



Using Reasonable  
Accommodations and  
Reasonable Modifications  
to Avoid Eviction

April 21, 2023

## AUDIENCE [POLL 1]

Are you an:

- a) Attorney
- b) Advocate
- c) Housing Provider / Landlord
- d) Tenant
- e) Other

## FAIR HOUSING AMENDMENTS ACT

Requires housing providers to make Reasonable Accommodations

- *42 U.S.C. § 3604(f)(3)(B)*
- *24 C.F.R. § 100.204*

Requires housing providers to allow Reasonable Modifications

- *42 U.S.C. § 3604(f)(3)(A)*
- *24 C.F.R. § 100.203*

# FAIR EMPLOYMENT AND HOUSING ACT

Requires housing providers to make Reasonable Accommodations

Requires housing providers to allow Reasonable Modifications

*2 C.C.R. Article 18, Sections 12176 through 12181*

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 their disability.
- Waiver of “no pet” policy to accommodate service dogs or comfort animals.

A **reasonable modification** is a physical change to a dwelling or common area.

Note: who pays depends on type of housing

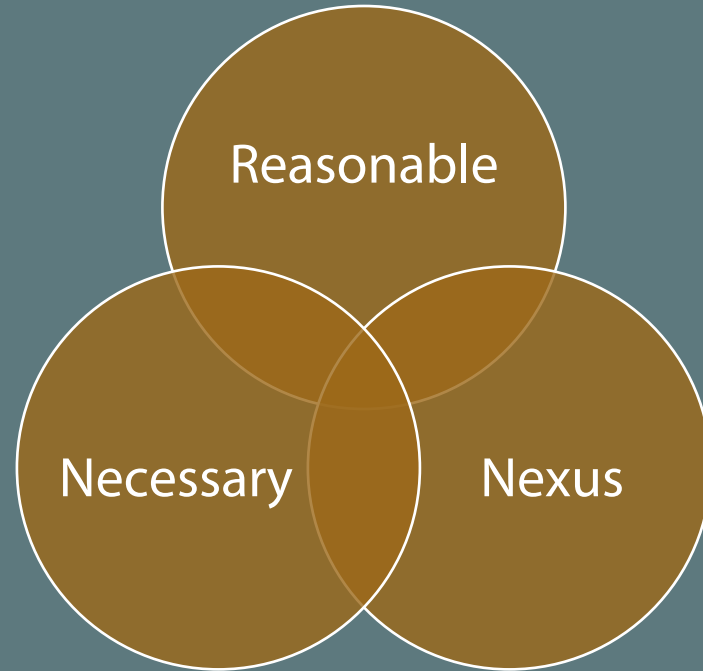
Note: restoration not always required



## EXAMPLES

- Ramps
- Flashing Doorbells
- Grab Bars
- Soundproofing





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

## WHAT IS REASONABLE?



- Burden Shifting Approach.
- Party requesting accommodation/modification bears the initial burden of showing that the request is “reasonable.”
- Once this showing is made, the burden shifts to the housing provider to disprove reasonableness.
- Housing provider is required to grant the requested accommodation/modification unless they can prove that the request is not reasonable.

## ESTABLISHING REASONABLENESS

Is the requested  
accommodation/modification:

- Reasonable on its face?
- Ordinarily or in the run of cases?
- Plausible?

# 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.,* does the request alter the essential nature of the operations?

## WHAT IS “NECESSARY”?

Does the provision of the accommodation/modification promote equal opportunity for the individual to use/enjoy his or her housing?

Will the accommodation/modification enhance the individual’s quality of life by ameliorating the effects of his or her disability?

## A “NEXUS” IS REQUIRED

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There must be a connection between the tenant’s disability, the requested accommodation and the ability of the tenant to use and/or enjoy their housing.

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If a tenant's disability is not obvious or readily apparent, a housing provider may ask for documentation to support the person’s request for a reasonable accommodation.

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A tenant or resident is not required to disclose their specific disability; they need only disclose enough information to document their disability-related need for the requested accommodation.

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Reliable documentation of an individual’s disability and/or their need of a reasonable accommodation can include an individual’s own credible statement or documentation of receipt of disability benefits.

