



# FAIR HOUSING 101: DISABILITY RIGHTS IN HOUSING

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# Audience Poll

Are you an:

- Attorney
- Advocate
- Housing Provider / Landlord
- Tenant
- Other

# Learning Objectives

1

Understand the basics of the Federal Fair Housing Act and California's Fair Employment and Housing Act;

2

Understand fair housing rights and responsibilities;

3

Understand complaint enforcement processes.

# Why are Fair Housing Protections Important to People with Disabilities?

- Due to low wages and inadequate Supplemental Security Income (SSI), disabled renters are “priced out” of housing at rates higher than that of the general population. Less than 5 percent of housing nationwide is accessible for people with moderate mobility difficulties, and less than 1 percent is accessible for wheelchair users.
- In 2020, 42% of people experiencing homelessness in California reported a disabling condition (which includes physical, mental, or emotional impairment that has a long-term disabling effect; a developmental disability; HIV/AIDS; or injury or illness incurred or aggravated during military service).
- According to data from the California Civil Rights Department, the most cited basis for discrimination in housing is disability. In 2020, disability complaints made up 39.3% of all housing complaints filed.



*THE RIGHT TO BE FREE FROM  
HOUSING DISCRIMINATION IS  
ESSENTIAL TO THE GOAL OF  
INDEPENDENT LIVING.*

*H.Rep.No.100-711, 100<sup>th</sup> Cong., 2d Session, 18,  
reprinted in 1988 U.S. Code Cong. & Ad. News, 2173,  
2179 (footnote omitted).*



# The Fair Housing Act

42 U.S.C. §3601 et seq.

Enacted in 1968; Amended in 1974 and 1988

*"It is the policy of the United States to provide, within Constitutional limitations, for fair housing throughout the United States."*

## The First 5 Protected Classes:

Race

Color

Religion

National Origin

Sex (1974)

## 1988 Amendments added:

Familial Status

Disability

# Defining Disability

A Person is considered disabled under the act if they:

- Have a **physical or mental impairment** that **substantially limits** one or more **major life activities**;
- Have a record of such a disability OR
- Are regarded as having such a disability

*42 U.S.C. § 3602(h)*

*24 C.F.R. § 100.201.*

# Physical or Mental Impairments – Common Examples

- Blind or low vision
- Deaf or hard of hearing
- Muscular Dystrophy
- Cerebral Palsy
- HIV infection,
- Autism
- Schizophrenia
- Cancer
- Epilepsy
- Individuals in recovery

*\*Not an exclusive list*

*\*Excludes illegal drug users*

*\*Excludes sex offenders*

# Major Life Activities

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Walking

*\*Not an exclusive list*

# Direct Threat

The Fair Housing Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

*42 U.S.C. § 3604(f)(9); 24 C.F.R. § 100.202(d).*

# Determining Direct Threat

- Determining whether someone poses such a direct threat must be made on an individualized basis, considering:
  - *the nature, duration, and severity of the risk of injury;*
  - *the probability that injury will actually occur; and*
  - *whether there are any reasonable accommodations that will eliminate the direct threat.*
  - *ALSO: consider whether the individual has received intervening treatment that has eliminated the direct threat (i.e., does a significant risk of substantial harm still exist?)*
- cannot be based on general assumptions, subjective fears or speculation

# Covered Real Estate Transactions

The FHA Prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners' insurance companies whose discriminatory practices make housing unavailable to persons because of disability.

- Rental
- Sales
- Lending
- Insurance
- Zoning Practices
- (All Areas Connected With Residential Housing)

# Covered Individuals/Entities

- Owners
- Managers
- Homeowners' Associations
- Lenders
- Real Estate Agents
- Brokers
- Governments
- Insurers
- Developers/Builders
- Architects
- Contractors
- Engineers
- Landscape Architects
- All Persons/Entities Involved with Residential Housing

# Covered “Dwellings”

- Generally defined as a structure or portion thereof designed or intended to be occupied as a residence by one or more families, including vacant land to be used for the construction of such a structure



# Examples

Private and  
Subsidized  
Properties

Single Family  
Dwellings

Duplexes

Multi-Family  
Buildings

Migrant Housing

Temporary  
Shelters

Group Homes

Nursing homes

Assisted Living  
Facilities

Other Residential  
Housing: “Where  
I Live”

