

LEGAL RIGHTS OF PERSONS WITH DISABILITIES

DISABILITY RIGHTS IN HOUSING



CALIFORNIA OFFICE OF THE ATTORNEY GENERAL

PUBLIC RIGHTS DIVISION

CIVIL RIGHTS ENFORCEMENT SECTION | *DISABILITY RIGHTS BUREAU*



TABLE OF CONTENTS

Disability Rights in Housing	1
I. Housing Laws that Protect People with Disabilities	1
A. State Law.....	1
1. Fair Employment and Housing Act	1
2. Unruh Civil Rights Act	2
3. Disabled Persons Act	2
4. Government Code section 11135.....	3
B. Federal Law	3
1. Fair Housing Amendments Act of 1988	3
2. Titles II and III of the Americans with Disabilities Act	3
3. Section 504 of the Rehabilitation Act	4
II. Rights in Housing	4
A. Physical Accessibility in Housing Design and Construction	4
1. Fair Employment and Housing Act.....	4
2. California Building Code.....	5
3. Fair Housing Act Accessibility Guidelines.....	5
4. HUD Regulations Pursuant to Section 504 and the ADA.....	5
B. Affordable Housing Programs	5
C. Reasonable Accommodations and Reasonable Modifications in Housing.....	6
1. Reasonable Accommodations.....	6
(a) Requesting a Reasonable Accommodation.....	7
(b) Establishing Disability and Nexus	7
(c) The Interactive Process	8
(d) Denial of a Reasonable Accommodation	8
2. Reasonable Modifications.....	9
D. Assistance Animals	10
1. Service Animals	10
2. Emotional Support Animals.....	10
3. Restrictions for Assistance Animals in Housing	10
III. Complaints	11
A. For Violations of State Law.....	11
B. For Violations of Federal Law	12

DISABILITY RIGHTS IN HOUSING

This publication discusses California and federal laws that protect persons with disabilities from public and private housing discrimination. It also describes options when persons with disabilities have experienced discrimination in housing because of their disability.

This publication is for informational purposes only, and is based on the law at the time of publication. Laws regularly change and are subject to differing interpretations. The facts of each and every case may also result in differing applications of the law. Accordingly, the information in this publication must not be considered definitive, exhaustive, or legal advice for any purpose, and does not create an attorney-client relationship with the California Department of Justice. When consulting this publication, check for any updates in the law that may be applicable in any given situation.

I. HOUSING LAWS THAT PROTECT PEOPLE WITH DISABILITIES

Under both state and federal law, individuals with disabilities have a right to full and equal access to housing. This means that housing providers cannot discriminate against individuals because of their disability. These laws also set minimum requirements for physically accessible housing and provide individuals rights to reasonable accommodations and service animals.

A. State Law

Several California laws ensure that persons with disabilities have the right to full and equal access to housing. These laws include the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), the California Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51), and the California Disabled Persons Act (DPA) (Civ. Code, § 54 et seq.). Federal laws, such as the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) and the Fair Housing Amendments Act of 1988 (FHAA) (42 U.S.C. § 3601 et seq.), provide similar protections.

1. Fair Employment and Housing Act

In California, the FEHA recognizes as a civil right the opportunity to seek, obtain, and hold housing without discrimination because of a disability. (Gov. Code, § 12921, subd. (b).) This means that individuals with disabilities have a right to rent, lease, or buy housing accommodations free from discrimination due to a disability.

The FEHA defines “disability” broadly, and includes both physical and mental health disabilities as well as medical conditions. (See Gov. Code, §§ 12926, subds. (i), (j), (m), (n), 12955.3.) The FEHA also protects individuals perceived to have a disability and individuals associated with someone who has a disability. (Gov. Code, § 12955, subd. (m).)

The FEHA applies to all housing accommodations in California except, under certain circumstances, those in which only one person rents space within an owner-occupied single-family residence. (Gov. Code, § 12927, subd. (c)(2)(A).) However, even housing providers who fall under this exception are prohibited from discriminatory advertising. (*Ibid.*) This means the provider cannot, in its advertisements for the housing, indicate a preference, limitation, or discrimination based upon protected classifications, including disability. (Gov. Code, § 12955, subd. (c).) For example, a housing provider cannot advertise that it will not rent to persons with disabilities or someone who requires a reasonable accommodation, such as a wheelchair ramp. (See Gov. Code, § 12955, subd. (c).) Nor can the owner of any housing accommodation make any oral or written inquiry designed to determine whether the person has a disability. (Gov. Code, § 12955, subd. (b).)

A housing provider or “owner” includes anyone who rents or sells housing, including a lessee, sublessee, or assignee; a real estate agent or broker; a salesperson; or a state or local government agency. (Gov. Code, § 12927, subd. (e).)

