

THE BASICS OF FAIR HOUSING LAW: Continuum of Care



Fair Housing Center of the
Legal Aid Society of San Diego, Inc.

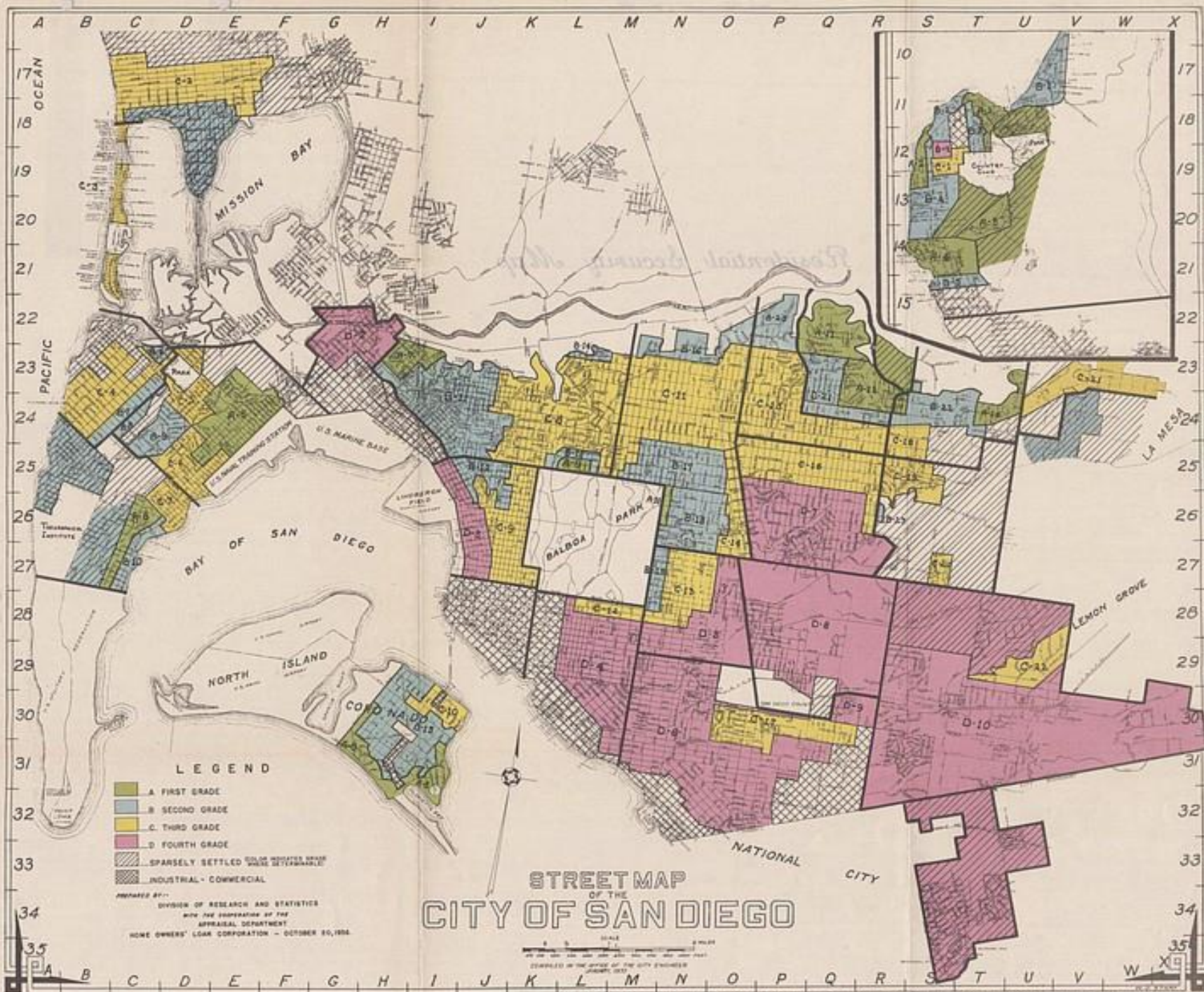
Fair Housing

as a Risk Management Tool

- DO YOU KNOW THE LAW?

- The ability of persons of similar income levels who are seeking housing in similar housing market and who have like qualifications, to have available to them the same range of housing choices, regardless of race, color, religion, national origin, sex, familial status or disability
(Federal Law)







