The law is not explicit as to this situation. However, transitional housing as defined by California law does not include rent (i.e., residents may or may not be required to pay rent), and the Transitional Housing Participant Misconduct Act (see # 74) clearly assumes that eviction laws do apply to all transitional housing programs regardless of whether rent is paid. It is suggested that all housing providers follow a presumption that all the landlord-tenant laws apply to any legal issue that arises (such as, for example, how to dispose of items left behind after a resident moves out).

***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

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<sup>32</sup> Cal. Civ. Code § 1940(a)

<sup>33</sup> Cal. Civ. Code § 1940(b)

rights that California considers so important that they may not be modified or waived by lease/rental agreement, and the rights to notice and hearing are among those listed.

***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 standard eviction process even if the resident has only been in the residence for two days because 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 hold 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).

***So what do we do if we have a program participant who is misbehaving in such a way that he interferes with the running of the program, or is actually threatening people?***

There are two ways to legally evict a resident from a transitional housing program in California: using the traditional eviction/unlawful detainer process, or using the Transitional Housing Participant Misconduct Act. The traditional eviction process, if evicting for a material violation of the lease, begins with a three-day notice.<sup>34</sup> The Transitional Housing Participant Misconduct Act is somewhat faster, but may only be employed if residents received written information about the Act when they signed the residency agreement (see # 74).<sup>35</sup> As always, if the behavior is due to a disability, the housing provider should attempt a reasonable accommodation to allow the resident to remain in his housing (see # 63).

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<sup>34</sup> Cal. Civ. Proc. § 1161(2)-(4)

<sup>35</sup> Cal. H&S § 50582(c)

## 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.

#### **Fresno HUD Office**

Dept. of Housing and Urban Development  
The Crocker Building  
2135 Fresno Street, Suite 100  
Fresno, CA 93721-1718

**Phone:** (559) 487-5033

**Fax:** (559) 487-5344

**Jurisdiction:** Stanislaus, Madera, Merced, Mariposa, Fresno, Kings, Tulare, and Kern Counties in California's Central Valley

#### **Los Angeles HUD Office**

Dept. of Housing and Urban Development  
AT&T Building  
611 West Sixth Street, Suite 800  
Los Angeles, CA 90017

**Phone:** (213) 894-8000

**Fax:** (213) 894-8107

**TTY:** (213) 894-8133

**Jurisdiction:** primarily Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Mono and Inyo Counties

#### **Sacramento HUD Office**

Dept. of Housing and Urban Development  
925 L Street  
Sacramento, CA 95814-3702

**Phone:** (916) 498-5220

**Fax:** (916) 498-5262

**TTY:** (916) 498-5959

**Jurisdiction:** northern 23 California counties

**San Diego HUD Office**

Dept. of Housing and Urban Development  
Symphony Towers  
750 'B' Street, Suite 1600  
San Diego, CA 92101-8131

**Phone:** (619) 557-5305  
**Fax:** (619)557-6296

**Jurisdiction:** San Diego and Imperial Counties

**San Francisco HUD Office**

Dept. of Housing and Urban Development  
600 Harrison Street, 3rd Floor  
San Francisco, CA 94107-1300

**Phone:** (415) 489-6400  
**Fax:** (415) 489-6419

**Jurisdiction:** San Francisco, Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Sonoma, Solano, Santa Cruz, San Benito, Monterey, Del Norte, Humbolt, Mendocino, and Lake Counties

**Santa Ana HUD Office**

Dept. of Housing and Urban Development  
Santa Ana Federal Building  
34 Civic Center Plaza, Room 7015  
Santa Ana, CA  
92701-4003

**Phone:** (714) 796-5577  
**Fax:** (714) 796-1285  
**TTY:** (714) 796-5517

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