The FEHA prohibits a housing provider from discriminating against people with disabilities in a wide range of housing activities, including selling, renting, or leasing a property. (Gov. Code, § 12955.) For example, a person renting, leasing, or providing real property for compensation must use the same criteria for selecting a buyer or tenant regardless of their disability status. (See Gov. Code, § 12955, subds. (d) and (k).) It is unlawful to refuse to sell, rent, or lease housing to an individual because the person has a disability, or to assert that housing is not available when it actually is available. (Gov. Code, § 12927, subd. (c)(1).) It is also unlawful to engage in harassment, retaliation, or other discriminatory conduct prohibited under the FEHA. (Gov. Code, § 12955, subds. (a), (f), (k); Cal. Code Regs., tit. 2, § 12005, subd. (b).)

The FEHA also prohibits disability discrimination by financial institutions and persons making, printing, or publishing advertisements. (Gov. Code, § 12955, subds. (c) and (e).) The FEHA further prohibits discrimination in land use practices. (Gov. Code, § 12955, subd. (l).)

For people with disabilities, the FEHA also provides a right to reasonable accommodations and modifications as well as a right to assistance animals; this is described in further detail later in this publication. (Gov. Code, § 12927, subd. (c)(1); Cal. Code Regs., tit. 2, §§ 12176, 12185.)

2. Unruh Civil Rights Act

The Unruh Act provides that people with disabilities are entitled to full and equal accommodations in all business establishments. (Civ. Code, § 51, subd. (b).) Any violation of the Unruh Act, where the “business establishment” is a housing provider, is also a violation of the FEHA. (Gov. Code, § 12955, subd. (d).) The Unruh Act uses the same definition for “disability” (including both physical and mental health disabilities) as the FEHA. (Civ. Code, § 51, subd. (e)(1), referencing Gov. Code, §§ 12926 and 12926.1; see also Gov. Code, § 12955.3 [definition of “disability” for purposes of housing discrimination same as definition of “disability” for discrimination generally, as defined in Gov. Code, § 12926].) A violation of the federal ADA is also a violation of the Unruh Act. (Civ. Code, § 51, subd. (f).)

3. Disabled Persons Act

The DPA provides that individuals with disabilities are entitled to full and equal access, like other members of the general public, to all housing accommodations offered for rent, lease, or compensation in California, subject to the conditions and limitations established by law, or state or federal regulation. (Civ. Code, § 54.1, subd. (b)(1).) Like the state laws above, the DPA broadly defines “disability” to include physical and mental health disabilities, as well as medical conditions, mirroring the definition set forth in the FEHA. (Civ. Code, § 54, subd. (b).) The DPA applies to all housing accommodations except those in which only one room is rented in an owner-occupied single family residence, as in similar provisions of the FEHA described above. (Civ. Code, § 54.1, subd. (b)(2).) For purposes of the DPA, hotels, lodging places, resorts, and other places the general public are invited to are not considered “housing accommodations,” but they are covered by the ADA’s prohibition on disability discrimination. (Civ. Code, § 54.1, subds. (a)(1), (b)(2); 42 U.S.C. § 12181(7)(A).) As with the Unruh Act, a violation of the federal ADA is also a violation of the DPA. (Civ. Code, § 51, subd. (f); Civ. Code, § 54.1, subd. (d).)

Equal access to housing for individuals with disabilities includes the right of a person with a disability to keep an assistance animal, even if pets are not ordinarily allowed in the residence. (Civ. Code, § 54.1, subd. (b)(6)(A).)

Additionally, a housing provider may not discriminate against an individual with a disability who is dependent on a spouse's income if the spouse is included on the rental agreement or lease; however, an owner is permitted to consider the aggregate financial status of the couple. (Civ. Code, § 54.1, subd. (b)(7).)

The DPA also provides individuals with disabilities the right to reasonable accommodations and reasonable modifications to make their housing accessible. (Civ. Code, § 54.1, subd. (b)(3).)

4. Government Code section 11135

California Government Code section 11135 (Section 11135) governs programs and activities that are conducted, operated, or administered by the state or by any state agency, that are funded directly by the state, or that receive any financial assistance from the state. (Gov. Code, § 11135.) This includes housing programs and activities that meet these characteristics. For those programs and activities, Section 11135 grants full and equal access to people with disabilities and prohibits discrimination on the basis of disability. (Gov. Code, § 11135, subd. (a).) It relies on the same definitions of “disability” as those found in the FEHA. (Gov. Code, § 11135, subd. (c), referencing Gov. Code, § 12926.)

Section 11135 requires these programs and activities to meet the protections and prohibitions of the ADA and its implementing federal rules and regulations. (Gov. Code, § 11135, subd. (b).) Where state law provides stronger protections and prohibitions than federal law, the programs and activities subject to Section 11135 must follow those stronger requirements. (*Ibid.*)

B. Federal Law

Federal law, including the FHAA and Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794), provides protections similar to state law.

