

Reasonable Accommodation in Federally Assisted Housing¹

Overview: Laws & Definitions

In the housing context, 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. A housing provider must grant a requested reasonable accommodation if it is necessary to accommodate the disability and does not create an undue financial or administrative burden. Failure to provide a reasonable accommodation may be construed as discrimination.² Practically, a reasonable accommodation helps eliminate barriers to full use and enjoyment of housing for individuals with disabilities.

Reasonable accommodation rules arise from a number of sources. The Fair Housing Amendments Act (FHAA)³, the Americans with Disabilities Act (ADA)⁴, and the Rehabilitation Act of 1973⁵ are federal laws that require reasonable accommodation for individuals with disabilities. California has also enacted laws requiring reasonable accommodation, such as the Fair Employment and Housing Act (FEHA),⁶ the Unruh Civil Rights Act,⁷ and the California Persons with Disabilities Act (CPDA)⁸. Federally assisted housing is subject to all three federal laws, which are generally interpreted interchangeably by courts. The California laws provide more expansive protections than federal laws. This section provides a basic overview of these laws.

The Fair Housing Amendments Act (FHAA)

The FHAA amended the Fair Housing Act (FHA) to prohibit discrimination against people with “handicaps,” defining handicap in the same way disability is defined in other federal legislation. 42 U.S.C. §3604(f) provides that discrimination under the act includes “a refusal to make reasonable accommodation in rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . .” The FHAA applies to all housing providers – private and public. Denial of a reasonable accommodation may constitute discrimination.

Section 504 The Rehabilitation Act of 1973

Section 504 provides that no qualified individual with a disability shall “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency. . . .”⁹ This statute only applies to housing providers receiving federal assistance (such as PHAs and owners of project-based Section 8) and provides greater protection for people with disabilities than the FHAA.

1. For more information contact Navneet Grewal at the National Housing Law Project, ngrewal@nhlp.org, or at (510)251-9400 x. 102

The Americans with Disabilities Act (ADA)

Title II of the ADA prohibits discrimination by state and local governments on the basis of disability, extending Section 504 protections to these entities.¹⁰ Like, the FHAA and Section 504, HUD is charged with the enforcement in housing.¹¹ Though the ADA covers PHAs because they are created by state law, its requirements are essentially equivalent to Section 504.¹² California Government Code §11135 requires that any California state-funded, operated, or administered agency be in compliance with the ADA's anti-discrimination provisions.¹³

California Laws

California's FEHA prohibits discrimination on the basis of disability and stresses that the law is intended to "afford greater rights and remedies to an aggrieved person than those afforded by federal law and other state laws."¹⁴ The Unruh Civil Rights Act prohibits discrimination on the basis of disability.¹⁵ It also sets FHAA as floor regarding discrimination. The California Disabled Persons Act (CDPA) specifically requires reasonable accommodation and modification in "all housing accommodation offered for rent, lease, or compensation."¹⁶

Federal Regulations

Section 504: 24 C.F.R. Part 8; FHAA: 24 CFR §100.204; ADA: 28 CFR §35.130(b)(7)

What is a Reasonable Accommodation?

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. Failure to provide a reasonable accommodation may be construed as discrimination.¹⁷

Federal Definition of Disability for the Purpose of Reasonable Accommodation¹⁸

Any person who:

1. has a physical or mental impairment that substantially limits one or more major life activities;
2. has a record of such impairment; or
3. is regarded as having such an impairment

California Definition of Disability for Housing Discrimination Purposes¹⁹

The California definition of disability differs from the federal definition. Instead of requiring that the disability "substantially limit[] major life activities," California law only requires that the tenant demonstrate that the disability limits major life activities. Under this law, a person should not consider mitigating measures when determining the extent of the limitation on major life activities. The definition of major life activities should also be broadly construed.²⁰ These differences mean that California law protects a broader group of people than federal law.

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Exceptions to the Definition of Disability

Drug Use

A current illegal user of a controlled substance is not disabled for the purposes of reasonable accommodation. However, an individual with a disability can include someone who has successfully completed drug rehabilitation, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use.²¹

Direct Threat

Nothing in the FHAA requires a landlord to make a dwelling available “to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”²² However, this threat must be objective, not subjective. Furthermore, the housing provider has an obligation to provide a reasonable accommodation that may help eliminate the threat.²³ If such an accommodation, one that eliminates the threat, can not be made, then the individual’s tenancy may not be protected.

*California Exceptions*²⁴

CA state law provides that an individual is not considered disabled based upon the following disorders:

- sexual behavior disorders
- compulsive gambling
- kleptomania
- pyromania
- psychoactive
- substance use disorders resulting from the current unlawful use of controlled substances or other drugs (same as federal).

