

Fair Housing 101

8/16/16

San Diego Refugee Forum



•Fair Housing Center of the Legal Aid Society of San Diego, Inc.

Take Away Points



“Reasonable Accommodations”
can keep people housed.

LASSD FAIR HOUSING TEAM

LASSD FAIR HOUSING SERVICES:

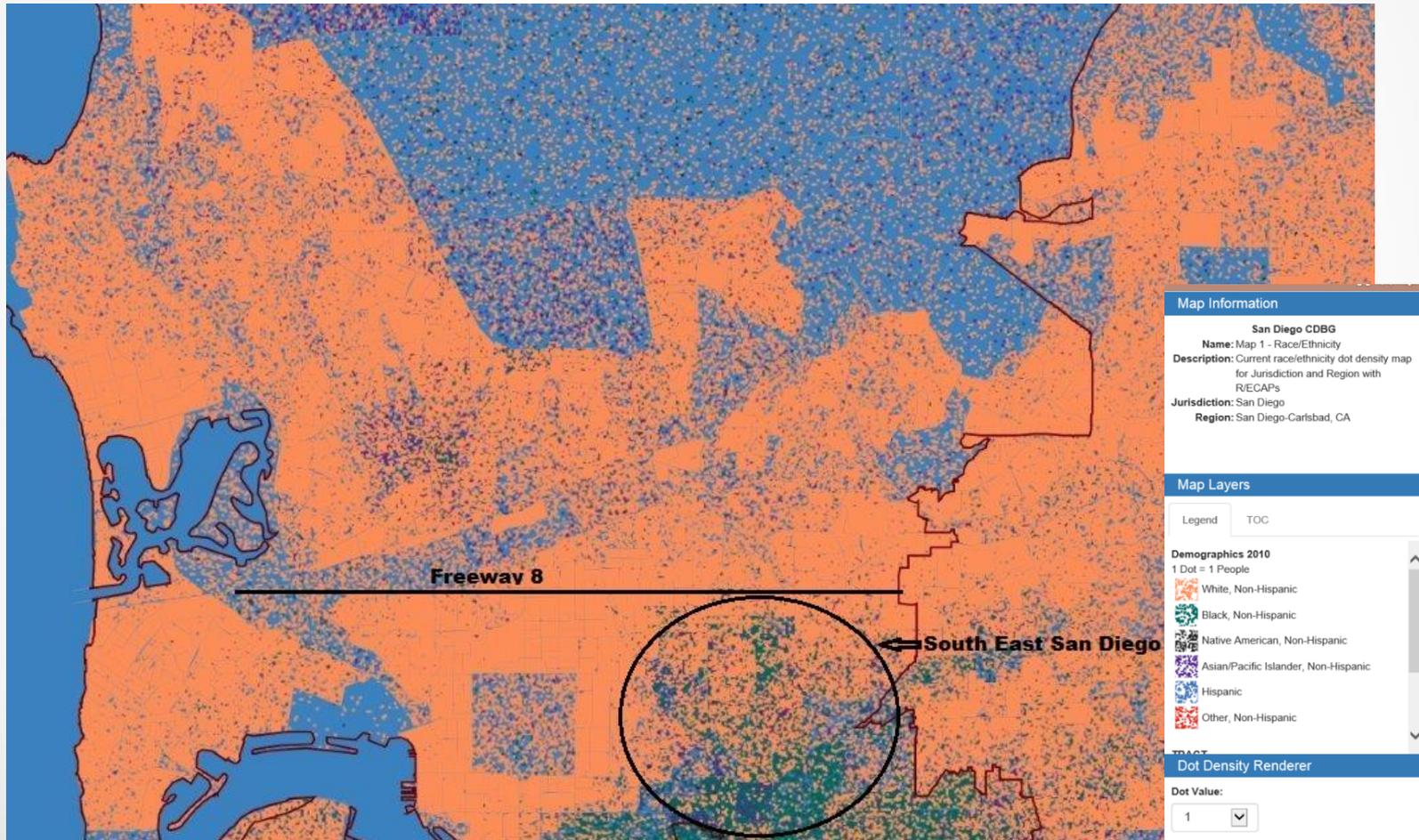
1. Outreach
2. Education
3. Enforcement
 - Litigation
 - Conciliation
 - HUD/DFEH complaints

Fair Housing – Definition Of

- The ability of persons of similar income levels who are seeking housing in similar housing market and who have like qualifications, to have available to them the same range of housing choices, regardless of race, color, religion, national origin, sex, familial status or disability (Federal Law)



San Diego: Integrated or Segregated?