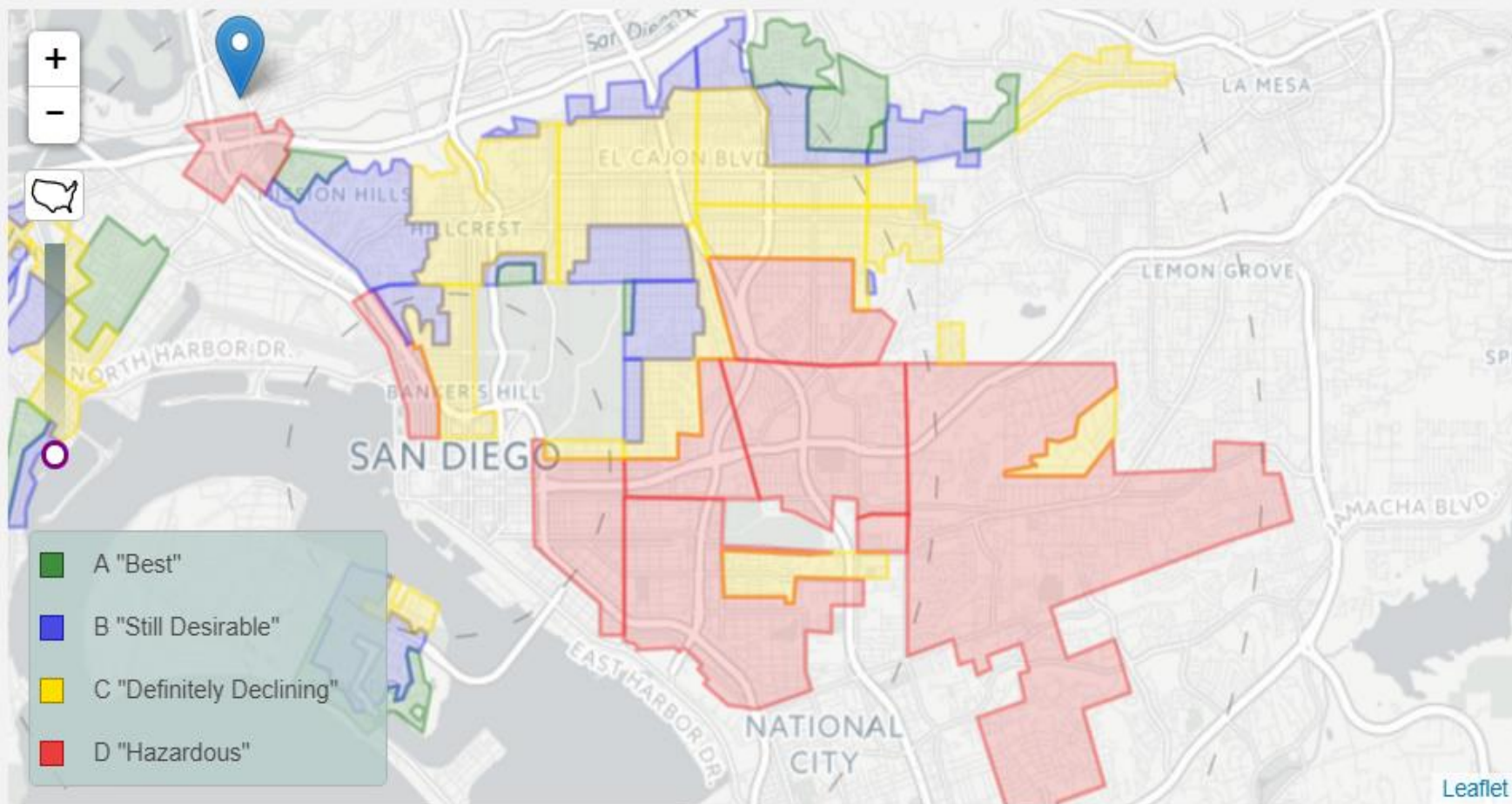
MAPPING INEQUALITY Redlining in New Deal America

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MAPPING INEQUALITY Redlining in New Deal America

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Search by city or state

in A-12. This area has recently been annexed to the City of San Diego.

Topography, gentle canyons and mesa lands, adapted to high class landscaping. Canyons considered very desirable for homesites. Residents white, with a few of the upper class Spanish families, consisting of Naval Officers, business and professional men and retired people. Income range \$3600 up. No ratio of concentration; no threat of infiltration, restricted to the Caucasian race. Type of construction - one and two story Spanish stuccos, interspersed with some English Colonial. Average age approximately five years. Cost range of construction \$4500 to \$60,000. Building restrictions by deed, \$4000 to \$10,000; architecturally controlled. This area is known as Talmadge Park, Nos. I, II and III. No. I being the older section, which, however, has an average age not to exceed nine years. No. III at present is one of the hottest buildings pots in the City; there being at the present time approximately thirty-eight new homes building in this area. This area, together with the hatched green area, which is the Northern part of this, has recently been annexed to the City of San Diego. Schools of all types, together with State College, transportation, markets, etc., easily accessible to this area. Street improvements in and paid for. Adequate lighting facilities. No flood or other hazards. Fog condition negligible. District highly regarded generally; large demand for rentals. Approximately 60% developed; 85% owner occupied; 15% rented; no vacancies.