1. Fair Housing Amendments Act of 1988

The federal FHAA prohibits disability-based discrimination in the terms, conditions, or privileges of the sale or rental of a dwelling. (42 U.S.C. § 3604(b).) The FHAA protects individuals with a disability as well as those who have a record of or are regarded as having a disability. (42 U.S.C. § 3602(h).) Please note that federal law uses the term “handicap” while this publication uses the more generally accepted term “disability.” The FHAA also covers most housing providers but has more exceptions than state law. (42 U.S.C. § 3603(b) [exemption from the FHAA for certain single-family houses as well as rooms in dwellings that house no more than four families living independently of each other, if the owner actually occupies one of the units].)

As described in more detail below, the FHAA also includes some minimum requirements for housing design and construction to make housing accessible for people with physical disabilities. (42 U.S.C. § 3604(f)(3)(C).)

2. Titles II and III of the Americans with Disabilities Act

Title II of the ADA (Title II) prohibits disability-based discrimination in housing owned or operated by public entities regardless of whether the entity receives federal financial assistance. (42 U.S.C. § 12132; 28 C.F.R. § 35.130.) For example, Title II covers housing owned or operated by public housing authorities that meets the ADA's definition of “public entity” and housing operated by local governments. (42 U.S.C. § 12131(1); 28 C.F.R. § 35.104.)

Title III of the ADA (Title III) prohibits disability-based discrimination by private entities that own, lease (to and from), and operate places of public accommodation, and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with established accessibility standards. (42 U.S.C. § 12182; 28 C.F.R. §§ 36.201, 36.401, 36.402, 36.406.) Public accommodations

at housing developments include any areas that are open to the general public, such as a rental office. (42 U.S.C. § 12181(7); 28 C.F.R. § 36.104.) Public accommodations also include, for example, homeless shelters and social service establishments. (*Ibid.*)

As described in more detail below, the ADA includes some minimum requirements for design and construction to make covered housing accessible for people with physical disabilities. (42 U.S.C. § 3604(f)(3)(C).)

3. Section 504 of the Rehabilitation Act

Section 504 prohibits discrimination against people with disabilities under any program or activity receiving federal financial assistance or any program or activity conducted by any Executive agency or by the United States Postal Service. (29 U.S.C. § 794(a).) This includes all operations of state or local governments, universities, and private organizations that receive federal financial aid. (29 U.S.C. § 794(b).)

As described in more detail below, Section 504 programs must be accessible to people with disabilities; both the statute and its regulations set out requirements for accessible design. (29 U.S.C. § 794; 24 C.F.R. part 8.)

Section 504 regulations also require housing providers to implement certain policies to ensure their housing programs are accessible to people with disabilities. (See 24 C.F.R. § 8.26.) For example, housing providers must engage in affirmative marketing to ensure information regarding the availability of accessible housing reaches eligible people with disabilities. (24 C.F.R. § 8.27(a).) Housing providers must also maintain wait lists and prioritize accessible units for people with disabilities requiring the accessible features. (24 C.F.R. § 8.27.)

As described in the next section of this chapter, all housing programs must provide reasonable accommodations and reasonable modifications to provide equal enjoyment of the property to people with disabilities. (24 C.F.R. §§ 8.20, 8.24, 8.33.)

II. RIGHTS IN HOUSING

This section describes the legal rights of people with disabilities in housing under state and federal law, and the requirements these laws impose on certain landlords, property management companies, homeowner associations, and other housing providers to make housing accessible to persons with disabilities.

A. Physical Accessibility in Housing Design and Construction

Both state and federal law set minimum requirements for housing developers to design and construct housing that is accessible to people with physical disabilities. It is common for multiple laws to apply to a housing development simultaneously.

1. Fair Employment and Housing Act

The FEHA requires housing developers to design and construct covered multifamily housing in a manner that allows access to, and use by, people with disabilities. (Gov. Code, § 12955.1.) It also sets out minimum required accessible features for covered multifamily dwellings. The FEHA defines “covered multifamily dwellings” to include both of the following: (1) buildings that consist of at least four condominium units or at least three rental apartment dwelling units if the buildings have at least one elevator, and (2) ground floor dwelling units in a building with at least four condominium units or at least three rental apartment dwelling units if the building does not have an elevator. (Gov. Code, § 12955.1.1, subd. (a).)

The FEHA sets forth how such dwellings must be accessible to persons with disabilities, including, for example, by having at least one building entrance on an accessible route, having accessible doors, public and common areas, light switches, and electrical outlets. (Gov. Code, § 12955.1.)

2. California Building Code

The California Building Code (CBC) includes a broad range of development requirements for buildings in California. Chapters 11A and 11B of the CBC outline accessible development requirements in California. (Cal. Code Regs., tit. 24, §§ 1101A et seq., 11B-101 et seq.)