University  
Housing

# Exceptions to FHA Coverage

- Owner occupied dwellings of four units or less (Mrs. Murphy exception)
- Any single-family home sold or rented by an owner, provided:
  - *The owner does not own or have an interest in more than three single-family homes;*
  - *The home is sold or rented without the use of a broker, agent or salesperson*

**Note:** The prohibitions on discriminatory advertisements still apply to these exceptions.

*24 C.F.R. § 100.10(c)*

# Prohibited Practices Under FHA

- Refusal to sell/rent after making a bona fide offer
- Discrimination in the terms, conditions or privileges of sale or rental of a dwelling
  - *e.g., requiring medical records to show you can live independently*
  - *e.g., requiring excess deposit*
- Make, print or publish a notice or statement that indicates a discriminatory preference
  - *e.g., no wheelchairs*
  - *e.g., active seniors only*
- Falsely tell someone a dwelling is not for sale or rent based upon membership in one of the protected classes
- Steering people toward or away from particular neighborhoods based upon a protected class, Redlining, Reverse Redlining
- Discrimination in residential real estate transactions
- Discrimination in provision of brokerage services
- Coercion, Intimidation, Threats or Interference with anyone asserting a Fair Housing right or assisting others who are exercising that right.

*24 C.F.R. Part 100, Subparts B and C.*

# Prohibited Practices Specific to Persons with Disabilities

If a person has a disability under the Act, a Landlord may not:

- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.
- Refuse to let the person make reasonable modifications to the dwelling or common areas, at tenant expense, if necessary for the disabled person to use the housing.

# Reasonable Accommodations

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.

- 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 service dogs or comfort animals.

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



# Reasonable Modifications

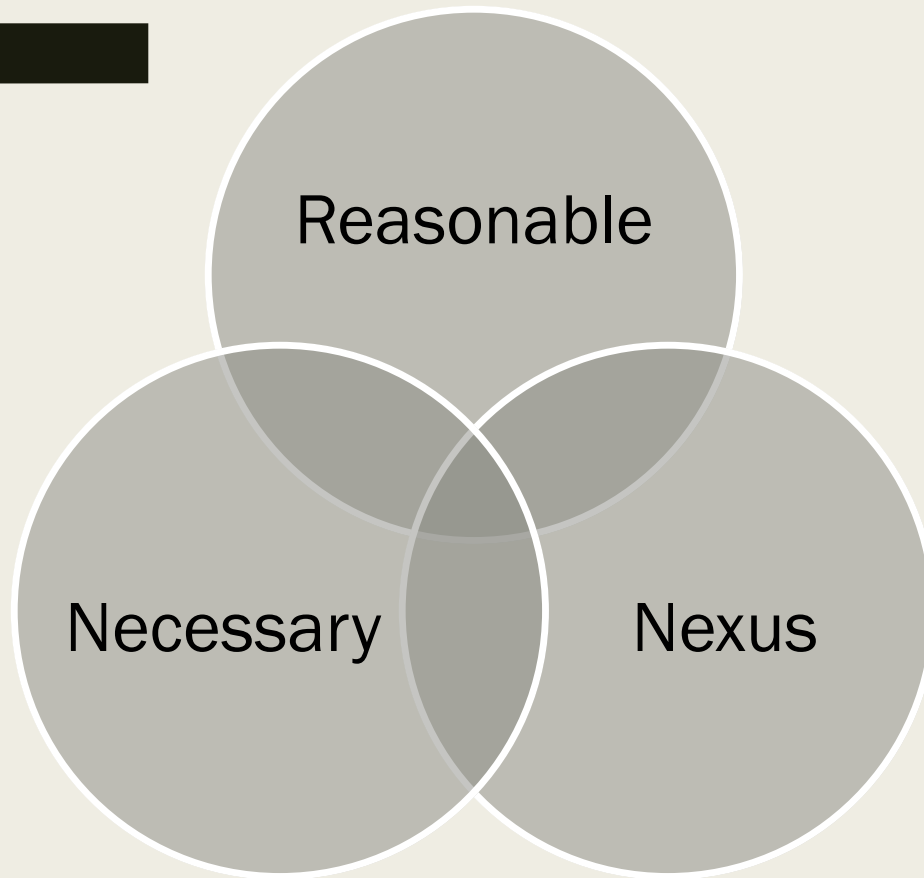
A **reasonable modification** is a physical change to a dwelling or common area.