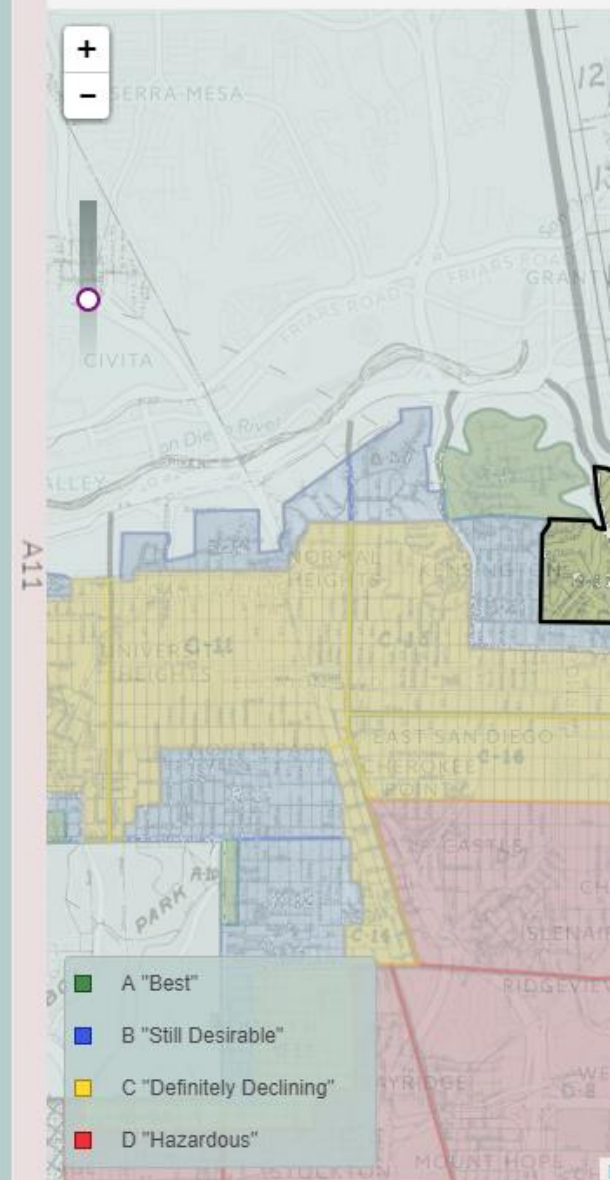
This is similar to A-12, but not quite so desirable. This area is in Mattoon District, and at this time there is no development whatsoever. If and when Mattoon situation is settled or cleared up, this area will become very active.

This area is known as the El Cerrito area. Topography of the land

Close

Leaflet

A12



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improvements and infiltration of apartments, rooming houses, etc. lowered the class of the property. Some of the best apartment houses in the city in the area but there are many of the medium or lower grade. The district definitely declining from a residential standpoint.

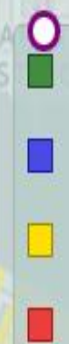
C-10. This area lies along the Bay and is a desirable district. However in this area is located the servants quarters or the colored population of Coronado. There is considerable building going on at this time and were it not for the colored population and a dump at the northeast portion of the area, same would be classified as a blue area and comparable to B-13. It is absolutely desirable with exception of the facts as set out above and it is necessary for this exclusive city to have such an area. In all other respects it compares favorably with B-13.

C-11. Topography practically level. Inhabited for the most part by lower salaried white-collar classes, mechanics, laborers, etc. Probable range of income \$1000 to \$2000 per year. Residents mostly white with some

Close

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CO





Rental Housing Discrimination on the Basis of Mental Disabilities: Results of Pilot Testing

Study of Rental Housing
Discrimination on the Basis of
Mental Disabilities:
Final Report



PD&R

U.S. Department of Housing and Urban Development | Office of Policy Development and Research

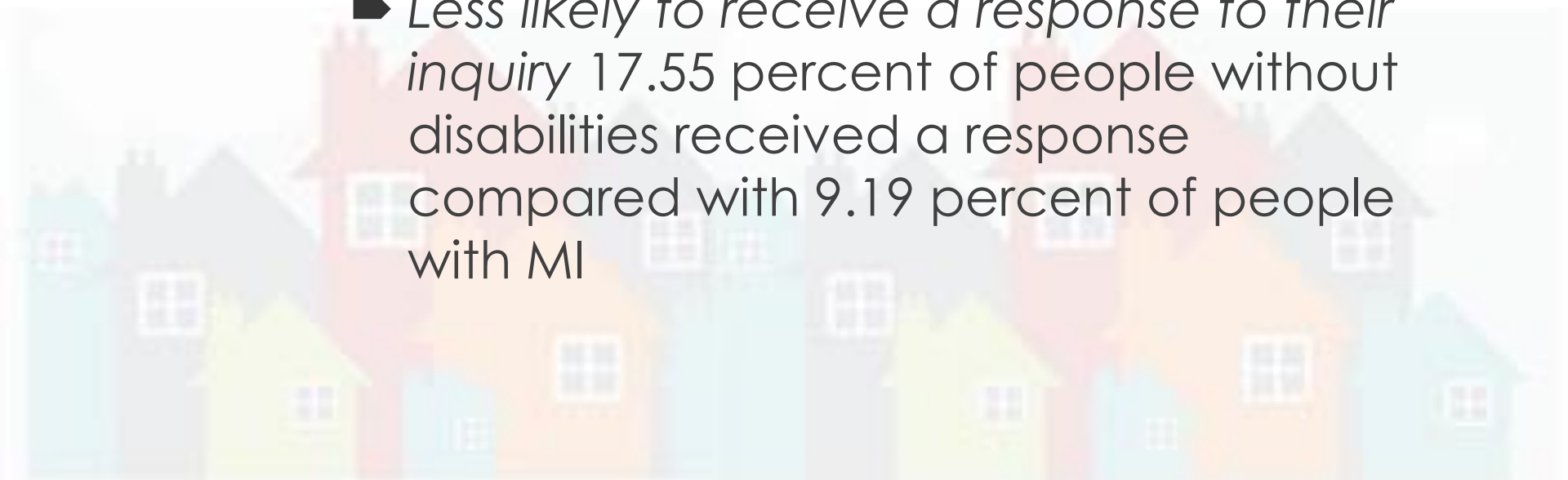
Testing Script

- Hello. Your apartment (<specify location>) seems to be what I had in mind. Is it still available? I'd like to come by and view the apartment; could you contact me with an available time to do so? I have a <disability identifier> and I've been living in <alternate housing identifier> but I want to get my own apartment now. Thanks, <name>



