

# Accommodations & Modifications

What You Need to Know NOW!

June 18, 2021



# Disclosure

Although this training session contains legal information as well as recommendations for policies and practices, it is intended only for a reference. You must use best judgment in deciding how to implement reasonable accommodation and modification procedures.

Individual cases and circumstances vary widely, and the law is always subject to change through legislative or judicial action.

***This training session is not intended to serve as a substitute for legal advice or to establish any time of legal findings.***

This session is designed to enhance your knowledge of Fair Housing by focusing specifically on the special needs and requirements for persons with disabilities.

# Learning Objectives

- Introduction to Accommodations and Modifications
- Definitions
- Laws
- Request Process
- Verification Process
- Modifications
- Accommodations
- Animals, Animals, Animals!



# Introduction

- The inclusion of persons with disabilities under the protections of the Fair Housing Act in 1988 and the passage of the Americans with Disability Act in 1990 provided persons with disabilities similar protections to those given to racial minorities in the preceding decades. These are first and foremost civil rights laws.



**For persons with disabilities fair housing law goes a step further, making it illegal to:**

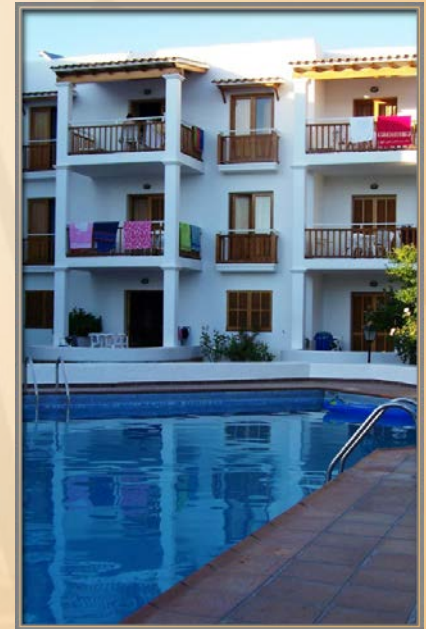
- Fail to make reasonable accommodations in rules, policies, and services to give a person with a disability equal opportunity to occupy and enjoy the full use of a housing unit and
- Fail to allow reasonable modification is necessary to allow full use of the premises.



# Availability of Units to Qualified Disabled Residents

Since 1988, ALL units must be made available to persons with disabilities, as long as the applicant meets your rental criteria.

Just like other applicants they can select any vacant apartment they like. For example, if you were to encourage a mobility impaired applicant to live on the first floor, you could be found guilty of “steering”.



## Balancing Act



Determining what is a reasonable accommodation or a reasonable modification requires a balancing of interests and a case-by-case judgment as to what is “reasonable”. None of these laws define which accommodations or modifications are “reasonable”.

# Defining Disability

1. Have a physical or mental impairment which limits one or more major life activities.
2. Having a history of a physical or mental impairment limiting one or more major life activities.
3. Are regarded as having a physical or mental impairment limiting one or more major life activities.



# Disability Fair Housing Act

## FEDERAL:

“A physical or mental impairment that  
**substantially**  
limits one or more major life activity”

## CALIFORNIA:

“A physical or mental impairment that  
limits one or more major life activity”

# What is a “major life activity”?



- Breathing
- Seeing
- Hearing
- Walking
- Learning
- Social / Relating
- Taking Care of Self

# Three Laws

## Americans With Disabilities Act

- ADA- **Federal** law enacted in 1990
- Businesses which serve the public must be accessible to disabled persons.

## Fair Housing Act - **Federal**

## Unruh Civil Rights Act- *California*

- Specifically states that any violation of the ADA also constitutes a violation of the Unruh Civil Rights Act.
- The result is that non-compliance with ADA is also a fair housing violation.

# Americans with Disabilities Act of 1990

- Properties built before 1991 may not be in compliance
- Property owners can be sued by someone other than a disabled person who was “harmed”
- Makes suing owners of older properties a potentially profitable business....
- The stated purpose of the law is to make businesses which serve the public accessible to disabled persons, including the removal of any barriers.
- Examples:
  - Sidewalks
  - Parking
  - Laundry

# Certified Access Specialist

Effective January 1, 2009, owner can have a property inspection done by a Certified Access Specialist.

This is a designation program initiated by the California Division of the State Architect.

If the property is found to be AD-compliant, it earns a designation certificate.

This certificate will protect against “drive by” lawsuits.



## Establishing the Need For Accommodation or Modification

It is wise to have a written procedure for handling modification and accommodation requests. This will assure that you are providing the same opportunities to all who make the requests.



# Written or Verbal Requests

- When a resident is seeking a modification or accommodation, you may ASK to have the request put in writing.
- The courts will uphold a verbal request but written is optimal.
- If the resident does not, or cannot, put the request in writing, put it in writing for them.
- Do not require that the request be in writing.