Fair HOUSING TODAY

- <https://vimeo.com/77785957>

Brief Overview of the Federal Fair Housing Act

- ▶ Passed in 1968, days after the assassination of Rev. Dr. Martin Luther King, Jr.
- ▶ Significantly strengthened when it was amended in 1988



Francis MillerLIFE

Fair Housing Act of 1968 - First Protected Classes

- Prohibits discrimination in housing on the basis of “**protected class status**”
 - **Race**
 - **Color**
 - **National origin**
 - **Religion**



Extinguishing Housing Discrimination Through Education

Fair Housing Act of 1968 – “Protected Classes”

- ▶ In 1974, Congress amended the Act to include discrimination on the basis of sex.

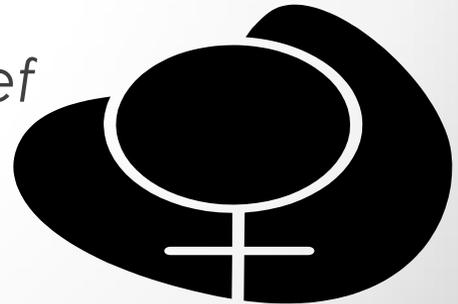


Extinguishing Housing Discrimination Through Education

Protected Classes

- SEX-BASED DISCRIMINATION INVOLVES;
- SEXUAL HARASSMENT;
- CREATION OF A HOSTILE ENVIRONMENT; OR
- QUID PRO QUO.

May v. Brunton-\$160,000 + injunctive relief



FAIR HOUSING AMENDMENTS ACT OF 1988

“Protected Classes”

- ▶ In 1988 Fair Housing Amendments Act added discrimination on the basis of disability and familial status (families with children under 18).

Note: Disability covered in depth later.

- ▶ Familial status denotes-Person(s) having children/ legal custody, or their designees, of an individual under the age of 18 years. It includes pregnant women or someone in the process of securing legal custody.

FAIR HOUSING AMENDMENTS ACT OF

1988

“Protected Classes”

- The 1988 Amendments state that reasonable occupancy requirements are permitted.
- HUD has adopted the so-called Keating Memo, which generally approves a two person per bedroom standard and also allows for great flexibility depending upon the particulars of the premises and family make-up that would allow for additional occupants.
- DFEH has adopted two plus one model occupancy standard.
 - The California Health & Safety Code Section 17922(a)(1) requires each municipality, to adopt the Uniform Housing Code. UHC § 503(b) permits, generally, occupancy of a dwelling by two persons in each habitable room with a minimum of 120 square feet of floor area, requiring an additional 50 square feet for each occupant in excess of two.

The Fair Housing Amendments Act

42 U.S.C. §§ 3601 - 3619.

The Fair Housing Amendments Act prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.

Federal Fair Housing Laws

Protected Classes:

1. race
2. disability
3. family status
4. national origin
5. sex
6. religion
7. color

FAIR HOUSING PROTECTIONS UNDER STATE LAW in CALIFORNIA



State of California Fair Housing Laws

More Protected Classes: (State)

- 1. Age**
- 2. Ancestry**
- 3. Marital status**
- 4. Sexual orientation**
- 5. Source of income**
- 6. Arbitrary status**
- 7. Gender Identity**
- 8. Gender Expression**

HOUSING COVERED

- Any residential building or vacant land available for the sale or lease of a dwelling
- Apartments, houseboats, homeless shelters, migrant farm worker housing, time shares, special needs housing/others
- Any place to which a person “intends to return”

Exemptions Under the Fair Housing

Act

Exemptions*

- Senior Housing Property with age restrictions.
- Fraternal/Religion-Based Housing
- Roommates of Same Sex

Note: CA law only exempts an owner occupied home, only renting out one room.

* Not all federal exemptions are covered.

RIGHTS, REMEDIES AND RESPONSIBILITIES UNDER THE FAIR HOUSING AMENDMENTS ACT

THE FAIR HOUSING AMENDMENTS ACT OF 1988 IS
THE SOURCE OF LAW. THIS ENACTMENT:

- ▶ Expanded coverage of FHA to prohibit discrimination in housing practices based on **disability** ...
 - Established design & construction requirements for multi-family housing (consisting of 4 or more dwelling units) built for 1st occupancy after March 13, 1991.
 - Established Significant Monetary Penalties.