Summary of Findings

- The testing conducted in this study documented significant levels of adverse differential treatment toward individuals with MI when compared with individuals who did not have MD.
- *Less likely to receive a response to their inquiry* 17.55 percent of people without disabilities received a response compared with 9.19 percent of people with MI



Summary of Findings

More likely to be encouraged to look at a different unit than the one advertised in telephone testing, a potential indicator of steering people with MI toward specific buildings or areas within rental complexes, resulting in segregated living patterns



Summary of Findings

- **The agent made overt comments related to disability during testing:**
- Quotation: “We need to keep the crazies out” regarding criminal and credit background check.
- Quotation: “Do you think that she should consider renting an apartment if someone needs to remind her to pay the rent?”



Brief Overview of the **Federal Fair Housing Act**

- Passed in 1968, days after the assassination of Rev. Dr. Martin Luther King, Jr.
- Significantly strengthened when it was amended in 1988.



Fair Housing Act of 1968 – “First Protected Classes”

Prohibits discrimination in housing on the basis of
“protected class status”

- **Race**
- **Color**
- **National Origin**
- **Religion**



Extinguishing Housing Discrimination Through Education

Fair Housing Act of 1968 - "Protected Classes"

- In 1974, Congress amended the Act to include discrimination on the basis of sex.



Extinguishing Housing Discrimination Through Education

Fair Housing Act of 1968 - "Protected Classes"

Sex-Based Discrimination Involves:

- SEXUAL HARASSMENT;
- CREATION OF A HOSTILE ENVIRONMENT; OR
- QUID PRO QUO.



NEW HUD RULE 24 CFR Part 100

Quid Pro Quo and Hostile Environment

Harassment Discriminatory Housing Practices Under the Fair Housing Act

- HUD amended its fair housing regulations to formalize standards for use in investigations and adjudications involving alleged harassment.



NEW HUD RULE 24 CFR Part 100

Quid Pro Quo and Hostile Environment

Harassment Discriminatory Housing Practices Under the Fair Housing Act

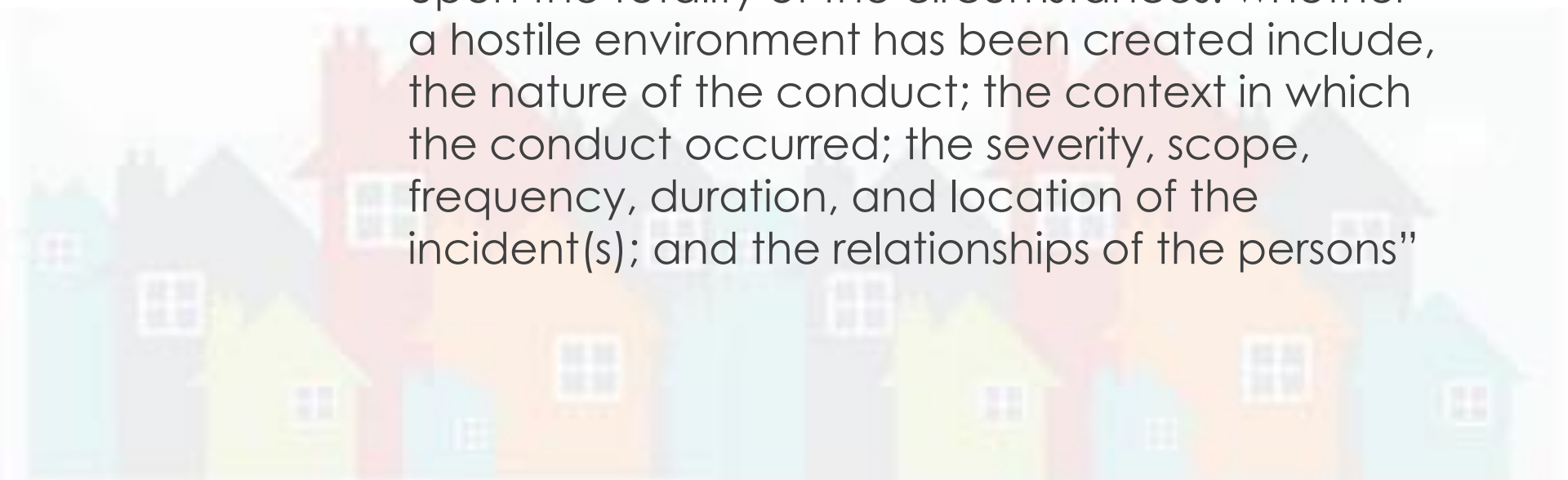
- “A person’s conduct may constitute quid pro quo harassment even where the victim acquiesces or submits to the unwelcome request or demand.”
- “Conversely, a person’s conduct may constitute quid pro quo harassment where the person takes or threatens to take an action that adversely affects the victim because the victim has refused to acquiesce or submit to the unwelcome demand.”