Law	Who is Covered
Fair Housing Act	All housing except owner-occupied
Americans With Disabilities Act	State and local government funded entities (i.e. funded by a state housing finance agency, housing authorities)
Section 504	Any entity receiving federal funds (does not include tax credit only buildings). ¹
California Fair Employment and Housing Act	All landlords, developers, banks, realtors, appraisers, brokerage services, etc
California Unruh	All businesses of any kind
California Disabled Persons Act (CDPA)	All public accommodations

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How to Request a Reasonable Accommodation

HUD has provided a number of guidelines regarding the process of requesting a reasonable accommodation. These can be found in both HUD PIH Letter 2007-05²⁵ and the HUD/DOJ Joint Statement on Reasonable Accommodation.²⁶

The Reasonable Accommodation Request

There are a number of components to requesting a reasonable accommodation: initial requests, verification, reasonableness, and the interactive process.

Initial Requests:

Once a tenant tells a housing provider that she is disabled and needs something changed in order to accommodate her disability, the provider is obligated to begin the reasonable accommodation process.²⁷ A request may be oral or written. However, the best practice is to request the accommodation in writing, so that there is a clear record of the request.

All requests should include the following elements:

1. Disability: This section needs to demonstrate that the tenant has a disability that could be accommodated by the specific request.

It does NOT need to state the name of the disability. A housing provider can not ask about the diagnosis, treatment, or the nature or extent of the disability.²⁸ Some clients may not want the name of their disability revealed for a number of reasons, including the stigma around certain disabilities. In this case, the person verifying the disability may simply state that the tenant has a disability that causes _____ symptoms that need to be accommodated by a change in _____ policy, as that change would help alleviate the barriers to tenant's ability to access or remain in the housing.

2. Accommodation: The request should state specifically what accommodation the tenant is seeking. For example, this section might request a designated parking area, a cosigner for the lease, or that rent is accepted at a later date in the month.
3. Nexus: This portion is vital. The letter must state how the accommodation is related to the person's disability and how it will help the tenant access or remain in the housing program.²⁹

Practice Tip: Though housing authorities are required to respond promptly to a reasonable accommodation request, they often take months. In order to encourage a speedier process, an advocate should set a concrete time frame for the housing provider's response in the initial written request.

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Verification

The housing provider may want to verify the request. There are three possible verification scenarios:

1. If a person's disability is obvious or known, and the need for the requested accommodation is known, then the PHA should not ask for any more information.³⁰
2. If the disability is known or obvious, but the need is not, then the PHA should ask only for information necessary to verify the need for the accommodation.³¹
3. If neither the disability nor the need for the accommodation is readily apparent, the PHA may ask for verification of both the disability and the need for the accommodation.³²
 - In some cases, the PHA should allow the individual to self-certify their disability. For example, an applicant/participant may provide proof of SSI (if younger than 62) or SSDI benefits in order to certify.
 - A doctor or other medical professional, a peer support group, a non-medical service agency, or any reliable third party who is in a position to know about the individual's disability may provide verification of the disability and the need for the accommodation.
 - **Practice Tip:** Though a range of people may verify the need for an accommodation, it is usually best to try to get a doctor's verification.

Reasonableness

If a housing provider has verified the need for the accommodation and the requested accommodation is reasonable, then she must provide it. The term "reasonable" means that the accommodation does not cause the housing provider an undue burden or fundamentally alter the nature of the program.

Undue Burden

An undue burden may be financial or administrative.³³

In order to determine if an undue financial burden exists, four factors should be considered.³⁴ One must weigh the housing provider's financial resources, the costs of the requested accommodation, the benefit to the tenant, and the availability of a less expensive accommodation.³⁵

Courts have recognized that reasonable accommodation will often cause some amount of financial or other burden.³⁶ Some costs are small, such as when a tenant requests a waiver of a parking fee as a reasonable accommodation. The cost may also be extreme, such as when a tenant requests the addition of an elevator where none existed before, thereby causing a significant financial burden.³⁷

Fundamentally Alter

A reasonable accommodation is unreasonable if it fundamentally alters the nature of the program; a housing provider does not have to grant a reasonable accommodation request if it includes services or policies that would change the very nature of what the housing provider does. For example, an accommodation will be considered unreasonable if a tenant asks a landlord to provide daily transportation services when the building currently has no such service.

Interactive Process

If a housing provider rejects a reasonable accommodation request, then it must engage in an interactive process with the tenant.³⁸ This means that it must offer to discuss alternative accommodation that would satisfy the tenant's need while not imposing an undue burden or fundamental alteration to the housing provider's program. It is important to keep in mind through this process that the person with disabilities is the only person who knows what the best accommodation for herself is. If the two parties cannot agree on an alternative accommodation, it is treated as a denial of the reasonable accommodation request.

