Reasonable Accommodations, Modifications, Assistance Animals, and COVID-19 Considerations in Fair Housing
Training Information

• The purpose of this training is to provide general information regarding the fair housing rights of individuals with disabilities.

• The information is provided in summary form and is **not** intended as a substitute to legal advice.

• Federal and state law can change at anytime, so please stay abreast to possible changes to the law.

• CLE code will be provided.
What is the Fair Housing Act?

- Federal law (with state counterpart)
- “Illegal to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability”
  - What’s a “dwelling?”
  - What’s a disability?
  - What’s discrimination?
  - What are “services and facilities?”
  - What are “terms, conditions, or privileges of sale or rental?”
Defining Disability

- Physical or mental impairment that substantially limits one or more major life activities.
  - Seeing
  - Self-care
  - Hearing
  - Walking
  - Speaking
  - Learning
  - Blindness
  - Depression/anxiety
  - Deafness
  - Mobility impairments
  - Autism
  - HIV/AIDS
Who is Covered?

- Tenants
- Prospective tenants
- Homeowners
- Family members with disabilities
- People with disabilities who are associated with tenants, prospective tenants, and homeowners
What “Dwellings” are Covered?

- Apartments
- Condos
- RV parks (long-term)
- Homeless shelters
- University dormitories
- Nursing homes
- Group homes
- Motels (long-term)
What “Dwellings” are NOT Covered?

- Owner occupied buildings with 4 or fewer units
- Single family houses sold/rented by owner without an agent
- Housing operated by religious organizations and private clubs that limit occupancy to members
Discrimination Under the FHA

• Refusal to make a reasonable accommodation in rules, policies, practices or services

• Refusal to allow a person with a disability to make reasonable physical modifications to the premises
  – Modifications are at the disabled tenant’s expense
Reasonable Modifications

• Physical changes to your home
• Examples:
  – Widening doors
  – Shower grab bars
• Requestor must pay to install and remove (if necessary)
• Do not include things covered by the “7 Accessibility Standards”
7 Accessibility Standards

• 1. Accessible building entrance on an accessible route
• 2. Accessible common/public use areas
• 3. Useable doors
• 4. Accessible route into/through dwelling unit
• 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations
7 Accessibility Standards

- 6. Reinforced walls in bathrooms for later installation of grab bars
- 7. Usable kitchens and bathrooms
7 Accessibility Standards

• Only apply to dwellings built for first occupancy after March 13, 1991

• Some caveats, e.g.:
  – Accessible route not required if terrain or unusual characteristics make impossible
  – Bathroom walls must be reinforced for later installation of grab bars
Reasonable Accommodations

• Change to a rule or policy
• Must be necessary to provide an equal opportunity to use and enjoy a dwelling
• Includes public and common use spaces
• Examples:
  – Closer parking space for disabled tenant
  – Exception to “no pets” policy for an assistance animal
Reasonable Accommodation Requests

• Best practices
  – In writing (email, certified mail)
    • Including follow-up letters
  – Be specific!
  – Use the words “reasonable accommodation request”
  – Guides on ACDL’s website
After You Make a Reasonable Accommodation Request

• What can housing providers ask?
  – CAN ask for documentation for non-obvious disability
  – CANNOT ask for entire medical record
  – Can provide alternative documentation
  – Does not have to be from a doctor

• Who has the burden of proof?
  – Initially requestor—must prove accommodation is “reasonable”
  – Then shifts to housing provider to show no undue burden, direct threat, or fundamental alteration
After You Make a Reasonable Accommodation Request

• Kicks off the “interactive process”
  – Process to find an accommodation
• Judicial construct: not universally recognized
• Not examined by:
  – AZ State Courts
  – District of Arizona
  – Ninth Circuit
  – US Supreme Court
Jill has Parkinson’s and uses a service dog to remind her to take her medication. Due to the tremors caused by her disability, she cannot hold a leash. Jill’s HOA has a mandatory leash policy for pets. Jill sends an email to her HOA board explaining her need for the service animal along with a letter from her doctor verifying her disability and explaining her need for the dog and for it to be off leash.

What happens next?
• Jill has made a reasonable accommodation request
  – Initial burden—is her request reasonable?
• HOA’s move: approve, deny, or ask for more info
  – Deny—must be fundamental alteration, undue burden, or direct threat
  – More info—may request only information that is necessary to evaluate the disability and/or disability-related need for the accommodation
Special Note: Assistance Animals

- FHA recognizes “Assistance Animals,” which includes:
  - Service Animals
  - Emotional Support Animals
  - Therapy Animals
- Do NOT need to be individually trained or “certified”
- NOT limited to dogs or certain breeds
  - Supersedes state and local law
- May need to be licensed and vaccinated
• CLE Code: Accommodation
• Email to cgutierrez@azdisabilitylaw.org along with presentation title:
  – Reasonable Accommodations, Modifications, Assistance Animals, and COVID-19 Considerations in Fair Housing
Coronavirus accommodations?
- Early lease termination
- Lease extension to prevent homelessness
- Private space in congregate setting
- Readmittance to group home after hospital stay
- ASL interpreters in nursing homes
• Readmittance after Covid infections:
  – “Nursing Care Institutions, Residential Care Institutions, ICF-DD, and DD Medical Group Homes must develop policies and procedures to facilitate the admission and readmission of residents who are ready for safe discharge from an acute care hospital without the requirement of a negative COVID-19 test result.”
  – 14 day quarantine upon readmission
• Visitation:
  – “Nursing Care Institutions, Residential Care Institutions, ICF-DD, and DD Medical Group Homes must offer an electronic visual form of communication if visitation is restricted.”
COVID-19: Exec. Or. 2020-22

• Other provisions:
  – Expires when COVID-19 Declaration of Emergency is terminated
  – Symptom checks for guests, PPE for staff
  – Cohort Covid-positive and unknown residents from negative residents
  – Separate, consistent staffing teams for each cohort
COVID-19: Halt on Evictions for Non-Payment of Rent

• Current version effective through March 31, 2021
  – Does not apply to non-payment of mortgages
  – Declaration under penalty of perjury must be submitted to landlord
  – Can be evicted for other reasons
  – Does not stop tenant from owing rent
COVID-19: Public Housing and Housing Choice Voucher (HCV) Programs

- Covered under halt on evictions
  - Public Housing Authorities (PHAs) should consider repayment plans, financial hardship exemptions
  - HCV participants should report changes in income so rent portion can be adjusted.
- Look to PHA for how COVID-19 is impacting daily operations
  - Limits on evictions for non-criminal conduct
  - Remote video inspections, staff working from home, drop boxes, etc.
Additional Resources

- ACDL’s FHA Self-Advocacy Guides: https://www.azdisabilitylaw.org/guides/#fair-housing
- HUD Guide to Reasonable Accommodations and Modifications: https://www.hud.gov/program_offices/fair_housing_equal_opportunity/reasonable_accommodations_and_modifications
About ACDL

ACDL is a public interest law firm and the designated protection and advocacy system for people with disabilities in Arizona. We assist people with disabilities to promote and protect their legal rights to independence, justice, and equality.

We have offices in Phoenix and Tucson but serve all of Arizona. For more information, please visit: www.azdisabilitylaw.org