3. Fair Housing Act Accessibility Guidelines

The federal FHAA requires that all new rental housing designed and constructed after March 13, 1991, be accessible to and usable by individuals with disabilities. (42 U.S.C. § 3604(f)(3)(C).) New rental housing covered by this section of the FHAA includes buildings with four or more units and at least one elevator, and ground floor units in other buildings with four or more units. (42 U.S.C. § 3604(f)(7).) The statute, its regulations, and Department of Housing and Urban Development (HUD) guidance set out requirements aimed at making buildings accessible for people with disabilities, including accessible building entrances, common areas, doors, routes throughout the dwelling, light switches, reinforced walls for grab bars, kitchens, and bathrooms. (24 C.F.R. § 100.205.) For more guidance on accessible design and construction, see [HUD's Fair Housing Accessibility Guidelines](#) (24 C.F.R. Ch. I, Subch. A, App. II), [HUD's Fair Housing Act Design Manual \(April 1998\)](#), and [Joint Statement of HUD and the DOJ: Accessibility \(Design and Construction\) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act](#) (Apr. 30, 2013).

4. HUD Regulations Pursuant to Section 504 and the ADA

HUD's regulations pursuant to Section 504 set out requirements to ensure that housing subject to Section 504 is accessible. (24 C.F.R. Part 8.) Housing programs covered by Section 504 must include a minimum percentage of units designed with features accessible to people with mobility and/or hearing/vision disabilities. (24 C.F.R. §§ 8.22, 8.23, 8.25.) The law requires that accessible units be distributed throughout housing projects and made available in a sufficient range of sizes and amenities to make housing choices for people with disabilities comparable to choices available to people without disabilities. (24 C.F.R. § 8.26.) Housing providers covered under Titles II and III of the ADA may also need to comply with the 2010 Americans with Disabilities Act Standards for Accessible Design in new construction, alterations, and additions. For more information about federal construction standards for accessibility, see [Uniform Federal Accessibility Guidelines](#), [2010 Americans with Disabilities Act Standards for Accessible Design](#), and [HUD's 2014 Alternative Accessibility Standard](#) (in effect until HUD formally revises its Section 504 regulations to adopt an updated accessibility standard).

B. Affordable Housing Programs

Both the federal government and the State of California have established programs to construct affordable housing as well as to provide rental subsidies to qualifying households. Any affordable housing programs subject to the design and construction requirements described in Section II(A) of this publication must also include features accessible to people with disabilities. Eligible individuals with disabilities and their families may apply for housing constructed through these projects, and housing providers must prioritize individuals with disabilities requiring accessible features for the designated accessible units. (24 C.F.R. § 8.27.)

The federal government administers a variety of housing programs for low-income households, mostly through HUD. People with disabilities may apply to any federal housing program where they meet the eligibility requirements, just like a person without a disability. As described above, these housing programs are generally required to include a minimum number of accessible units prioritized for people with mobility and/or hearing/vision disabilities. (24 C.F.R. §§ 8.22, 8.23, 8.25.)

Most state housing programs are administered by the California Department of Housing and Community Development (HCD). The California Tax Credit Allocation Committee (CTCAC) administers the state and federal Low-Income Housing Tax Credit Programs. The California Housing Finance Agency's (CalHFA) Multifamily Division finances affordable rental housing through partnerships with local jurisdictions, affordable housing developers, and other financial institutions, and the Single Family Division provides lending products and down payment assistance for first-time homebuyers.

Local agencies like city or county housing authorities as well as nonprofit organizations may operate affordable housing with state and federal funding, and must follow the applicable requirements when doing so.

Developers looking for more information about requirements and how to apply for funding through state housing programs should check each agency's website: [HCD](#), [CTCAC](#), and [CalHFA](#).

For people seeking affordable housing, CTCAC maintains an online [list of projects](#). HUD, HCD, CalHFA, or local housing authorities may have information about housing programs. Local independent living centers may also have information about open waiting lists. See the [California Attorney General's Office Resources for People with Disabilities](#) webpage for resources including independent living centers in California.

C. Reasonable Accommodations and Reasonable Modifications in Housing

Both state and federal law require housing providers to make reasonable accommodations and reasonable modifications where they are necessary to provide an individual with a disability equal opportunity to use and enjoy the premises. (Gov. Code, §§ 12927, subd. (c)(1), 12955.1, subd. (a); Civ. Code, § 51, subd. (b); Civ. Code, §§ 54.1, subd. (a)(1), (b)(3); 29 U.S.C. § 794; 24 C.F.R. §§ 8.20, 8.24, 8.33; 42 U.S.C. §§ 3604(f)(2), 3604(f)(3)(A),(B).)