Disability - Definition of

Under federal & state fair housing laws, disability (handicap) means, with respect to a person:

- A physical or mental impairment which substantially limits 1 or more major life activities;
- A record of such an impairment;
- Or, being regarded as having such an impairment.

Disability - Definition of

- The State of California law was amended in 2000 to make significant changes to its disability laws. The definition of physical and mental disability was clarified to only require a “limitation” upon a major life activity, not a “substantial limitation” as required by federal law.

Examples of Impairments Which May Result in Disability

- Visual, speech, & hearing impairments
- Cerebral palsy
- Mental Illness
- Autism
- Epilepsy
- Muscular dystrophy
- Cancer
- Heart disease
- Diabetes
- HIV infection
- Drug addiction- Recovery
- Alcoholism- Recovery



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

Examples

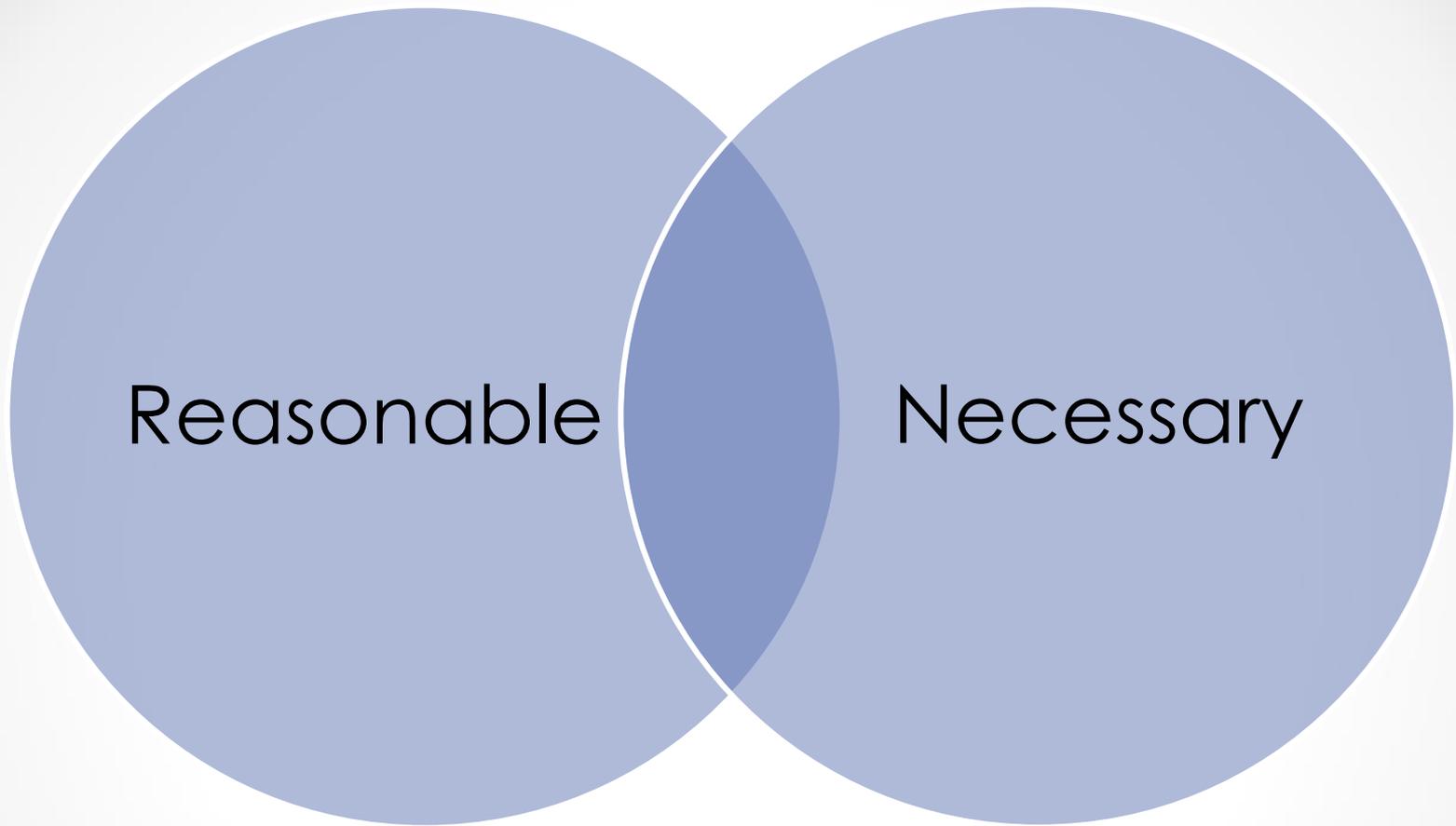
- Adjustment of the rent due date to accommodate receipt of public benefits.
- Allowing someone to transfer to a quieter unit because noise aggravates his or her disability.
- Waiver of “no pet” policy to accommodate psychiatric service dogs or comfort animals.