- Installing a grab bar in a bathroom
- Widening doorways to make rooms more accessible
- Lowering kitchen cabinets
- Adding a ramp to make a primary entrance accessible
- Altering a walkway to provide access to a public or common use area
- Installing “blinking” doorbells or emergency alarms to provide alerts to someone who is Deaf, or brailled signage for someone who is Blind.

*Note: who pays depends on type of housing involved*

*Note: restoration may be, but is not always required*

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



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

# What is Reasonable?

- Burden Shifting Approach.
- Party requesting accommodation 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 unless they can prove that the requested accommodation is not reasonable.



# Establishing Reasonableness

Is the requested accommodation:

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

*Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1157  
(9th Cir. 2003)

# 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 promote equal opportunity for the individual to use/enjoy his or her housing?

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

# Nexus Required

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.

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.

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.

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.

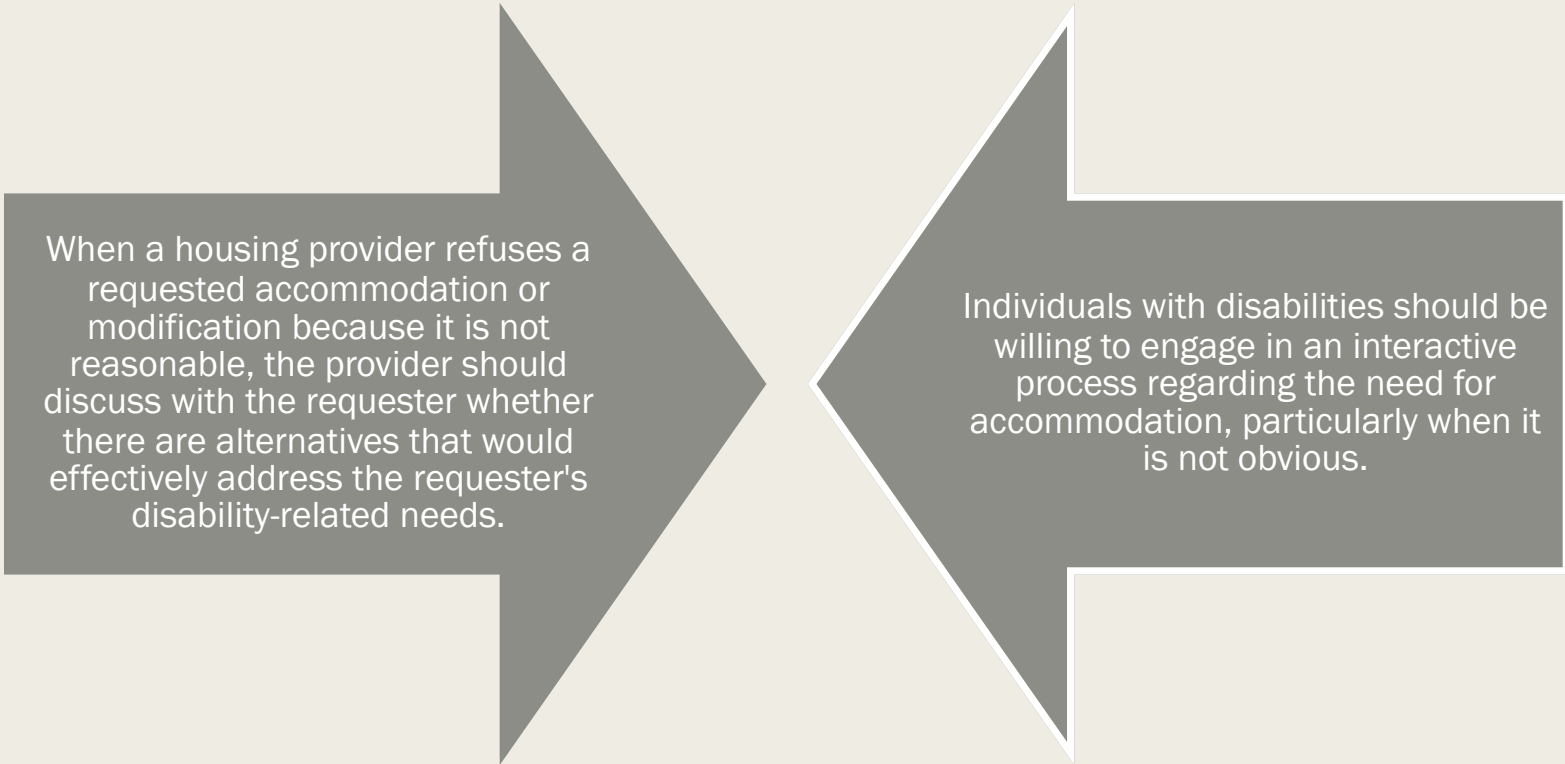
## NO NEXUS

- 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.