NEW HUD RULE 24 CFR Part 100

Quid Pro Quo and Hostile Environment

Harassment Discriminatory Housing Practices Under the Fair Housing Act

- “Hostile environment harassment exists depends upon the totality of the circumstances. whether a hostile environment has been created include, the nature of the conduct; the context in which the conduct occurred; the severity, scope, frequency, duration, and location of the incident(s); and the relationships of the persons”



ADDED DOMESTIC VIOLENCE PROTECTIONS IN FEDERALLY-ASSISTED HOUSING AND PROGRAMS

- **Violence Against Women Act (VAWA)**
- Provides specific protections for victims of domestic violence, dating violence, or stalking in federally assisted housing including:
 - Continuum of Care
 - ESGP
 - HOME
 - Section 202
 - Section 811
 - HOPWA
 - Multi-family housing
 - Public Housing
 - (Section 8)



VIOLENCE AGAINST WOMEN ACT (VAWA)

Prohibits: denial of admission to, denial of assistance under, termination from participation in, or eviction from:

- housing on the basis or as a direct result of the fact that the applicant or tenant has protected status under VAWA
- Requires notice of rights under VAWA and emergency housing transfer options
- Protects lesbian, gay, bisexual, and transgender as well as heterosexual victims of domestic violence



Fair Housing Amendments

Act of 1988 - “Protected Classes”

- In 1988 Fair Housing Amendments Act added discrimination on the basis of disability and familial status (families with children under 18).

Note: Disability covered in depth later.

- Familial status denotes-Person(s) having children/ legal custody, or their designees, of an individual under the age of 18 years. It includes pregnant women or someone in the process of securing legal custody.



Fair Housing Amendments

ACT OF 1988 “Protected Classes”

- The 1988 Amendments state that reasonable occupancy requirements are permitted.
- HUD has adopted the so-called Keating Memo, which generally approves a two person per bedroom standard and also allows for great flexibility depending upon the particulars of the premises and family make-up that would allow for additional occupants.



Fair Housing Amendments

ACT OF 1988 “Protected Classes”

- two plus one model occupancy standard DFEH has adopted.
- The California Health & Safety Code Section 17922(a)(1) requires each municipality, to adopt the Uniform Housing Code. UHC § 503(b) permits, generally, occupancy of a dwelling by two persons in each habitable room with a minimum of 120 square feet of floor area, requiring an additional 50 square feet for each occupant in excess of two.



Seven Protected Classes

(FEDERAL)

1. Race
2. Disability
3. Familial status
4. National origin
5. Sex
6. Religion
7. Color



Extinguishing Housing Discrimination Through Education

FAIR HOUSING PROTECTIONS UNDER STATE LAW IN CALIFORNIA



State of California Fair Housing Laws

Protected Classes: (State)

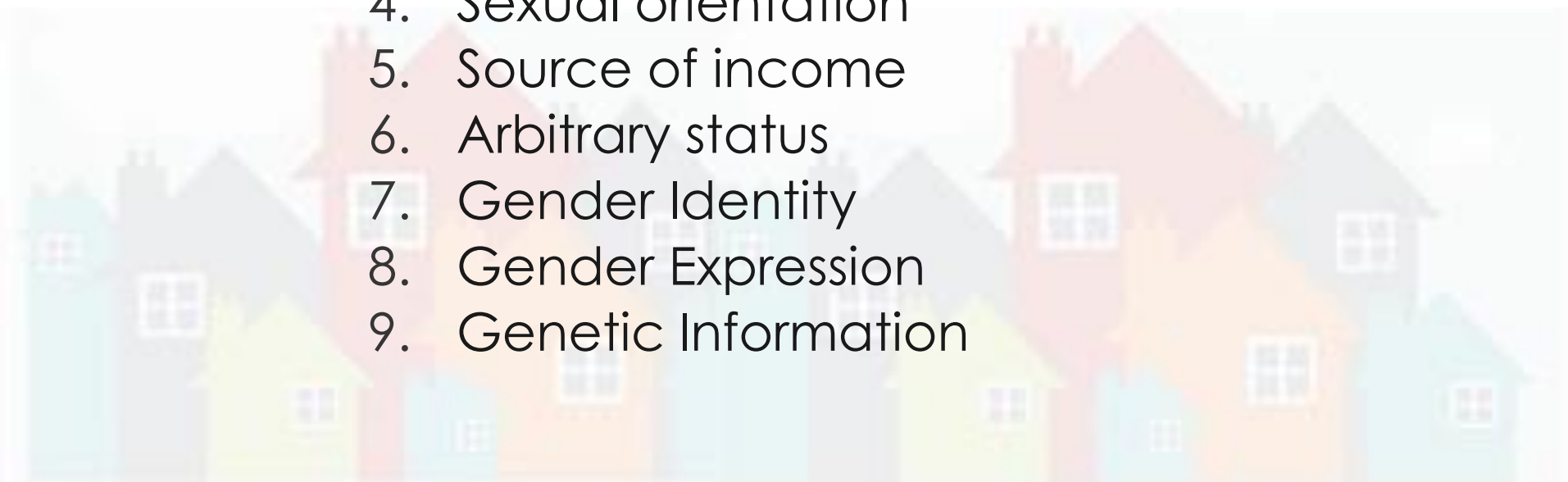
1. Race
2. Disability
3. family status
4. National origin
5. Sex
6. Religion
7. Color