A Reasonable Modification
is a physical change to a
dwelling or common area.

Examples

- Ramps
- Flashing Doorbells
- Grab Bars
- Soundproofing



Must be Necessary and Reasonable.
Requires a "Nexus".

What is Reasonable?

1. Party requesting accommodation bears the initial burden of showing that the request is “reasonable.”
 - a. Reasonable on its face?
 - b. Ordinarily or in the run of cases?
 - c. Plausible?

2. Once this showing is made, the burden shifts to the housing provider to disprove reasonableness. Unless housing provider can prove that the requested accommodation is not reasonable, the accommodation must be provided.

Disputing Reasonableness

Undue financial or administrative burden

- Factors: cost, benefit to tenant, financial resources of the provider, availability of equally effective less expensive alternative.
- Note: Some cost or financial burden on provider is to be expected.

Fundamental alteration

- i.e. can't alter the essential nature of the operations.



What is “Necessary”?

Frees the tenant from a rule, policy, or practice that interferes with the person’s right to use and enjoy the dwelling.

Improves the tenant access to the unit by removing architectural barriers

Enhances the tenant’s quality of life by ameliorating the effects of the disability.

Enables the tenant to satisfy the essential requirements of tenancy the same as a non-disabled person can.



Nexus Required

There must be a connection between the disability, the requested change and the ability of the individual with disabilities to use and/or enjoy his or her housing.

NEXUS

- Tenant's disability is exacerbated by loud noises.



- Tenant requests transfer to a quieter unit and the ability to install soundproofing.

NO NEXUS

- Tenant's disability is exacerbated by loud noises.



- Tenant requests accessible parking space.

“Interactive Process”

When a housing provider refuses a requested accommodation or modification because it is not reasonable, the provider should discuss with the requester whether there are alternatives that would effectively address the requester's disability-related needs.

Individuals with disabilities should be willing to engage in an interactive process regarding the need for accommodation, particularly when it is not obvious.



Verification

Housing provider may request reliable disability - related information

- 1) Necessary to verify that the person has a qualified disability,
- 2) Describes the needed accommodation, and
- 3) Shows the relationship between the disability and the need for the RA.

Verification

- Usually not necessary:

**TO PROVIDE MEDICAL RECORDS OR DETAILED
INFORMATION ABOUT NATURE OF DISABILITY**

Laflamme v. New Horizons

Common Issues

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Non-compliance with Lease Terms

Direct Threat

Service & Support Animals

Disability-Related Lease Violations

- Disability-related behaviors or needs may create a nuisance
 - (e.g. yelling at manager; night terrors) or otherwise breach lease terms.
- Initiate accommodation request and begin interactive process immediately upon notice of adverse housing action
 - (i.e. notice to cure or eviction notice).

Request for Accommodation

Must show:

- Link between noncompliance & tenant's disability.
- Accommodation/modification will allow the tenant to obtain compliance and remain compliant with the lease (i.e. necessary).
- Accommodation/modification is reasonable.

If the accommodation/modification is denied – it provides an affirmative defense to eviction

“Direct Threat”

The Fair Housing Amendments Act does not protect a tenant “whose tenancy would constitute a direct threat to the health or safety of other individuals, or whose tenancy would result in substantial physical damage to the property of others.” 42 U.S.C. 3604(f)(9)

Establishing Direct Threat

Analysis is objective, not subjective.

Consider:

- Nature of risk
- Duration of risk
- Severity of risk of injury
- Probability injury will occur.