Section 504 Grievance Procedure

Under Section 504 of the Rehabilitation Act, federally assisted housing providers are required to create grievance procedures designed to address claims of discrimination against program participants with disabilities. In practice, the grievance procedure is often used as the vehicle for interactive process.³⁹

Timing of the Request

A reasonable accommodation may be requested at any time, prior to application and admission, during occupancy, after termination or eviction, and even during litigation.⁴⁰

Common Issues Arising in Federally Assisted Housing

Many of the reasonable accommodation issues for people living in privately owned housing and federally assisted housing overlap. For example, requests to allow service animals or live-in-aides are common in either type of housing.⁴¹ However, housing authorities and recipients of federal financial assistance must abide by additional obligations that are not imposed on those housing providers solely covered by the FHAA.

Federal financial assistance means:

“any assistance provided or otherwise made available by the Department through any grant, loan, contract or any other arrangement, in the form of:

- (a) Funds;
- (b) Services of Federal personnel; or
- (c) Real or personal property or any interest in or use of such property, including:
 - (1) Transfers or leases of the property for less than fair market value or for reduced consideration; and

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(2) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.”⁴²

Thus, housing providers such as PHAs and private owners of federally assisted property are subject to Section 504, whereas recipients of Low Income Housing Tax Credits and private owners accepting Section 8 vouchers are not.

Key Points: Section 504 imposes greater duties on housing providers receiving federal financial assistance than private owners. The housing provider must

- Make program accessible as a whole
- Pay for modifications
- Provide auxiliary aids and services necessary for effective communication with persons with disabilities;
- Develop a transition plan to ensure that structural changes are properly implemented to meet program accessibility requirements;
- Perform a self-evaluation of its program and policies to ensure that they do not discriminate based on disability.
- Operate its programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

HUD has posted information on Section 504 duties at <http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm>

In addition to these general duties, HUD’s implementing regulations impose more requirements.⁴³

Admission to the Program

The duty to provide reasonable accommodation to individuals begins when the waitlist for a housing program first opens. If the process by which the waitlist is filled is inaccessible to a person because of her disability, the housing provider must provide a reasonable accommodation that would allow her the opportunity to get on the waitlist.⁴⁴

Additionally, federally assisted housing providers must provide reasonable accommodation that would allow an applicant to meet the eligibility requirements of the program.⁴⁵

Examples:

- A PHA may have to reinstate an applicant to the waitlist as a reasonable accommodation.⁴⁶
- If an applicant can not attend an interview due to her disability, the PHA or owner must either arrange for an accessible location, or conduct the interview at the applicant’s home or other accessible location.
- A PHA or owner must provide accessible communication.

Locating a Unit (Voucher Program)

Payment Standard

Generally, a PHA may set its payment standard at 90-110% of the listed Fair Market Rent (FMR) for the area, as set by HUD.⁴⁷ However, a prospective tenant may have difficulty finding a unit that is both accessible and affordable. Recognizing this difficulty, HUD regulations require that a PHA increase the payment standard for a voucher holder if necessary as a reasonable accommodation.⁴⁸

A housing authority may grant a request to increase the payment standard up to 110% of FMR without first requesting HUD approval.⁴⁹ The HUD Field Office Public Housing Director for a given region can approve an increase in the payment standard that falls between 110-120%. For increases above 120%, the housing authority must request a waiver from HUD headquarters.⁵⁰

A tenant can only request a waiver to the payment standard after the family has located a unit.⁵¹ Also, once HUD approves an exception payment standard, it will remain in effect until a still-higher exception payment standard is necessary and approved. In the past, HUD has sometimes only allowed the waiver to last for a year, or in other cases, families have had to re-verify the need each year.

In order to receive a HUD waiver on payment standards, the PHA should include:

- A.) a statement from a health care provider regarding the nature of the disabled person's disability/ies and the features of the unit (which may include its location) which meet that person's needs;
- B.) the contract rent and utility allowance for the unit;
- C.) a statement from the PHA that it has determined the rent for the unit is reasonable, and that the unit has the feature/s required to meet the needs of the person with disabilities as noted in the statement from the health care provider;
- D.) the household's monthly adjusted income;
- E.) the FMR for the unit size for which the family is eligible;
- F.) proposed effective date of the new lease or actual effective date of the lease renewal."⁵²

In the past several years, HUD has annually announced, in the federal register, that it has granted 10-15 payment standard waivers.⁵³

Extension of Voucher Search Time

A PHA must allow a tenant to extend the time allotted to search for an apartment if necessary as a reasonable accommodation. There is no time limit to the extension of voucher search time as a reasonable accommodation, but advocates should be cognizant that at some point, a PHA may find the length of the extension to be unreasonable if it is preventing that voucher from being used.⁵⁴