State of California Fair Housing Laws

More Protected Classes: (State)

1. Age
2. Ancestry
3. Marital status
4. Sexual orientation
5. Source of income
6. Arbitrary status
7. Gender Identity
8. Gender Expression
9. Genetic Information



NEW LAW: San Diego Source of Income

It is unlawful for any person to do any of the following acts, wholly or in part, based on a person's *source of income* (except as may be necessary to comply with any program requirements related to *source of income*):

- 1. To refuse to enter into or renew an agreement for *tenancy*;
- 2. To interrupt or terminate any *tenancy*;
- 3. To falsely represent that a *rental-unit* is not available for *tenancy*;
- 4. To require inclusion in the terms of an agreement for *tenancy* any clause, condition, or restriction; or
- 5. To restrict a tenant's access to facilities or services on real property associated with the *tenancy*, or refuse repairs or improvements to real property associated with the *tenancy*.



NEW LAW: San Diego Source of Income Anti-Discrimination

- *Source of income* means all lawful, verifiable sources of income, or rental assistance from any federal, state, local, or nonprofit-administered benefit or subsidy program, or any financial aid from any rental assistance program, homeless assistance program, security deposit assistance program, or housing subsidy program, whether paid directly to the program participant, landlord, or representative of either.



NEW LAW: San Diego Source of Income Anti-Discrimination

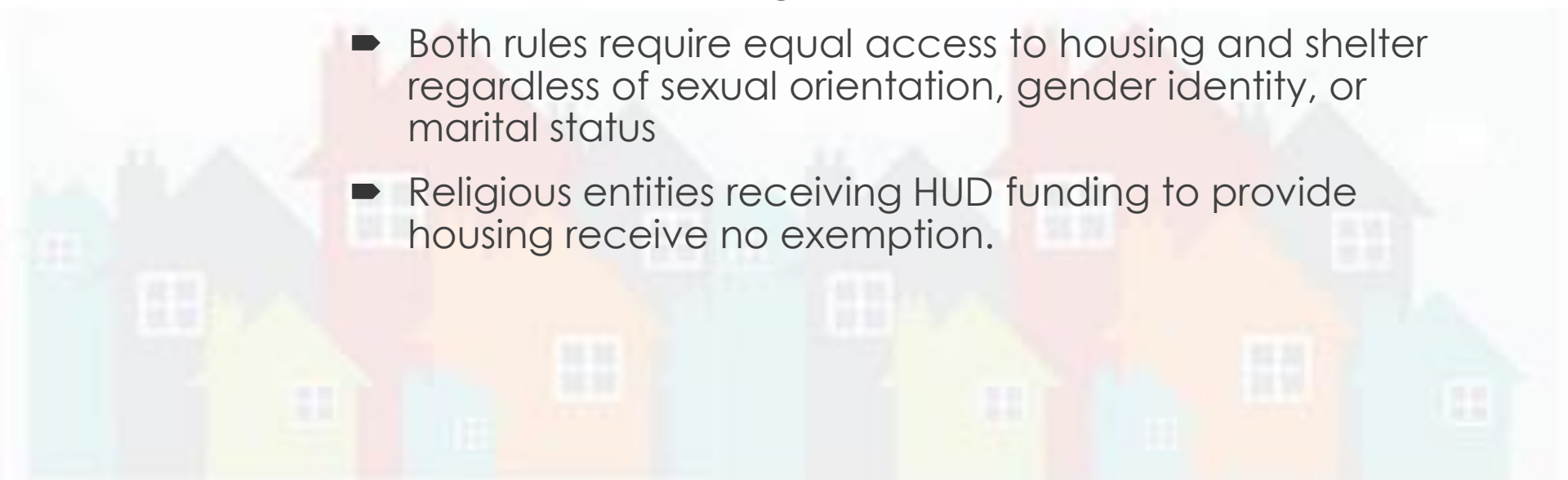
► Enforcement and Remedies

- (a) An aggrieved person claiming a violation of this Division may file an action against a person in a court of competent jurisdiction for a violation(s) that is alleged to have occurred on or after **August 1, 2019**.
- (b) An aggrieved person may seek an injunction under this section.
- ((c) The court may award monetary damages to an aggrieved person who proves a violation of this Division. If the court determines that a violation occurred during a *tenancy*, then the court shall award to the individual whose rights are violated three (3) times the amount of one month's rent that was being charged for the *rental-unit* at the time of violation.
- (d) The court may award punitive damages, as well as attorneys' fees and costs of action.
- (e) Nothing in this section shall be interpreted to limit or restrict the City's authority to administer and enforce the provisions of this Division.