# WHEN VERIFICATION IS NECESSARY

**You should not require verification of the disability if the disability and need are obvious.**

You can require verification if the disability and need are not obvious or apparent.



# Obtaining Verification

The HUD / DOJ Guidelines have expanded the list of potential verifiers from primary health care providers to include several other sources.

In other words, although most verification continues to come from doctors or other medical professionals, if another type of credible verification is presented, do not automatically deny the request.

# In California...

If the verification comes from one of these other sources, it must be considered.

1. Peer Support Group
2. Agency, non-medical
3. Credible 3<sup>rd</sup> Party
4. Self Statement





# Verification

HUD guidelines note that verification can be provided by a credible statement from the disabled person or a reliable third party who is in a position to know the facts.

There is no definition of what a credible statement is.

This leaves rental housing professionals to decide what they find credible.

In this area, it would be good management to **give your renter the benefit of the doubt.**

# What to Verify:

1. In the verifier's opinion, the person meets the California definition of disability :AND
  2. The requested modification or accommodation relates to the disability: AND
- The person requires the requested modification or accommodation in order to have full and equal use and enjoyment of the property.

**Do NOT make any inquiry into the nature or severity of the person's disability. Do NOT contact the health care provider to ask questions or obtain additional information about the person's disability.**

# Section 504 of the Rehabilitation Act of 1973

- Federal law that requires all programs receiving federal funding to be accessible to persons with disabilities.
- Housing must be “readily accessible and usable by individuals with disabilities”.
- The Act outlines design requirements applicable to federally funded new construction with five or more units.
- Also grants the right to request and receive reasonable accommodations and modifications at no cost.

## Establishing Reasonableness



- Your job is to determine if the request is reasonable.
- Does it impose an **undue** financial or administrative burden on the landlord, or change the nature of the business?
- **Even if you think the request is unreasonable, you are expected to negotiate a workable solution.**
- Do not deny a request until you have discussed it with an attorney.
- Turn request around within 72 hours- Delay = Denial

# REASONABLE MODIFICATIONS

For new or existing residents:

If the disabled person is a qualified applicant or a current resident becomes disabled, they have the right to make reasonable modifications to the dwelling.



# Reasonable Modifications

## Structural Changes

- Covered by HUD / DOJ guidelines
- Physical change is needed to give a disabled person full enjoyment of the premises
- Renter bears the financial responsibility(unless government subsidized financing-property pays)
- Work must be done in a “workman like” manner.
- You may choose to make the modifications at your expense, however, be prepared to do the same for all other residents who need the same modifications.

# Reasonable Modifications

- The modification must be necessary and relate to the disability.
- Modifications must be reasonable and feasible.
- Modifications may not permanently damage the building.
- In California, over \$500 requires a licensed contractor.
- Resident must obtain any permits.
- Description of proposed modification (written or verbal).

# Reasonable Modifications

- Renter may request an exterior modification to the rental unit.
- Renter may request a modification to the exterior common area or building.
- Construction date will determine who pays.
- 
- Additional security deposits or insurance cannot be required from the resident.



# Reasonable Modifications

## Modification Upgrades

If a modification would ordinarily cost the resident \$1000, but the landlord wants it upgraded to be more aesthetically pleasing, the landlord would be required to pay the difference.

## Maintaining Modifications

If a modification is used by the resident, he or she is responsible for maintaining it. If the modification is also used by other residents, such as a ramp to the laundry room, the property would be responsible for its maintenance.

# When the Resident Moves Out

The resident MAY be required to restore the modifications of the interior to the original condition at their expense IF the modification would negatively affect the next non-disabled resident and make it difficult to lease.

In very limited circumstances the owner may require the resident to pay into an interest bearing escrow account to ensure that adequate funds are available to make the restoration. The interest earned would benefit the resident.

Consult with an attorney before establishing the necessity of an escrow account.



# REASONABLE ACCOMMODATIONS

One of the special rights afforded to disabled persons is the right of reasonable accommodation.

Accommodations tend to vary on a case-by-case basis.



# Reasonable Accommodations



## What is a reasonable accommodation?

A change, an exception or an adjustment to a rule, policy, practice or service that may be necessary to allow for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

# Reasonable Accommodation

**What is required for you to grant a reasonable accommodation?**

There must be:

- A disability
- A relationship between the disability and the accommodation
- A necessity for the accommodation

# Common Accommodation Requests



- Permitting a support or assistive animal on “no pet” properties.
- Permitting disabled guests to bring their assistive animals on a “no pet” property.
- Assigning a parking space closer to the person’s apartment.
- Mailing, emailing, or faxing forms to a disabled resident or applicant.
- Picking up the rent from a disabled person’s apartment.