Renting from a Relative

Generally, a Section 8 voucher holder cannot rent a unit from a relative.⁵⁵ However, a PHA must approve such a unit if requested as a reasonable accommodation.⁵⁶

Special Housing Types

A PHA may restrict voucher usage for certain special housing types such as homeownership, single room occupancy housing, congregate housing, shared housing, group homes, cooperative housing, and space rentals for manufactured housing/mobile homes. However, the PHA must allow the use of any of these housing types if necessary to accommodate a person's disability.⁵⁷

Occupancy (All Programs)

Unit Size

Federally assisted housing programs provide for specific unit size based on the number, gender, and relationship of family members. A person with a disability may request an exception to this policy, both to allow for a live-in aide as well as for other reasons relating to the participant's disability. For example, if one of the family members is a child with autism who can not share a room with a sibling, the family may request a reasonable accommodation. PHAs may argue that this is an undue financial burden, but the relatively low cost of paying the difference for one family should not rise to such a level absent significant budget constraints and a large number of requests.⁵⁸

Utility Allowance

For public housing, the voucher program, and project based Section 8, PHAs are required to set a reasonable utility allowance for tenant paid utilities. If participants are responsible for paying some or all of the utility bills and a person's disability leads to utility costs greater than those allowed by the PHA or owner, they may request an increase in the utility allowance.⁵⁹ Once this request has been made, the PHA or owner should approve it and the tenants must provide the PHA or owner with enough information to accurately adjust the utility allowance to provide for the accommodation.⁶⁰

Live-in Aide

A PHA or owner must approve a live-in aide as a reasonable accommodation.⁶¹ A recent HUD notice has thrown into question whether or not this provision applies situations in the Section 8 voucher program where the same aide does not live in the unit 24 hours a day.⁶² The notice requires PHAs administering Section 8 vouchers to only provide an extra bedroom for a 24 hour live-in aides. However, as with any other policy, advocates

should still request a reasonable accommodation to that rule, especially for individuals who require 24 hour rotating caregivers.

Transfers

A PHA or owner might institute a policy restricting requests to transfer a unit. For example, a housing provider may only allow transfers after a tenant has been living in the unit for one year. Such a policy must be waived if the tenant needs to transfer in order to accommodate her disability, and that tenant should receive priority over a new admission to the program.⁶³

Eviction/Termination

Reasonable Accommodation/Mitigating Circumstances

When a housing provider seeks to terminate assistance to or evict a participant, it may consider disability as a mitigating circumstance and determine if a reasonable accommodation would allow the participant to remain in the program.⁶⁴ Providers of HUD Multifamily properties must inform a tenant of their right to reasonable accommodation in the eviction notice.⁶⁵

Affirmative Advocacy

PHA Plans

Housing authorities must submit an annual plan each year, with supporting documents, that states the PHA's policies regarding project based vouchers, the Section 8 voucher program, public housing, and Section 8 Mod Rehab. There is no similar planning process for project-based Section 8. The Annual Plan, as well as the attachments to it which include the Section 8 Administrative Plan and the Admissions and Continued Occupancy Policy (ACOP) articulate the PHAs policies, including those on reasonable accommodation. Additionally, each PHA must certify that it is in compliance with Section 504 and fair housing laws. Furthermore, the Annual Plan must state what, if any, funds it intends to use to make reasonable modifications in the coming year.⁶⁶ This annual process provides an opportunity for advocates to comment on their local PHA's policies on reasonable accommodation, and to work toward implementing ones more advantageous to their clients.

PHAs must follow a federally mandated timeline when developing and submitting PHA plans. The plans must be submitted to HUD 75 days prior to the end of the PHA's fiscal year.⁶⁷ The PHA must give the public a 45-day notice of the public hearing on the plan.⁶⁸

Each PHA is required to certify that the Annual Plans are available for review along with all required attachments and supporting documents at the main office of the PHA.⁶⁹ Advocates may contact their local PHA to obtain the plan. The Annual Plan with

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attachments, but almost always without supporting documents, are posted on the HUD web site. Some PHAs post their plans on their own web sites.

Section 8 Administrative Plan/Public Housing Admission and Continued Occupancy Plan (ACOP)

The Section 8 Administrative Plan contains all of the discretionary policies of the PHA regarding the Housing Choice Voucher program and Project-based vouchers. The ACOP is the parallel document for public housing.⁷⁰ Both documents should include the housing authority's policies on reasonable accommodation.⁷¹ Usually the PHA describes its policies both in a specific section on its fair housing duties, as well as throughout the plans. If no such policies exist, advocates should press for their inclusion in the plans. The Section 8 Administrative Plan and any amendments must be approved by the PHA Board of Commissioners.