CPD EQUAL ACCESS RULE

The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, effective March 5, 2012 was supplemented on October 21, 2016 by the “Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs” Final Rule

- 2012 Equal Access Rule updated the definition of “family” in HUD programs
- Both rules require equal access to housing and shelter regardless of sexual orientation, gender identity, or marital status
- Religious entities receiving HUD funding to provide housing receive no exemption.



CPD EQUAL ACCESS RULE

The 2012 Equal Access Rule required equal access to HUD-assisted or HUD-insured housing regardless of sexual orientation, gender identity, or marital status. The 2016 CPD Equal Access Rule affirmed these protections extend to assistance provided under the following Community Planning and Development Programs:

- Community Development Block Grant (CDBG) Program
- Housing Opportunities for Persons With AIDS (HOPWA)
- HOME Program
- Emergency Solutions Grant (ESG) Program
- **Continuum of Care Program**



CPD EQUAL ACCESS RULE

- Shelter placement for transgender individuals should be determined based on each individual's identity and preference giving deference to the individual's safety concerns. A person may identify as a transgender male, but feel unsafe staying in the men's shelter given their state of transition
- Similarly, staff may perceive of an individual as female, but learn during intake that they identify as male and prefer to be placed in men's shelter
- Clarifies how temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities comply with the requirement that equal access be provided to programs, buildings, facilities, services, benefits, and accommodations in accordance with an individual's gender identity

CIVIL RIGHTS LAWS APPLICABLE TO HOUSING

- Title VI of the Civil Rights Act of 1964
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990



CIVIL RIGHTS LAWS APPLICABLE TO HOUSING

- **Title VI of the Civil Rights Act of 1964** Prohibits discrimination based on race, color, or national origin in programs or activities that receive federal financial assistance. Prohibits both intentional discrimination as well as discriminatory effects of policies, criteria, and methods of administering programs.



CIVIL RIGHTS LAWS APPLICABLE TO HOUSING

- **Section 504 of the Rehabilitation Act of 1973**
- With respect to any program receiving federal financial assistance, provides that no otherwise qualified person shall, because their disability, be:
 - Excluded from participation
 - Denied benefits, or
 - Subjected to discrimination
- Applies to the availability of services, accessibility, delivery, employment and the administration of programs



CIVIL RIGHTS LAWS APPLICABLE TO HOUSING

- **Americans with Disabilities Act (ADA) of 1990**
- Regulates places of public accommodation and services operated by private entities
- Requires that facilities **open to the public** consider the needs of persons with disabilities, e.g. a **Leasing or Coordinated Intake Office**.
- People with disabilities who visit the facility must have access to all services and amenities. Consider accessibility of **parking, curbs, ramps, stairs, elevators, public drinking fountains, restrooms and public telephones, etc..**



CRIMINAL RECORDS

- HUD issued guidance for the use of Criminal Records by Providers of Housing and Real Estate-Related Transactions in April of 2016.
- Criminal Records are not a protected category.
- However, a policy or practice that restricts access to housing on the basis of criminal history can have a disparate impact on protected categories, such as race and national origin.
- Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions are likely to disproportionately affect African-Americans and Hispanics.

HUD Guidance April 4, 2016



Criminal records

- **All Housing-Fair Housing Act**

- Considerations by housing providers:

- A housing provider with a policy or practice that excludes persons with certain types of convictions must show that the policy excludes conduct by addressing a demonstrable risk to resident safety or health
- The policy or practice must consider the nature, severity, and recency of criminal conduct and show a relationship to risk to resident safety or health
- An individualized assessment of particular circumstances is likely to be a less discriminatory alternative; more likely to be upheld than categorical exclusions based on type of conviction
- Mitigating circumstances can be considered in the individualized assessment

Criminal records

- Mitigating circumstances
- HUD's guidance strongly suggests consideration of mitigating circumstances as part of a case by case assessment triggered by evidence of conduct that poses demonstrable risk to others
- Relevant individualized evidence might include:
 - The facts or circumstances surrounding the criminal conduct;
 - The age of the individual at the time of the conduct;
 - Evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and
 - Rehabilitation efforts.

Criminal records

Takeaway:

- NO BLANKET BANS ON CONVICTIONS
- NO BLANKET BANS ON ARRESTS
- ARREST \neq CONVICTIONS



Dwellings v. Temporary Housing



Housing Covered

- Any residential building or vacant land available for the sale or lease of a dwelling.
- Apartments, houseboats, homeless shelters*, migrant farm worker housing, time shares, special needs housing/others.
- Any place to which a person “intends to return.”



NEW DFEH REGULATIONS: “Housing accommodation” or “dwelling” includes:

- Single room occupancy hotel rooms and rooms in which people sleep within other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one bedroom or portion of the dwelling;
- Sober living homes;
- Transitional housing; supportive housing; licensed and unlicensed group living arrangements; residential motels or hotels; boardinghouses; emergency shelters; homeless shelters; shelters for individuals surviving domestic violence; cabins and other structures
- Recreational vehicles used as a home or residence



Exemptions Under the Fair Housing Act

Exemptions:

- Senior Housing Property with age restrictions.
- Ms. Murphy (Single Family Homeowners of three (3) or Less Housing Units with no use of broker/appraiser/other).

Note: This exemption does not apply to discriminatory advertising.