## 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.



## INTERACTIVE PROCESS CASES: FHA

- Howard v. HMK Holdings, LLC, 988 F.3d 1185 (9<sup>th</sup> Cir. 2021) - **no “standalone” liability** for failure to engage in an interactive process.
- Rodriguez v. Morgan, No. CV 09-8939-GW CWX, 2012 WL 253867 (C.D. Cal. Jan. 26, 2012) - failure to engage in an interactive process **can be considered** in determining whether a housing provider failed to reasonably accommodate the tenant’s disability.
- HUD / DOJ Joint Statement – housing provider **“should” use** interactive process

## INTERACTIVE PROCESS: FEHA

- Interactive Process is REQUIRED. Housing provider must engage with the requestor or their representative.
- Purpose is to exchange information to identify, evaluate, and implement a reasonable modification that allows the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity.
- If housing provider believes request cannot be granted, the provider must engage in the interactive process to determine if an alternative is feasible.

*2 CCR § 12177*

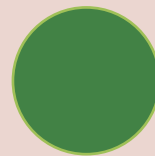
REASONABLE  
ACCOMMODATIONS AND  
REASONABLE MODIFICATIONS  
CAN BE USED TO ADDRESS  
LEASE VIOLATIONS & AVOID  
ADVERSE HOUSING ACTIONS



# HOARDING



Hoarding that violates health and safety codes is a lease violation.



Hoarding at lease violation level indicates disability.

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Persistent difficulty discarding or parting with possessions, regardless of their actual value due to a perceived need to save the items and to distress associated with discarding them.

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Accumulation of possessions that congest and clutter active living areas and substantially compromises their intended use.

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Clinically significant distress or impairment in social, occupational, or other important areas of functioning (including maintaining a safe environment for self and others).

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The hoarding is not attributable to another medical condition (e.g., brain injury), or better explained by the symptoms of another mental disorder (Obsessive-Compulsive Disorder).

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## HOARDING DISORDER

## ACCOMMODATING PEOPLE WHO HOARD

Accommodations might take the form of a tenant agreeing to modify their behavior or might involve a landlord altering their policy or rules, and possibly even absorbing some cost.

- E.g., extra time to allow a tenant to clean out their apartment in order to pass a housing or subsidy inspection;
- E.g., extra time to allow a tenant to access and utilize services to address the hoarding behavior and underlying causes;
- E.g., a payment plan that permits a hoarder to catch up on unpaid rent when the hoarder used rent money for his or her hoarding activities.

DOUGLAS V. KRIEGSFELD CORP.  
884 A.2D 1109 (D.C. 2005)

Landlord attempted to evict tenant whose mental disability interfered with her ability to clean and upkeep her unit.

The tenant sought an accommodation, specifically a stay of eviction so that she could utilize social service agencies that would assist her in cleaning her apartment.

The Court ruled that the tenant was entitled to such a reasonable accommodation.

## ACCOMMODATIONS PLAN

- Develop both a short and long-term plan.
- Imminent threats must be dealt with asap.
- Must address unpaid rent, damage to property or other related issues
- Accommodation may not be required if repeated violations, prior accommodations unsuccessful.



KEEP IT IN  
PERSPECTIVE!

People are allowed to live in their homes and apartments and to fill those homes and apartments full of belongings that “others” might consider garbage so long as...

- Lease terms are followed
- City ordinances are complied with

Focus should be only on solving legitimate health and safety issues rather than attempting to achieve ideal housekeeping habits

## MINIMUM SAFETY GUIDELINES

General guidelines include:

- Working toilet and sink
- Adequate walking paths in rooms used on a regular basis
- Safe walkway (flooring uncluttered)
- No infestations of insects and/or rodents
- No excessive accumulation of garbage
- Absence of fire hazards – no combustibles near radiators or stoves, no blocked exits, no overloading of outlets



## NON-COMPLIANCE WITH LEASE TERMS

## DISABILITY-RELATED LEASE VIOLATIONS

Disability-related behaviors may create a nuisance, make others uncomfortable or even breach lease terms.