Failure to Provide the Accommodation

Definition of Aggrieved Individual

Any aggrieved person has standing under the Fair Housing Amendments Act. Aggrieved person is defined as “any person who— (1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.”⁷² This includes a person denied a reasonable accommodation.

Because the FHAA makes it illegal to discriminate “in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of-- (A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter,”⁷³ a person living with or intending to live with the person with disabilities may also sue. For example, in *Canady v. Prescott Canyon Estates Homeowners Assoc'n*, the court found in favor of parents who asserted that a homeowner's association violated the Fair Housing Act by refusing to allow their disabled son to move into their home, located in a senior community. Such a ruling may be useful in cases where a housing authority refuses to add a family member with disabilities to the family composition.⁷⁴

Prima Facie Case

While many of the elements of a prima facie case are the same as elements required to request a reasonable accommodation, they will need to be laid out again for enforcement. A prima facie case that a housing provider has failed to provide a reasonable accommodation rests on four elements:⁷⁵

1. The aggrieved individual suffers from a disability defined by the FHA⁷⁶;

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2. The landlord is aware or should reasonably be expected to know of the disability;
3. Accommodating the disability may be necessary to afford the plaintiff an equal opportunity to use and enjoy the housing;
4. The housing provider has refused to grant the request.

Suffers from a Disability

One must demonstrate that the person requesting the accommodation actually suffered from a disability. Much of the difficulty in this area revolves around the severity of impact on major life activities (remembering that the standard is easier to meet under state law than federal law). Thus, it is important to demonstrate how the disability affects the affected individual's daily life and whether or not those effects are mitigated by medication or medical devices.⁷⁷

Knowledge of the Disability

Because it is illegal for a housing provider to inquire about a person's disability, a tenant or applicant should inform the provider that she has a disability when requesting the accommodation. This is especially important in a situation where the disability is not obvious. However, a landlord could have been expected to know of the disability.

Necessary

A tenant must demonstrate that without accommodation, use and enjoyment of the person's dwelling is diminished.⁷⁸ At a minimum this requires a showing that the accommodation would result in an "affirmative enhancement" to the tenant's quality of life.⁷⁹ The affirmative enhancement alone is not sufficient to justify the accommodation, however, if the tenant fails to also demonstrate the link between his or her disability and the policy in place.⁸⁰ This issue has been contentious where the requested accommodation helps alleviate the economic consequences of the disability that prevent the tenant from enjoying full and equal access to the housing.⁸¹ However, recent victories demonstrate that courts are beginning to recognize that such economic effects of a person's disability may be relieved by a reasonable accommodation.⁸²

Refusal to Grant Request

The housing provider must actually refuse the accommodation request in order to present all the elements of a discrimination claim.⁸³

Methods of Enforcement

This section sets forth a brief description of the options available to an individual when she opts to challenge a denial of a reasonable accommodation. It is not intended to be an

exhaustive list of options. For further resources, see John P. Relman, *Housing Discrimination Practice Manual* 3-1-3-46 (2007); California Department of Fair Employment and Housing, <http://www.dfeh.ca.gov/complaints/Default.aspx>; HUD Fair Housing and Equal Opportunity, <http://www.hud.gov/complaints/housediscrim.cfm>.

HUD Complaint

An individual that has been a victim of discrimination on the basis of her disability can file a complaint with HUD.⁸⁴ A person may file a complaint with HUD within one year after the date of discrimination. HUD must decide whether or not to file a complaint within 100 days. HUD has a duty to conciliate, and if that fails, it may either proceed through an Administrative Law Judge (ALJ) or through the Justice Department in federal court. Remedies before an ALJ include compensatory damages, injunctive or equitable relief, and civil penalties in the public interest between \$11,000 to \$55,000.⁸⁵

DFEH Complaint

A person may also file a complaint with California's Department of Fair Employment and Housing within one year of the act of discrimination. DFEH will investigate the complaint and if it finds a violation will attempt formal conciliation. If conciliation fails, DFEH may recommend litigation, which may either be heard before the Fair Employment and Housing Commission or civil court. The FEHC may order remedies for out-of-pocket losses, injunctive relief, access to the housing previously denied, additional damages for emotional distress, and civil penalties up to \$10,000 for the first violation. In civil court, the same remedies are available, except that instead of civil penalties, a court may award unlimited punitive damages.⁸⁶

Writ of Mandate (PHA only)

Another option to enforce reasonable accommodation policies is to bring a writ of mandate in California state court. A court may issue a writ of mandate to any "to any inferior tribunal, corporation, board, or person,"⁸⁷ such as a PHA, in order to compel the performance of an act which the law requires. This option does not allow for damages. It either compels performance, stays action, or requires the lower authority to show cause why it is not in compliance with the law in question. A writ must be filed within 90 days of the date the administrative decision becomes final.