1. Reasonable Accommodations

Both state and federal law provide a right to reasonable accommodations. Under state law, prohibited housing discrimination includes refusal to make "reasonable accommodations" or changes in rules, policies, practices, or services when necessary to provide equal opportunity to a person with disabilities. (Gov. Code, § 12927, subd. (c)(1).) Federal law also requires housing providers to make reasonable accommodations. (42 U.S.C. § 3604(f)(3)(B); see also 24 C.F.R. § 100.204(a).) Examples of these accommodations include allowing a service animal as an exception to a "no pets" policy, reserving a parking space for a tenant with mobility disabilities as an exception to a "first come, first served" parking policy, and permitting caretakers as an exception to a "no overnight guests" policy. (See 24 C.F.R. § 100.204; *Robison v. Amcal Wood Ranch Fund XXXVII* (C.D. Cal., Sept. 23, 2008, No. CV 07-4862 SVW JCx) 2008 WL 9888773, *14-15.) State regulations also outline reasonable accommodation examples including providing a reserved parking space as an exception to a "first come, first served" parking rule; allowing a person with disabilities whose only income is government benefits to have a co-signer; and providing someone with disabilities additional time to complete application paperwork. (Cal. Code Regs., tit. 2, § 12180, subd. (c).)

Federal regulations interpreting the FHAA also recognize live-in aides as reasonable accommodations. (24 C.F.R. §§ 5.403, 982.402(b)(6).) Additionally, these HUD regulations provide that a live-in aide is factored into the family size calculation when determining a housing subsidy for a single person. (24 C.F.R. § 982.402(b)(6)-(7).) For more information about federal reasonable accommodation law, see the [Joint Statement of HUD and the DOJ: Reasonable Accommodations Under the Fair Housing Act](#) ("Joint Statement on RAs").

(a) Requesting a Reasonable Accommodation

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. ([Joint Statement on RAs](#), Question 6.) These accommodations must be provided even if this results in the individual receiving preferential treatment over tenants without disabilities. (42 U.S.C. § 3604(f)(3)(A)-(B); *Giebeler v. M & B Associates* (9th Cir. 2003) 343 F.3d 1143, 1149-1150 (citing *U.S. Airways v. Barnett* (2002) 535 U.S. 391).)

California law does not require a reasonable accommodation request to be in writing. (Cal. Code Regs., tit. 2, § 12176, subd. (f)(3).) It also permits a representative to make a reasonable accommodation request on behalf of an individual with disabilities. (Cal. Code Regs., tit. 2, § 12176, subd. (f)(2).) The obligation to provide a reasonable accommodation is ongoing, and an individual may make a request at any time. (Cal. Code Regs., tit. 2, § 12176, subd. (f)(3), (4).)

Housing providers may establish a formal process for requesting a reasonable accommodation. State law requires housing providers to provide assistance to individuals with disabilities in completing any such formal process and cannot deny a reasonable accommodation because the individual did not use the formal procedure. (Cal. Code Regs., tit. 2, § 12176, subd. (f)(5)-6.)

A housing provider may not charge a fee or require an additional deposit or financial contribution as a condition of receiving, processing, or granting a reasonable accommodation. (Cal. Code Regs., tit. 2, § 12180, subd. (a)(1).) A housing provider may not request or require an individual with a disability or representative to waive the right to request a future accommodation. (Cal. Code Regs., tit. 2, § 12180, subd. (a)(3).)

(b) Establishing Disability and Nexus

State law limits what questions a housing provider may ask to establish a disability and nexus to a reasonable accommodation request. (Cal. Code Regs., tit. 2, § 12178.) If both the individual's disability and the need are known or obvious to the person reviewing the request, the housing provider should not ask for any more information. (Cal. Code Regs., tit. 2, § 12178, subd. (b).) For example, if a person with a mobility disability who uses a wheelchair goes in person to request to move to a unit on the first floor as a reasonable accommodation, the housing provider may not request any additional information before reviewing the request. (*Ibid.*)

If the disability is known or obvious, but the need for accommodation is not, the housing provider may ask only for information that: (1) describes the needed accommodation; and (2) shows the relationship between the disability and how the accommodation is necessary. (Cal. Code Regs., tit. 2, § 12178, subd. (c).)

If neither the disability nor the need is known or obvious, the housing provider may ask for information that: (1) is necessary to establish the individual has a disability; (2) describes the needed accommodation; and (3) shows the relationship between the disability and how the accommodation is necessary. (Cal. Code Regs., tit. 2, § 12178, subd. (d).)

The housing provider may not seek information about a particular diagnosis or medical condition, the severity of the disability, medical records, medical history, other disability or medical issues unrelated to the request, or other disability or health-related information beyond the information identified above. (Cal. Code Regs., tit. 2, § 12178, subd. (e).)

Information regarding the individual's disability or need for accommodation can be collected in variety of ways. In many cases, the individual can make a self-certification. Examples include documentation of

receipt of disability benefits or a credible statement by the individual with a disability (i.e., a statement that a reasonable person would believe is true based on the available information). (Cal. Code Regs., tit. 2, § 12178, subd. (f).)