- Talking to oneself
- Self-stimming behaviors
- Yelling / night terrors

In the event of a breach of lease terms, initiate accommodation request and begin interactive process immediately

## REQUEST FOR ACCOMMODATION TO CURE LEASE VIOLATION

Must show:

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

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

## “DIRECT THREAT” EXCEPTION

FHAA does not protect or require accommodation of 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)*

FEHA provides a similar exception. *See 2 C.C.R. Article 18, Section 12179*



## ASSESSING DIRECT THREAT

Objective, not subjective.

Individualizes assessment required. 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.

*BOSTON HOUS. AUTH. V. BRIDGEWATERS*  
898 N.E.2D 848 (MASS. SUP. JUD. CT. 2009)

Eviction of public housing tenant who had physically assaulted another tenant overturned due to public housing authority's failure to "make an individualized assessment."

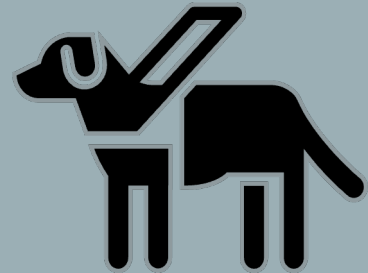
In the case, there was evidence that post-incident treatment had eliminated the problem behavior for the tenant, who had mental disabilities.



*CITY WIDE ASSOCIATES V. PENFIELD*  
409 MASS. 140 (1991)

- Landlord attempted to evict tenant whose mental disability caused her to engage in property damage. Tenant damaged walls from which she heard voices.
- Tenant requested that landlord delay eviction to allow her time to avail herself of counseling programs and show that interventions would minimize the risk her engaging in further property damage.
- Court ruled in favor of the tenant that this was a reasonable accommodation. Considered the cost of damage and lack of evidence that property damage affected other tenants.

# ASSISTANCE ANIMALS



## SERVICE ANIMALS & EMOTIONAL SUPPORT ANIMALS

FHAA: people with disabilities have the right to reside with both service animals and emotional support animals (collectively “assistance animals”) as a reasonable accommodation.

FEHA also recognizes this right. *See 2 C.C.R. Article 18, Section 12185*

Rights in housing are broader than rights in other settings (e.g., rights in places of public accommodation under the Americans with Disabilities Act)

SERVICE ANIMAL,  
COMFORT ANIMAL  
OR PET?

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**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.

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**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.

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**Pet** – A domesticated animal kept for pleasure or companionship.



## REQUIREMENTS?

- No restrictions regarding who may train the animal.
- No requirement that the animal be specially trained.
- Special tags or "certifications" are not required.
- No species or size limitations.



## ECONOMIC ACCOMMODATION

An economic accommodation is a change in a rule, policy, practice, or service that is necessary to overcome disability-caused economic barriers to tenancy.

*GIEBELER V. M & B ASSOCIATES*  
343 F.3D 1143 (9TH CIR. 2003)

- Case involving a tenant with disabilities who requested a co-signer as an accommodation.
- Exception to no co-signer policy was necessary:
- to afford Giebeler equal opportunity to use and enjoy a dwelling.
- Court held: Accommodation need not stem directly from the disability but may “adjust for the practical impact of a disability”

*MCGARY V. CITY OF PORTLAND*  
386 F.3D 1259, 1263 (9TH CIR. 2004)

- Tenant requested additional time to clean up his yard in order to discharge a nuisance citation. City rejected request, saying tenant could pay the City for clean-up. City cleaned yard & billed tenant. Tenant sued.
- District court held City's imposition of a financial burden (paying for yard cleaning) did not deny tenant use of his home or prohibit him from living there.
- 9<sup>th</sup> Cir. reversed, recognizing that exceptions to neutral policies may be mandated where a tenant's disability-related need for policy modification is essentially financial in nature.



## EXAMPLES

Waiving income requirements

Allowing co-signers

Altering rent due date

Overlooking lack of credit history

Security deposit – paying over time.

Allowing tenant to break lease early

# HYPOTHETICALS

## TAYLOR

Taylor has mental health disabilities. Six months after moving into a “no pets” apartment complex, Taylor’s treating psychologist recommended she get an emotional support dog.