Private Civil Suit

An individual may opt to individually bring a case against the housing provider in either state or federal court, with punitive damages available. The filing deadline is two years from the date of the act of discrimination. This can be filed concurrently with a HUD/DFEH complaint and will be stayed while such a complaint is being investigated.⁸⁸

Affirmative Defense to UD

Reasonable accommodation may be raised as a defense to an unlawful detainer, even if no prior request was made.⁸⁹

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² 42 U.S.C.A. §3604(f) (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).

³ 42 U.S.C.A. §§3601, *et seq* (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).

⁴ 42 U.S.C.A. §§ 12131, *et seq* (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).

⁵ 29 U.S.C.A. §794 (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).

⁶ CA Gov't. Code §§12900, *et seq* (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

⁷ Cal. Civ. Code § 51, *et seq.* (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

⁸ Cal. Civ. Code §§ 54.1 *et seq.* (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

⁹ H.R. Rep. 100-711 at 18 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2179, 2183.

¹⁰ 42 U.S.C. §12132 (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08); *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (stating specifically that the ADA extends Section 504 coverage to state and local programs).

¹¹ 28 C.F.R. §35 (2008).

¹² The ADA uses the term reasonable modification to refer to both changes to structure as well as policies, whereas the FHA distinguishes between accommodation (changes to policies and practices) and modifications (structural changes).

¹³ 42 U.S.C §12132 (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).

¹⁴ CA Gov't. Code §12955.6. (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99). Nothing in this part shall be construed to afford to the classes protected under this part, fewer rights or remedies than the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and its implementing regulations (24 C.F.R. 100.1 *et seq.*), or state law relating to fair employment and housing as it existed prior to the effective date of this section. Any state law that purports to require or permit any action that would be an unlawful practice under this part shall to that extent be invalid. This part may be construed to afford greater rights and remedies to an aggrieved person than those afforded by federal law and other state laws.

¹⁵ Cal. Civ. Code § 51 (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

¹⁶ Cal Civ. Code §54.1 (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

¹⁷ 42 U.S.C. §3604(f) (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-0).

¹⁸ 29 U.S.C. §706(8) (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-0); 42 U.S.C. §3602(h) (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-0); 42 U.S.C. §12101(2) (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-0); 24 C.F.R. §8.3

(2008); 24 C.F.R. §100.201 (2008); 28 C.F.R. 35.104 (West 2008).

¹⁹ CA Gov't Code §12926 (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

(i) "Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodation, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2). "Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs. . .

(k) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems:

neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodation, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(l) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of

individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

²⁰ CA Gov't. Code § 12955.6. (k)(1)(B)(iii)(West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

²¹ 42 U.S.C. § 12210(b) (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-0).

²² *Id.* at §3604(f)(9).

²³ 24 C.F.R. § 9.131 (stating that “(c) In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.”); *Roe v. Sugar River Mills Associates*, 820 F.Supp. 636 (D. N.H. 1993); *Roe v. Housing Authority of the City of Boulder*, 909 F.Supp. 814 (D. Colo. 1995); *McAlister v. Essex Prop. Trust*, 504 F. Supp. 2d 903 (C.D. Cal. 2007); JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE, REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACT, at 4 (2004)[hereinafter Joint Statement].

²⁴ CA Gov't. Code § 12926(i)(5) (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

²⁵ Non-discrimination and Accessibility for Persons with Disabilities, HUD Letter 2007-05 (Sept. 21, 2007) (making permanent Notice on Non-discrimination and Accessibility for Persons with Disabilities, PIH 2006-13 (March 8, 2006)).

²⁶ *Joint Statement, supra* n. 22.

²⁷ *Id.* at 10.

²⁸ DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 19 (2003) [hereinafter PUBLIC HOUSING GUIDEBOOK].

²⁹ *See e.g. Landmark Properties v. Olivo*, 783 N.Y.S. 2d 745 (N.Y. App. Term 2004) (affirming order of eviction where tenant had not submitted clear evidence establishing that his dog was necessary to his enjoyment of his rental unit); *Andover Hous. Auth. V. Shkolnik*, 820 N.E.2d 815 (Mass. 2005)(holding that tenant's requested reasonable accommodation, delay or withdrawal of eviction action, would not permit the tenant to comply with lease provisions regarding excessive noise); PUBLIC HOUSING GUIDEBOOK, *supra* note 28, at 20.

³⁰ *Joint Statement, supra* at 12.

³¹ *Id.*

³² *Id.* at 13.

³³ 24 C.F.R. §8.11 (2008).

³⁴ *Joint Statement, supra* at 8.