The individual with a disability may also provide this information through any reliable third party who knows about the individual's disability or the disability-related need for the requested accommodation. (Cal. Code Regs., tit. 2, § 12178, subd. (g).) A reliable third party may include a medical professional; a health care provider, including the office of a medical practice or a nursing registry; a peer support group developed as an alternative to traditional medical or psychological treatments; or a non-medical service agency or person, including [In-Home Supportive Services](#) or [Supported Living Services](#) providers. (*Ibid.*)

This also includes any other reliable third party who knows about the individual's disability or disability-related need for the accommodation. This could be a relative caring for a child with a disability, a relative caring for an elderly family member with dementia, or others in a caregiving relationship with a person with a disability. (Cal. Code Regs., tit. 2, § 12178, subd. (g)(5).)

Determining whether a third party is reliable is a case-by-case analysis. The analysis may take into account: (1) information establishing how the third party is familiar with the individual's disability or the disability-related need for the accommodation; (2) information that specifies the functional limitations that underlie the request for an accommodation, but this information need not include specific medical information or terminology; or (3) information providing a means to contact the third party to verify that the person identified did in fact provide the documentation and to answer any questions permitted by law. (Cal. Code Regs., tit. 2, § 12178, subd. (h).)

(c) The Interactive Process

A housing provider must engage in the interactive process before denying a reasonable accommodation request. (Cal. Code Regs., tit. 2, § 12177.) This process is intended to exchange information to identify, evaluate, and implement a reasonable accommodation that will provide access to the person with a disability. The interactive process must be timely and conducted in good faith. In other words, the housing provider must make a fair and honest effort to engage and consider the request. (Cal. Code Regs., tit. 2, § 12177, subd. (a).) If the housing provider believes the requested accommodation cannot be granted, they must use the interactive process to determine if another accommodation is equally effective. (Cal. Code Regs., tit. 2, § 12177, subd. (c).)

(d) Denial of a Reasonable Accommodation

As described above, a housing provider can deny a reasonable accommodation request if the individual does not have a disability or if there is no connection between the requested accommodation and the person's disability. (Cal. Code Regs., tit. 2, § 12179, subd. (a).) A housing provider may also deny a reasonable accommodation if the requested accommodation: (1) would fundamentally alter the provider's services or operations; (2) would cause the provider undue financial and administrative burden; or (3) would create a direct threat. (Cal. Code Regs., tit. 2, § 12179, subd. (b).) This decision-making process is discussed in greater detail below.

A housing provider cannot deny a reasonable accommodation request based on their fears or prejudices about a disability, or because other tenants might think it is unfair to provide the person with that accommodation, or because the reasonable accommodation might become an undue burden if granted to multiple tenants. (Cal. Code Regs., tit. 2, § 12179, subd. (f).)

The decision to deny a reasonable accommodation may include factors such as the cost of the requested accommodation, the housing provider's financial resources, the benefits that a proposed alternative ac-

commodation would provide to the individual with a disability, and whether alternative accommodations are available that would effectively meet the disability-related needs of the individual with a disability. (Cal. Code Regs., tit. 2, § 12179, subd. (d)(1)-(4).)

Where the housing provider is part of a larger entity, the structure and overall resources of the larger organization, as well as the financial and administrative relationship of the entity to the larger organization, may be considered. Generally, a larger entity with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller entity with fewer resources. (Cal. Code Regs., tit. 2, § 12179, subd. (d)(5).) The determination may also consider whether the need for the accommodation arises from the owner's failure to comply with legal obligations, including a failure to maintain or repair the property as required by law or contract. (Cal. Code Regs., tit. 2, § 12179, subd. (d)(6).)

As noted above, a housing provider may deny a reasonable accommodation where there is a fundamental alteration to the nature of the housing program. (Cal. Code Regs., tit. 2, § 12179, subds. (b)(1), (e).) A fundamental alteration changes the essential nature of the services or operations of the housing provider. For example, a reasonable accommodation request to shop for groceries for a person with a disability may constitute a fundamental alteration if a landlord does not normally provide this service for residents. (Cal. Code Regs., tit. 2, § 12179, subd. (e).)

A housing provider may deny a reasonable accommodation where the requested accommodation would constitute a direct threat to the health or safety of others (i.e., a significant risk of bodily harm) or would cause substantial physical damage to the property of others, and such risks cannot be sufficiently mitigated or eliminated by another reasonable accommodation. (Cal. Code Regs., tit. 2, § 12179, subd. (b)(3).)

The determination of whether there is a direct threat must be based on objective evidence, and not unsubstantiated inferences. The evidence must be sufficiently recent as to be credible. The housing provider must consider three factors to make this determination. First, they must consider the nature, duration and severity of the risk of a direct threat to the health and safety of others or of substantial physical damage to the property of others. Second, they must consider the likelihood that a direct threat will actually occur. And third, they must consider whether there are any additional or alternative reasonable accommodations that will eliminate the direct threat. (Cal. Code Regs., tit. 2, § 12179, subd. (b)(3)(B).)