Accommodation  
Requests that  
***Could Cost***

- Automatic shut off valves
- Flashing smoke detectors
- Designating white striped reserved spot with signage
- Adjusting doors to common areas



# Accommodation Requests

## Financial Accommodations

1. Allowing a co-signer /guarantor
2. Modifying rent due dates
3. Transferring to another unit

## Undue Burden

One of the tests that will be applied in order to determine the reasonability of this type of request is does it impose an **undue financial or administrative burden** on the property?

# Accommodation Requests

If you are faced with a situation where a resident is requesting a financial accommodation, it is recommended that you consult an attorney who is well versed in this cutting edge area of fair housing law.

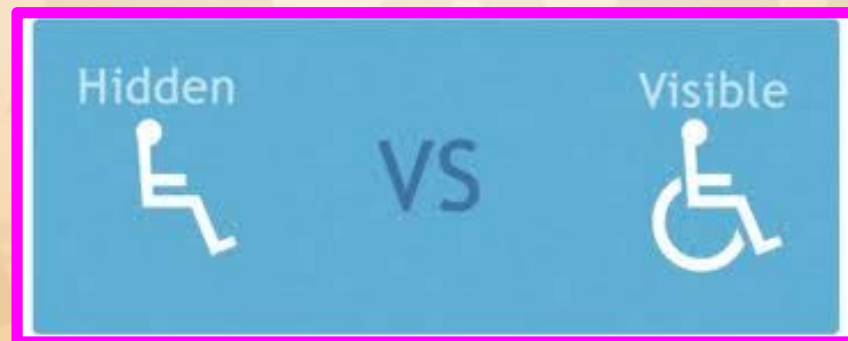
Do not make a decision to grant or deny a financial accommodation request without legal advice.



# Evaluating Reasonable Accommodation Requests

## How do you evaluate?

- Obvious or non-obvious disability?
- Obvious or non-obvious connection between disability and accommodation?



# The Most Common Request

- What is an “Assistance Animal”?
- Any animal that is “necessary” because of a disability:
  - “Companion” animal
  - “Emotional Support” animal
  - “Therapy” animal
  - “Comfort” animal



# Definitions



## SERVICE DOGS

Any dog trained to perform tasks for an individual with a disability.



## EMOTIONAL SUPPORT DOGS

Medically prescribed animals providing therapeutic benefit through dedicated companionship.



## THERAPY DOGS

Animal-assisted therapy involving animals as a form of treatment.





## **Service Animals as a Reasonable Accommodation**

# Service Animals – NOT Assistance Animals

- According to the CA DFEH's new fair housing regulations, if the animal is a service animal the reasonable accommodation verification process **does not apply.**
- The only questions you may ask is to determine if the animal is a service animal are:
  - “Are you an individual with a disability?” and
  - “What is the disability-related task the animal has been trained to perform?”.
  - You are not permitted to ask the individual to demonstrate the task.