³⁵ *Id.*; *See e.g., Solberg v. Majerle Mgmt.*, 879 A.2d 1015 (Md. 2005)(finding an undue burden where request would have required landlord to make significant changes to his personal life and daily activities and would have prevented him from inspecting tenant's unit).

³⁶ *U.S. v. California Mobile Home Park Mgmt Co.*, 29 F.3d 1413 (9th Cir. 1994)(holding that mobile home park owner, under duty to provide reasonable accommodation imposed by the FHAA, may have to incur reasonable financial costs).

³⁷ *Congdon v. Strine*, 854 F.Supp. 355, 363 (D.Pa.1994) (finding the installation of a new elevator at a cost of \$65,000 was an undue financial burden).

³⁸ *Joint Statement, supra* at 7.

³⁹ 24 C.F.R. §8.53 (2008).

⁴⁰ *Joint Statement, supra* at 12; *See also Hous. Auth. of Bangor v. Maheux*, 748 A.2d 474, 476 (Me. 2000). (Until writ is issued, landlord remains under obligation to provide reasonable accommodation.); *Schuetz Inv. Co. v. Anderson*, 386 N.W.2d 249 (Minn. Ct. App. 1986) (Landlord ordered not to evict tenant who failed to cure during cure period); *Radecki v. Joura*, 114 F.3d 115 (8th Cir. 1997) (finding that landlord

may be required to halt eviction even if the accommodation request was not made until the eviction proceedings); *Douglas v. Kriegsfield*, 884 A.2d 1109 (D.C. 2005) (explaining the “general rule [] under the Fair Housing Act [is] that a reasonable accommodation defense will be timely until the proverbial last minute.”)

⁴¹ Other common reasonable accommodation requests include needing a designated parking space, allowing for alternative rent payment dates, extending the time needed to vacate an apartment, or allowing for extra time and help removing clutter.

⁴² 24 C.F.R. 8.3 (2008).

⁴³ *Id.* at Part 8.

⁴⁴ PUBLIC HOUSING GUIDEBOOK, *supra* note 28, at 39-40; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK: WAITING LIST AND TENANT SELECTION 4-11 (2001) [hereinafter VOUCHER GUIDEBOOK].

⁴⁵ PUBLIC HOUSING GUIDEBOOK, *supra* note 28, at 58-9; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD HANDBOOK 4350.3: OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS, Chapter 4: Waiting List and Tenant Selection, 4-21,55 (2008)(hereinafter HUD HANDBOOK).

⁴⁶ 24 C.F.R. § 982.204(c)(2)(2008); PUBLIC HOUSING GUIDEBOOK, *supra* note 28, at 39(providing a detailed list of possible reasonable accommodation to waiting list procedures); VOUCHER GUIDEBOOK, *supra* note 44, at 4-6.

⁴⁷ 24. C.F.R. § 982.503(2008).

⁴⁸ *Id.* at § 982.505(d).

⁴⁹ Requests for Exception Payment Standards for Persons with Disabilities as a Reasonable Accommodation, PIH 2008-13 (March 10, 2008)[hereinafter Payment Standards]; VOUCHER GUIDEBOOK, *supra* note 44, at 7-9.

⁵⁰ *Payment Standards*, *supra* note 48.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See Anthony Ha, *HUD Regulatory Waivers: Summary of Recent Waivers Regarding Voucher and Other Programs*, 35 HOUS. L. BULL. 238, 239 (2005); see also Jason Lee, *HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities*, 37 HOUS. L. BULL. 115, 116-17 (2007); Antonia Konkoly, *HUD Regulatory Waivers Benefit Individual Participants and Public Housing Authorities*, 38 HOUS. L. BULL. 139, 140-1 (2008).

⁵⁴ 24 CFR §§ 982.303(b)(2) and §8.28(a)(4)(2008); See *c.f.* *Burgess v. Alameda Hous. Auth.*, 98 Fed. Appx. 603 (9th Cir. 2004)(deciding that pro se applicant had made sufficient claim to assert that denial of voucher extension violated the Fair Housing Amendments Act) ; VOUCHER GUIDEBOOK, *supra* note 44, at 5-44 ,8-12.

⁵⁵ 24 C.F.R. § 982.306(d) (2008).

⁵⁶ *Id.*; VOUCHER GUIDEBOOK, *supra* note 44, at 8-15, 19.

⁵⁷ VOUCHER GUIDEBOOK, *supra* note 44, at 3-5, 17-1.

⁵⁸ PUBLIC HOUSING GUIDEBOOK, *supra* note 28, at 64; HUD HANDBOOK, *supra* note 45, at 3-65,67.

⁵⁹ 24 C.F.R. § 965.508 (2008).

⁶⁰ VOUCHER GUIDEBOOK, *supra* note 44, at 18-8; PUBLIC HOUSING GUIDEBOOK, *supra* note 28, at 172.