If a support animal, discussed in greater detail below, is requested as a reasonable accommodation, a housing provider may deny that request if the animal creates a direct threat to the health or safety of others or would cause substantial physical damage to the property of others. (Cal. Code Regs., tit. 2, §§ 12179, subd. (b)(4), 12185, subd. (d)(9).)

2. Reasonable Modifications

A reasonable modification is very similar to a reasonable accommodation, but instead of a change to policy, it is a structural or physical change to the property. (Cal. Code Regs., tit. 2, § 12176, subd. (b).) The request process and reasons for denial mirror those for reasonable accommodations. (Cal. Code Regs., tit. 2, § 12176, subd. (f).) For example, a person who uses a wheelchair may request a reasonable modification to install a ramp to make the front door of their unit accessible to them. (Cal. Code Regs., tit. 2, § 12178, subd. (b).)

A housing provider may not deny an individual with disabilities the right to make reasonable modifications at the individual's expense to accommodate their disabilities if they agree to restore the premises to its pre-existing condition. (Civ. Code, § 54.1, subd. (b)(3)(A); Cal. Code Regs., tit. 2, § 12179, subd. (c)(4); 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203.) A housing provider may also condition the reasonable modification

request on reasonable assurances that the work will be done in a “workmanlike manner” and that any required building permits will be obtained. (Cal. Code Regs., tit. 2, § 12179, subd. (c)(3); 24 C.F.R. § 100.203(b).)

In housing programs that receive federal financial assistance or are part of a program or activity of an entity that receives federal financial assistance, Section 504 requires that housing providers cover the cost of reasonable modifications. (24 C.F.R. § 8.33; [Joint Statement of HUD and the DOJ: Reasonable Modifications Under the Fair Housing Act](#) (Mar. 5, 2008) at Question 31 [as of Sept. 6, 2023].)

D. Assistance Animals

Both state and federal law provide people with disabilities the right to have an assistance animal in housing. (Cal. Code Regs., tit. 2, § 12185; Civ. Code, § 54.1, subd. (b)(6); 28 C.F.R. §§ 35.136, 36.302(c); see also Gov. Code, § 12927, subd. (c)(1).) This includes “service animals” and “emotional support animals.”

1. Service Animals

A “service animal” is an animal that is trained to do a task that helps a person with a disability. (Cal. Code Regs., tit. 2, § 12005, subd. (d)(1); 28 C.F.R. §§ 35.104, 35.136, 36.104, 36.302(c) [although “service animal” under federal law is limited to dogs and miniature horses, because California law is broader by including different species of animals, California law is controlling in this instance].) A service animal does not require professional training or certification. Instead, the animal can be trained by the individual with a disability or other individual. (Cal. Code Regs., tit. 2, § 12005, subd. (d)(1); 28 C.F.R. §§ 35.136(f), 36.302(c)(6); [Frequently Asked Questions about Service Animals and the ADA](#) (Feb. 28, 2020) U.S. Dep’t of Justice, at Question 5 [as of Sept. 6, 2023].)

Under state law, an individual with disabilities has a right to a service animal in housing. (Cal. Code Regs., tit. 2, § 12185, subd. (b).) This includes both tenants and visitors. (*Ibid.*) The only questions that can be asked to determine if the animal is a service animal are: 1) “Are you an individual with a disability?” and 2) “What is the disability-related task the animal has been trained to perform?” (*Ibid.*) The individual with a disability cannot be asked to have the animal demonstrate the task. (*Ibid.*) An animal vest, ID card, or certification does not, in and of itself, constitute verification of disability or need for reasonable accommodation. (Cal. Code Regs., tit. 2, § 12185, subd. (d)(7).)

2. Emotional Support Animals

An “emotional support animal” (ESA) is an animal whose mere presence provides comfort or support to a person with a disability. An ESA can be any type of animal. Unlike a service animal that performs a trained task, an ESA does not need to be trained, nor does it need to be registered or certified to serve as an ESA. (Cal. Code Regs., tit. 2, §§ 12005, subd. (d)(2), 12185, subd. (c).) For more information about assistance animals, see the California Civil Rights Department’s [Emotional Support Animals and Fair Housing Law](#).

Under state law, an individual may request to have an emotional support animal as a reasonable accommodation in housing. (Cal. Code Regs., tit. 2, § 12185, subd. (c); *Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com.* (2004) 121 Cal.App.4th 1578.) The process for making this reasonable accommodation request mirrors the general process described above.

3. Restrictions for Assistance Animals in Housing

State law permits housing providers to set reasonable restrictions for assistance animals. Some permitted restrictions include requiring the assistance animal be kept under the owner’s control, requiring disposal of animal waste, and requiring the owner to prevent nuisance behavior as long as preventing the behavior does not interfere with performance of the animal’s duties. (Cal. Code Regs., tit. 2, § 12185, subd. (d)(6); 28 C.F.R. §§ 35.136(b)-(d), 36.302(c)(2)-(4).) For example, a “no noise” rule

job of barking to alert an individual of an imminent seizure, but incessant barking when the individual is not at home may violate reasonable restrictions relating to nuisance. Any restrictions may not be greater than those imposed upon other animals on the property. (Cal. Code Regs., tit. 2, § 12185, subd. (d)(6).)