Taylor contacted the management company and asked if it was possible for her to have an emotional support dog.

Management told Taylor that her lease was for a no pet rental, so although they could not approve her request to have a dog, they would allow her to break her lease without penalty as a reasonable accommodation.

Has the management company violated the law?



- a) No, because Taylor is in the middle of her lease and the building is a no pets building.
- b) No, because they offered to allow Taylor to break her lease as a reasonable accommodation.
- c) Yes, management should have allowed Taylor to have an ESA as a reasonable accommodation.
- d) "a" and "b"

**The Answer is “c” - management should have allowed Taylor to have an ESA as a reasonable accommodation.**

- Note: Accommodation requests can be made at any time (even during the eviction process)
- Note: early lease termination is also a type of accommodation to which a tenant may be entitled, but a tenant cannot be forced to accept an accommodation they do not want.

## TREVOR

Trevor is a veteran with Post Traumatic Stress Disorder who experiences night terrors. Trevor recently moved into a federally-subsidized apartment complex for veterans where the walls are very thin. Trevor's bedroom wall is shared with a neighboring unit. Trevor's neighbor has complained about Trevor's night terrors, which occur multiple times a week. The on-site manager warned Trevor that he will lose his housing if he does not get his night terrors under control.

Trevor contacts you for help. Which, if any, of the following, are possible accommodations to explore with Trevor?

- a) Transfer to a different unit or building.
- b) Reconfiguration of Trevor's unit.
- c) Soundproofing the walls.
- d) All of the above.
- e) Only "a" and "b" because Trevor probably can't afford to soundproof the walls.

## The Answer is “d” – all of the above.

- Note: This is a situation where a reasonable accommodation and/or a reasonable modification may work in resolving the issue.
- Note: As this is federally subsidized housing the cost of any physical modifications is shifted to the housing provider.
- Note: Although individuals with disabilities are generally acknowledged to know what accommodation will work best for their disability, the decision of what accommodation to pursue in this case would best be determined through an interactive process.





## TRINA

Trina is a wheelchair user and has a hoarding disorder. Trina lives in a one-bedroom apartment in a building owned by Agnes. Agnes stopped by Trina's unit and noticed that Trina had high stacks of magazines and newspapers lined up along the walls in her hallway.

Agnes serves Trina with a three-day notice requiring her to clean up her apartment or face eviction. Trina asks Agnes for additional time to clean her apartment. Agnes refuses, telling Trina she just needs to "get it done" because she is creating a health and safety hazard.

Has Agnes violated fair housing law?

- a) No, because having clutter in your hallway is a safety issue and lease violation and must be addressed immediately.
- b) No, because Trina never asked to engage in an interactive process and never asked for a reasonable accommodation for a disability.
- c) Yes, because Trina is entitled to more time to clean her unit.
- d) "a" and "b"



## The Answer is C.

- Note: having clutter blocking your hallway *may* be a lease violation. Minimum safety guidelines require safe and clear walkways and walking paths within rooms.
- Note: Additional time is within the scope of reasonable accommodations that may be available for hoarding behaviors. Additional time may also be a necessary accommodation for Trina's physical disability here.
- Note: A tenant does not have to use special words or phrases to ask for an accommodation or initiate an interactive process. As a wheelchair user – Trina's disability should be evident.

## RESOURCES

- HUD/DOJ Joint Statement on Reasonable Accommodations:  
<https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>
- HUD/DOJ Joint Statement on Reasonable Modifications:  
[https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable\\_modifications\\_mar08.pdf](https://www.hud.gov/sites/dfiles/FHEO/documents/reasonable_modifications_mar08.pdf)
- Notice on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs:  
<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>
- Fact Sheet on HUD's Assistance Animals Notice:  
<https://www.hud.gov/sites/dfiles/PA/documents/AsstAnimalsGuidFS1-24-20.pdf>



THANK YOU

Michelle Uzeta  
Senior Counsel

**Disability Rights Education  
& Defense Fund**

[muzeta@dredf.org](mailto:muzeta@dredf.org)