# FHA Cases on the Interactive Process:

- 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



# Resources on Reasonable Accommodations & Reasonable Modifications

- Joint Statement on Reasonable Accommodations:  
<https://www.hud.gov/sites/dfiles/FH/EO/documents/huddojstatement.pdf>
- Joint Statement on Reasonable Modifications:  
[https://www.hud.gov/sites/documents/reasonable\\_modifications\\_mar08.pdf](https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf)

Under the Act, housing built for first occupancy after March 1991 must include:

- Public and common use areas that are readily accessible to and usable by persons with disabilities;
- Doors that are designed to allow passage into and within all premises of covered dwellings;
- An accessible route into and through the dwelling unit;
- Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- Reinforcements in bathroom walls to allow the later installation of grab bars; and
- Usable kitchens and bathrooms.

Joint Statement on Accessibility Requirements:

<https://www.hud.gov/sites/documents/JOINTSTATEMENT.PDF>

Fair Housing Center of Metropolitan Detroit Video:

<https://youtu.be/Fg5hF7PQU4A>

## Design and Construction Requirements

# Broad Standing

Anyone “aggrieved” by a discriminatory housing practice has the right to enforce the FHA. This includes any person who -

- Claims to have been injured by a discriminatory housing practice; or
- Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Standing has been extended to:

- People with disabilities
- People associated with people with disabilities
- Fair housing organizations
- Housing providers prevented from building/operating housing

# Enforcement

- HUD enforces the FHA:  
<https://www.hud.gov/fairhousing/fileacomplaint%20>
- Complaints must be filed within 1 year.
- HUD must complete an investigation and make a determination of reasonable cause within 100 days.
  - *If this deadline is not met, HUD or the State agency must notify the complainant in writing stating the reasons for the delay.*
- While HUD is conducting the investigation, the SOL for filing a lawsuit is tolled.
- Filing a complaint with HUD is not a pre-requisite for filing suit on FHA claims.
- FHA claims generally have a 2-year SOL.

# Remedies

## Non-Monetary Relief (Injunctive Relief)

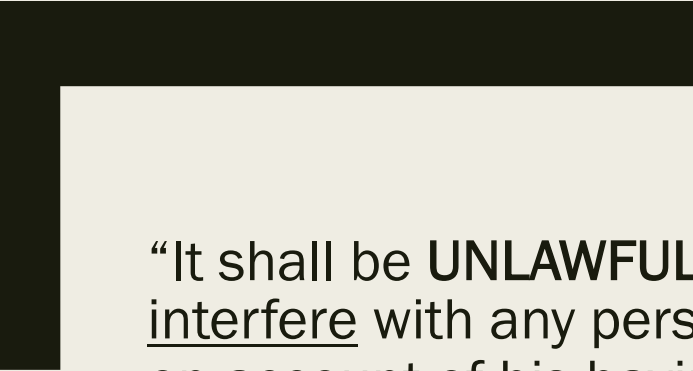
- To correct the illegal behavior
- To end discriminatory policies
- To provide for new non-discrimination policies (reporting requirements, affirmative advertising, etc.)

## Compensatory Relief

- Economic Damages/Out-of-Pocket
- Emotional Damages

## Punitive Damages

## Recovery of Attorney's Fees and Filing Costs



“It shall be **UNLAWFUL** to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.”

*42 U.S.C. § 3617*



# Retaliation





# CALIFORNIA'S FAIR EMPLOYMENT & HOUSING ACT

# FEHA Basics

- FEHA prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on a number of protected characteristics, including disability. *Cal. Gov't. Code §12955 et seq.*
- Disability related prohibitions generally track FHA.
  - *Reasonable Accommodations*
  - *Reasonable Modifications*
  - *See 2 C.C.R. Article 18, Sections 12176 - 12181.*
- FEHA was written to “to conform California law on the subject of fair housing to the Federal Fair Housing Act.” *Broodmore San Clemente Homeowners' Assn. v. Nelson*, 25 Cal.App.4th 1, 5–7, 30 Cal.Rptr.2d 316 (1994).