Housing provider must determine whether there is an accommodation that could eliminate or mitigate the direct threat.



DIRECT THREAT- HUD - DOJ JOINT STATEMENT at 4-5

BEFORE EXCLUDING A PERSON FROM HOUSING, The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat.

Determination based on individualized assessment that is based on reliable objective evidence (e.g., current conduct, or a recent history of overt acts), considering:

- (1) the nature, duration, and severity of the risk of injury;
- (2) the probability that injury will actually occur; and
- (3) whether there are any reasonable accommodations that will eliminate the direct threat.

DIRECT THREAT- HUD-DOJ JOINT STATEMENT at 4-5

In evaluating a recent history of overt acts, provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (i.e., a significant risk of substantial harm).

Provider may then:

- request that the individual document how the circumstances have changed so that he no longer poses a direct threat;
- **obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy.**

Service Animal, Comfort Animal or Pet?

- Service Animal - An animal that is necessary to afford an individual an equal opportunity to use and enjoy a dwelling or to participate in a housing service or program.
- Emotional Support Animal - Any dog or other common domestic animal that helps an individual with psychiatric disabilities manage or alleviate the symptoms of those disabilities, by providing therapeutic nurture, comfort and support.
- Pet – A domesticated animal kept for pleasure or companionship.



Assistance Animal vs. Service Dog

- Service Dogs: ADA
- Assistive Animals: Fair Housing Act

SERVICE DOGS (ADA)

Service animals are defined as dogs that are “individually trained to do work or perform tasks for people with disabilities.

“Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets.”

Miniature horse



ASSISTANCE ANIMALS

(Fair Housing Act)

Federal Fair Housing Act (FHA) violations are administered with consideration of Section 504 & HUD's definition per HUD/DOJ Joint Statement of April 25, 2013:

“An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.”

Assistance Animals

- ILLEGAL TO CHARGE A “PET DEPOSIT” or a “PET FEE” for a Assistance Animal a reasonable accommodation.
- - No formal training required.

- NO BREED, SIZE, OR WEIGHT RESTRICTIONS ALLOWED FOR A REASONABLE ACCOMMODATION.
- INSURANCE COMPANY MUST ALLOW.

Requirements?

- No restrictions about who may train the animal.
- No requirement that the animal be specially trained.
- Special tags, equipment, "certification" or special identification cannot be required.
- No species, breed or size limitations.



ASSISTANCE ANIMALS

- When can assistive animal be denied as a direct threat to health and safety of other?
 - 1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or
 - 2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

Examples of Accommodations

- Allowing a condominium owner who has a mental illness to use an “assistance animal/dog” despite the Condominium Association’s “no pets” policy.
- Allowing a friend of a resident who fears going out of doors to enter a laundry room that is designated “for tenants only” where the disability prevents the resident from doing her own laundry.”

Examples of Accommodations

Non-payment cases:

- Allow third party (charity, social service agency, housing authority) to pay rent
- Excuse late rent payment (tenant's illness, hospitalization etc.)
- Agree not to terminate Section 8 Contract
- Payment plan for over-due rent
- Agree to electronic payment of rent
- Change rent due date with early dementia

Common Reasonable Accommodation Issues Arising in Federally Assisted Housing

- Admission to the program:

Credit History: A person with a disability may have a negative credit history as a result of his or her disability and requests for an accommodation to ignore the credit history.

Criminal Background: An applicant may ask for a reasonable accommodation to consider mitigating circumstances when his or her past criminal activity was related to or the direct result of his or her disability

Questions?

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Resources

- HUD/DOJ Joint Statement on Reasonable Accommodations:
<http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>
- HUD/DOJ Joint Statement on Reasonable Modifications:
http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf
- HUD/DOJ Joint Statement on Group Homes, Land Use and the Fair Housing Act:
http://www.justice.gov/crt/about/hce/final8_1.php
- Bazelon Center for Mental Health Law: www.bazelon.org
(publications)
- National Housing Law Project - www.nhlp.org
- U.S. Department of Housing and Urban Development
<http://www.hud.gov>

WHAT YOU CAN AND SHOULD DO ABOUT IT

If you believe that you or someone close to you has been a victim of housing discrimination, please call:

Legal Aid Society of San Diego, Inc.

Fair Housing Center

(844) 449-3500

711 TTY