An individual may have multiple assistance animals, but each must meet the requirements, and a housing provider may consider the impact of multiple assistance animals when determining whether the request constitutes an undue burden or fundamental alteration. (Cal. Code Regs., tit. 2, § 12185, subd. (d)(4).)

State law also prohibits housing providers from imposing certain restrictions. For example, housing providers may not apply breed, size, and weight limitations for assistance animals (other than the ADA restrictions relating to miniature horses as service animals). (Cal. Code Regs., tit. 2, § 12185, subd. (d)(5); 28 C.F.R. §§ 35.136(i)(2), 36.302(c)(9)(ii).) Additionally, a housing provider cannot require a pet fee, additional rent, or other additional fee, including additional security deposit or liability insurance, for an assistance animal. (Cal. Code Regs., tit. 2, § 12185, subd. (d)(2).) But an individual with an assistance animal may be required to cover repair costs for damage the animal causes to the premises, beyond ordinary wear and tear. (Cal. Code Regs., tit. 2, § 12185, subd. (d)(3).)

A housing provider may only exclude an assistance animal if permitting the animal would: (1) fundamentally alter the provider's services or operations; (2) cause the provider undue financial and administrative burden; or (3) constitute a direct threat to the health or safety of others (i.e., a significant risk of bodily harm) or would cause substantial physical damage to the property of others, and such risks cannot be sufficiently mitigated or eliminated by a reasonable accommodation. (Cal. Code Regs., tit. 2, §§ 12179, subd. (b), 12185, subd. (d).) A determination that an assistance animal poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct. (Cal. Code Regs., tit. 2, § 12185, subd. (d)(9)(B).) The determination cannot be made on evidence that is so old it is not credible or reliable, or on mere speculation or fear about the types of harm or damage an animal may cause or on evidence about harm or damage that other animals have caused. (*Ibid.*)

If an individual with a disability is denied permission to have an assistance animal, the individual is still entitled to all the rights and privileges that otherwise would have been accorded the individual, so long as the individual no longer has the animal. (Cal. Code Regs., tit. 2, § 12185, subd. (d)(8).)

III. COMPLAINTS

An individual who believes they have been discriminated against in housing under any of the laws described in this publication may have options to file complaints with a government agency or in court. Please be aware that these complaints may have strict timeframes for filing and other requirements. It is best for an individual wishing to file a lawsuit to consult with a lawyer as soon as possible.

A. For Violations of State Law

If an individual believes they have experienced discrimination under the Unruh Act, the DPA, or Government Code section 11135, they may file a complaint with the California Civil Rights Department (CRD). (Gov. Code, §§ 12980, 12989.1, 12930.) CRD is authorized to take individual complaints and investigate and enforce these laws to vindicate individual victims' rights. (Gov. Code, § 12930, subd. (f).) Information about how to file a complaint can be found at the [CRD website](#). The Attorney General, a city attorney, a district attorney, or the Department of Rehabilitation acting through the Attorney General also has authority to enforce these laws. (Civ. Code, §§ 52, 55.1.) The individual may also file a private lawsuit. (Civ. Code, §§ 52, 55; Gov. Code, § 11139.)

B. For Violations of Federal Law

If an individual believes they have experienced discrimination under federal housing law, in addition to filing with CRD as stated above, they may file a complaint with HUD. (42 U.S.C. §§ 3610 and 3612.) For more information about how to file a complaint, see [HUD's website](#). The individual may also file a private lawsuit. (29 U.S.C. § 794(a).)

For questions or comments about this publication, please contact the California Department of Justice's Disability Rights Bureau within the Civil Rights Enforcement Section at DisabilityRights@doj.ca.gov.

For individual complaints and inquiries, please contact the [California Civil Rights Department \(CRD\)](#), formerly known as the Department of Fair Employment and Housing. Please note that the California Department of Justice, unlike CRD, only pursues systemic violations by local governmental entities or companies directly impacting the general public or large groups of individuals. It does not handle individual complaints or inquiries. It also does not represent individuals, provide legal advice, or provide updates about its investigations and/or litigation, even to individuals who provided information about those matters. It also does not handle cases involving isolated violations of law, matters against state-level public entities, or out-of-state conduct.

To report a complaint to the California Department of Justice, please contact the Public Inquiry Unit (PIU). PIU staff may not respond to every inquiry, cannot answer legal questions or give legal advice, and cannot act as a personal lawyer for individuals who report a complaint. Complaints may be referred to a more appropriate agency.

For more information about reporting a complaint against a business or company to PIU, visit the [Consumer Complaint webpage](#).

For more information about reporting a complaint against another entity to PIU, visit the [General Comment, Question or Complaint webpage](#).