# Differences Between FEHA and FHA Related to Disability

- FEHA definition of “disability” requires only that a major life activity be “limited” not “substantially limited”
- Mitigating measures are not considered when assessing whether a person has a disability.
- FEHA also prohibits discrimination on the basis of medical condition. “Medical condition” means:
  - Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer; or
  - Genetic characteristics

*Cal. Gov't. Code §12955.3, 12926*

# Other Differences – 2020 Regulatory Amendments

**Interactive process** is REQUIRED for requests for reasonable accommodations and modifications.

- 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 the request cannot be granted, the provider must engage in the interactive process to determine if an alternative is feasible.

*2 CCR § 12177*

# Other Differences, continued...

Clarifies times where costs for reasonable modifications may be considered “accommodations” and shifted to housing provider. *2 CCR § 12177(d)(6)*

- If the modifications are needed because of a failure to maintain the housing, and in particular if they are needed because of a failure to maintain an accessible feature.
- If the accessible feature was required by building and accessibility codes at the time of construction, but the building/housing provider failed to comply with those codes.

Clarifies that source of income discrimination includes receipt of public assistance and subsidies, including Section 8. *Cal. Gov't. Code §12955(p)(1)*

# Enforcement

- The California Civil Rights Department (CRD), formerly the Department of Fair Employment and Housing (DFEH), enforces the FEHA:
- Complaints must be filed within 1 year.  
<https://calcivilrights.ca.gov/complaintprocess/#fileComplaintBody>
- CRD must complete an investigation and make a determination of reasonable cause within 100 days. *Cal. Gov't Code § 12980(f)*.
  - *If this deadline is not met, CRD must notify the complainant in writing stating the reasons for the delay.*
- While CRD is conducting the investigation, the SOL for filing a lawsuit is tolled.
- Filing a complaint with CRD is not a pre-requisite for filing suit on FEHA claims.
- FEHA claims generally have a 2-year SOL.

# Remedies

## Non-Monetary Relief (Injunctive Relief)

- To correct the illegal behavior
- To end discriminatory policies
- To provide for new non-discrimination policies (reporting requirements, affirmative advertising, etc.)

## Compensatory Relief

- Economic Damages/Out-of-Pocket
- Emotional Damages

## Punitive Damages

## Recovery of Attorney's Fees and Filing Costs

# Retaliation

FEHA prohibits owners of housing accommodations from harassing, evicting, or otherwise discriminating against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against that person for:

- opposing unlawful practices
- informing law enforcement agencies of unlawful practices
- testifying or assisting in any proceeding under FEHA
- aiding or encouraging a person to exercise or enjoy their rights under FEHA.