# Yes, Miniature Horses!





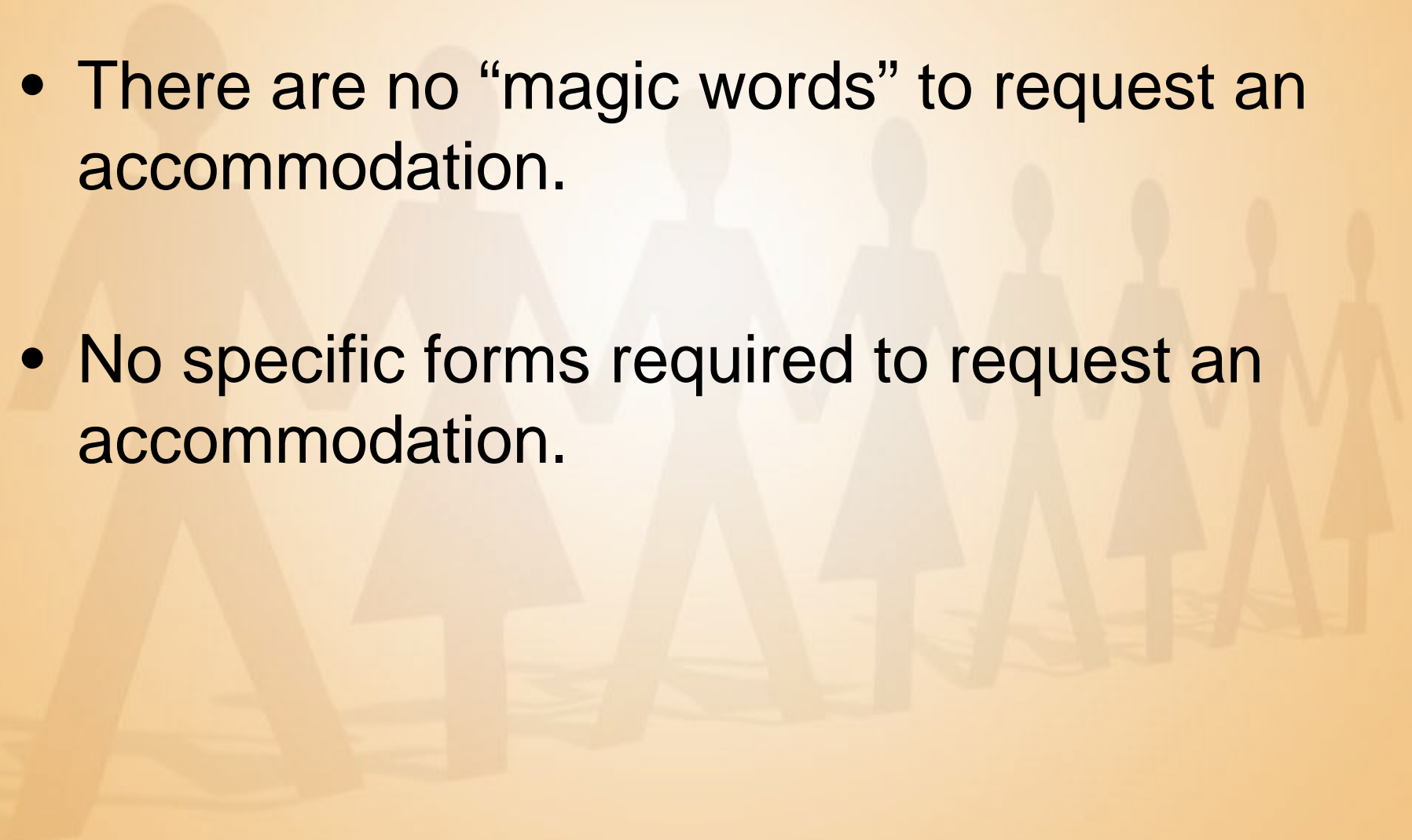
# Airlines Prohibit ESA's



- Beginning January 1, 2021, only trained service dogs qualify as service animals on US airlines.
- ESA's will be classified as pets with fees as much as \$175.
- Why should rental housing care?

# What constitutes a request for an assistance animal?

- There are no “magic words” to request an accommodation.
- No specific forms required to request an accommodation.







**ONLINE  
“PRESCRIPTIONS,”  
“CERTIFICATIONS,”  
” AND  
“REGISTRATIONS”**

- **Animals DO NOT have to be “registered” as an assistance animal.**
- **Assistance animals are not required to have any particular certification or license.**



OFFICIAL

# Emotional Support Dog

SERVICE DOG NAME, **BUDDY**

CERTIFICATE NO. **S651322**

**JOHN DOE**  
HANDLER

*Under the Americans with Disabilities Act (ADA), privately owned businesses that serve the public such as restaurants, hotels, shops, theaters, concert halls, and sports facilities, are prohibited from discriminating against individuals with disabilities. The ADA requires all businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.*

*[Signature]*  
SIGNATURE

SEP 2015



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# Verifying Accommodation Requests

The procedures are the same as in verifying modification requests.

## **Reminder**

If the disability is obvious or known, no verification is necessary. If what is requested obviously relates to the disability, no further verification of need is necessary. If either the disability or need is not obvious, verification may be required.

As with modifications, management has the right to determine if the request is reasonable.

# Denying a Request for Accommodation

## **What might cause you to deny a request for a reasonable accommodation?**

- Request is not made by, or on behalf of, a person with a disability.
- Request is not reasonable or feasible.
- Accommodation will impose an undue financial or administrative hardship.
- Accommodation will fundamentally alter the nature of the housing providers operations.



# Engage in the Interactive Process



1. Determine if there is an alternative solution
2. Assist disabled person with outside resources that can help
3. Do not say “I Don’t Know” or “No”

# Managing Assistant Animals

- ARE subject to usual and customary “pet” rules regarding behavior, hygiene, supervision, restraint, and licensure.
- ARE subject to legitimate, non-discriminatory health codes (i.e., no dogs in the pool).
- CANNOT pose a direct threat to the health or safety of other people or damage to the property.
- Generally, California counties or cities require licensees for all pets and animals. In most counties, service animals receive a fee waiver (though must still license with city/county)
- CANNOT be charged “pet rent,” deposits, or other “pet” related charges, BUT
- CAN be responsible for damage caused to the premises.

# Under the FHA, Assistance Animals:

- CANNOT be a nuisance!
- CANNOT be aggressive toward other people or animals!
- CANNOT run free!
- Depending on the animal, MAY be restricted to the interior of the home!
- Note that there is little likelihood of a disability-related need NOT to have an assistance animal spayed or neutered.

WHEW!!!  
This is SO much  
information!!!

Any Questions!!



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