⁶¹ 24 C.F.R. § 982.316(a) (2008); see PUBLIC HOUSING GUIDEBOOK, *supra* note 28, at 64-5,195.

⁶² Over Subsidization in the Housing Choice Voucher Program, PIH 2008-20 (April 16, 2008).

⁶³ PUBLIC HOUSING GUIDEBOOK, *supra* note 28, at 107; HUD HANDBOOK, *supra* note 45, at 7-28.

⁶⁴ 24 C.F.R. 982.552(c)(2)(i)(2008); VOUCHER GUIDEBOOK, *supra* note 44, at 15-10.

⁶⁵ HUD HANDBOOK, *supra* note 45, 8-14 (2008).

⁶⁶ HUD Letter 2007-5, *supra* note 24.

⁶⁷ 24 C.F.R. § 903.23(b)(2)(2008); a PHA’s fiscal year is stated on each of the PHA’s Annual Plans, which are available at <http://www.hud.gov/offices/pih/pha/index.cfm>.

⁶⁸ 24 C.F.R. § 903.17(b) (2008).

⁶⁹ *Id.* at §§ 903.17(b)(1) and 903.23(e) (2008).

⁷⁰ *Id.* at § 960.202(a)(2008).

⁷¹ VOUCHER GUIDEBOOK, *supra* note 44, at 3-3.

⁷² 42 U.S.C. §3602(i)(West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08); *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

⁷³ 42 U.S.C. § 3604(f)(1)(West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).

⁷⁴ 60 P.3d 231 (Ariz. 2002).

⁷⁵ *United States v. California Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997).

⁷⁶ “(1) [A] physical or mental impairment which substantially limits one or more of a person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment” 42 U.S.C.A. §§ 3602(h)(1)-(3)(excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08)(This section also specifically precludes current illegal use or addiction to controlled substances from FHA protections).

⁷⁷ *Sutton v. United Air Lines*, 527 U.S. 471 (1999)(holding that corrective or mitigating measures should be considered when determining the extent of the disability’s impact on major life activities); *Toyota v. Williams*, 534 U.S. 184 (2002)(ruling that “[m]erely having an impairment does not make one disabled for purposes of the ADA; claimants also need to demonstrate that the impairment limits a major life activity”).

⁷⁸ *Giebeler v. M & B Assoc.*, 343 F.3d 1143, 1155 (9th Cir. 2003) (“Imposition of burdensome policies, . . . can interfere with disabled persons’ right to use and enjoyment of their dwellings, thus necessitating accommodation.”); *United States v. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1381 (9th Cir. 1997) (holding that plaintiff failed to demonstrate that the landlord’s refusal to pay for a caregiver’s parking would diminish the care she received).

⁷⁹ *Dadian v. Village of Wilmette*, 269 F.3d 831, 838 (7th Cir. 2001)(instructing that determining whether an accommodation is necessary requires a “showing that desired accommodation will affirmatively enhance disabled plaintiff’s quality of life by ameliorating the effects of the disability”); *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995)(stating that the concept of necessity requires a minimum showing that accommodation affirmatively enhance tenants life by ameliorating effects of the disability.)

⁸⁰ *Sanghvi v. City of Claremont*, 328 F.3d 532 (9th Cir. 2003) (Denying request for an accommodation where plaintiffs did not demonstrate that reasonable accommodation was linked to their patients’ care, but rather a preference to bypass associated costs of city building requirements).

⁸¹ *Freeman v. Sisao*, 2008 WL 906746 (EDNY 2008)(denying a motion to dismiss complaint under the FHAA where a landlord may be required to accept a Section 8 voucher as a reasonable accommodation).

⁸² *Id.*

⁸³ *DuBois v. Ass’n. of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006)(finding that condominium owners association did not deny request for reasonable accommodation and thus could not have violated the FHAA).

⁸⁴ 42 U.S.C. §3610 (West, Westlaw through P.L. 110-311 (excluding P.L. 110-234, 110-246, 110-289, and 110-301) approved 8-12-08).

⁸⁵ See John P. Relman, *Housing Discrimination Practice Manual* 3-1-3-46 (2007).

⁸⁶ California Department of Fair Employment and Housing,

<http://www.dfeh.ca.gov/complaints/Default.aspx>.

⁸⁷ CA Civ. Code §1084 -1097 (West, Westlaw through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99).

⁸⁸ California Department of Fair Employment and Housing,

<http://www.dfeh.ca.gov/complaints/Default.aspx>.

⁸⁹ *Douglas v. Kriegsfield*, 884 A.2d 1109 (D.C. 2005) (explaining the “general rule [is that] under the Fair Housing Act [is] that a reasonable accommodation defense will be timely until the proverbial last minute”).