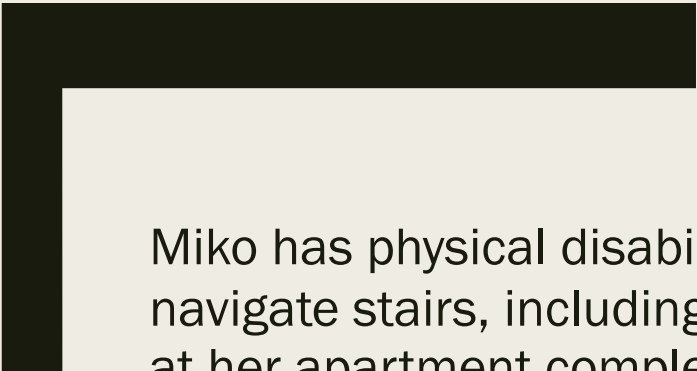
*Cal. Gov't. Code §12955(f)*



HYPOTHETICALS

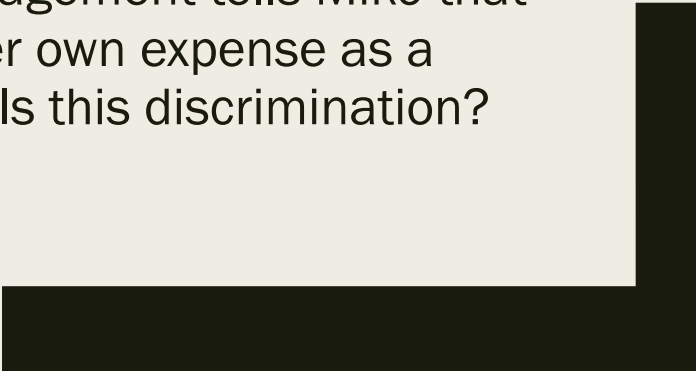
# Hypothetical

Juan has cerebral palsy. He moves into an apartment. He advises the landlord that he needs to have reinforcements and grab bars installed in the shower. The landlord says that there is “no way” he is paying for this and tells Juan that he can have the reinforcements and grab bars installed, but at his own expense. Is this discriminatory?



Miko has physical disabilities that make it difficult and painful to navigate stairs, including the stairs leading in and out of the pool at her apartment complex. The pool has a lift that Miko has used consistently over the years, but a few months ago the lift broke down.

Management has told Miko that they do not have the funds to pay for the lift to be repaired or replaced. Management tells Miko that they will permit her to replace the lift at her own expense as a reasonable modification for her disability. Is this discrimination?



# Hypothetical

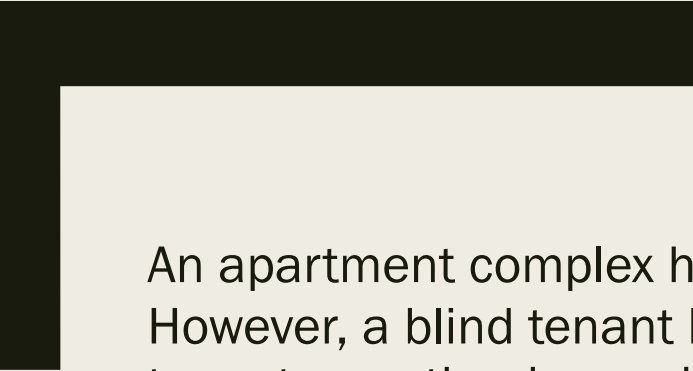


# Hypothetical

Stacey is a person living with HIV. She applies to rent an apartment and discloses this information to the manager. The manager replies that he will rent her the apartment but only if she agrees not to use the pool because he does not want other tenants exposed to the virus.

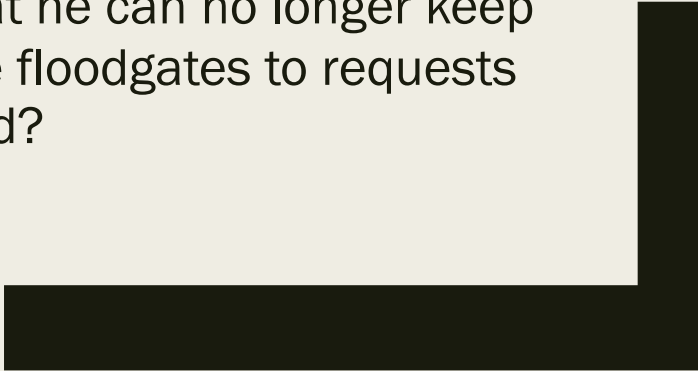
Stacey explains to the manager that there is no risk of transmission from swimming in a pool. However, the manager decides not to rent to her because she is a direct threat to other tenants.

Has the manager engaged in discrimination?



An apartment complex has strict rules that no pets are allowed. However, a blind tenant has a service dog in her unit. Another tenant sees the dog and tells management he would also like to have a dog. The manager tells the tenant no, and warns that if he gets a dog, he will be served with an eviction notice. Has the tenant been discriminated against?

The landlord also tells the blind tenant that he can no longer keep his service dog because it has opened the floodgates to requests from other tenants. Is the landlord justified?



# Hypothetical



Jamal has an emotional support cat. Jamal applies to rent an apartment after doing a walk through with the on-site manager. Jamal includes on his application that he has “an emotional support cat.” The on-site manager texts Jamal to say, “it is our policy not to accept cats, even emotional support cats.” Jamal files a complaint with CRD.

The on-site manager tells the CRD investigator that Jamal did not look disabled or provide her with any information about his disability. Would CRD be justified in closing Jamal’s complaint?



Hypothetical



THANK YOU