- Owner Occupied Units With Four Units Of Less

Note: This exemption does not apply to discriminatory advertising.

- Fraternal/Religion-Based Housing
- Roommates of Same Sex

Note: CA law only exempts an owner occupied dwelling with a single room rented to an individual. Gov't Code Section 12927 Subd. c

Exemptions

- **There are no exemptions for the discriminatory advertising prohibitions under 3604 (c).**
 - Includes statements made by housing providers.
 - These owners may be able to refuse to rent, but are prohibited from verbalizing their discrimination.



Rights, Remedies, and Responsibilities Under The FAIR HOUSING AMENDMENTS ACT

THE FAIR HOUSING AMENDMENTS ACT OF 1988 IS THE SOURCE OF LAW.

THIS ENACTMENT:

- Expanded coverage of FHA to prohibit discrimination in housing practices based on **disability**...
- Established design & construction requirements for multi-family housing (consisting of 4 or more dwelling units) built for 1st occupancy after March 13, 1991.
- Established Significant Monetary Penalties .

Disability - Definition of

Under federal & state fair housing laws, disability (handicap) means, with respect to a person:

- A physical or mental impairment which substantially limits 1 or more major life activities;
- A record of such an impairment;
- Or, being regarded as having such an impairment.



Disability - Definition of

- The State of California law was amended in 2000 to make significant changes to its disability laws. The definition of physical and mental disability was clarified to only require a “limitation” upon a major life activity, not a “substantial limitation” as required by federal law.



Examples of Impairments Which May Result in Disability

- Visual, speech, & hearing impairments
- Cerebral palsy
- Mental Illness
- Autism
- Epilepsy
- Muscular dystrophy
- Cancer
- Heart disease
- Diabetes
- HIV infection
- Drug addiction - Recovery
- Alcoholism - Recovery



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



Examples

- A landlord assists an applicant with mental health disability in filing out the standard application form.
- A landlord notifies a tenant with multiple chemical sensitivity in advance of painting and pest treatments.
- A landlord with a first come, first served parking policy makes an exception by creating a reserved parking space for a tenant, who because of her disability, has difficult walking and needs to park close to the building.



A Reasonable Modification

- is a physical change to a dwelling or common area.



Examples

- Ramps
- Flashing Doorbells
- Grab Bars
- Soundproofing

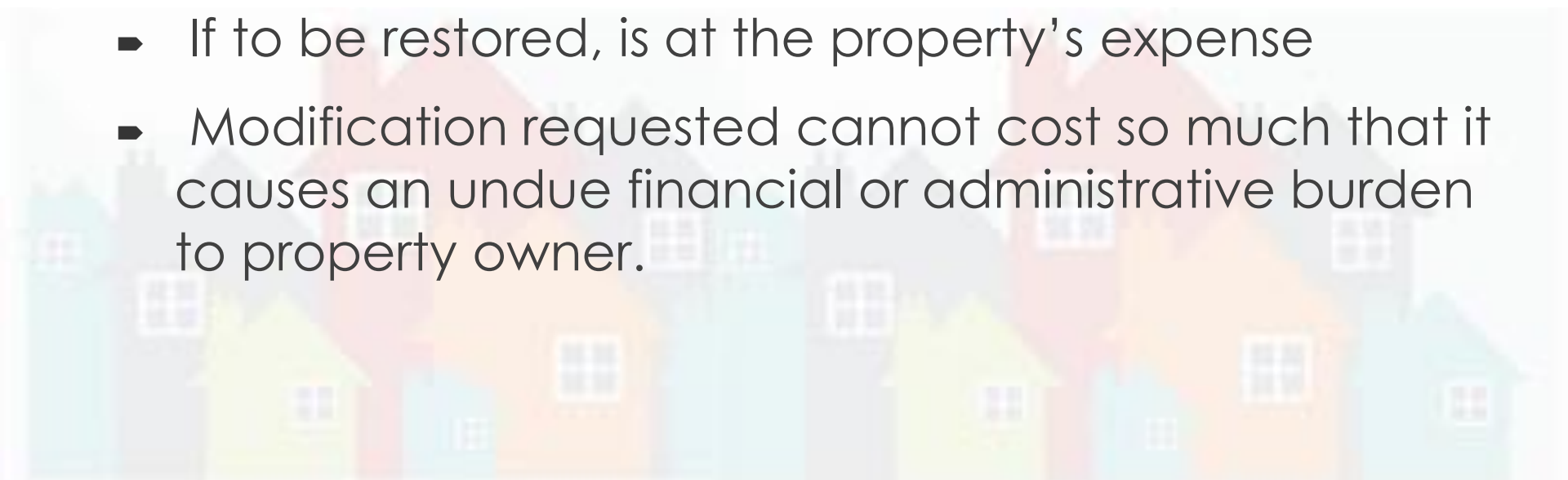


REASONABLE MODIFICATIONS: CONVENTIONAL HOUSING

- At tenant's expenses (*if property was built correctly*).
- Done in a workmanlike manner (contractor if over \$500 labor and materials).
- Tenant pays for and obtains permits
- Landlord can request changes be restored to original condition where reasonable, barring normal wear and tear, if it will negatively affect the next tenant
- Can establish an interest-bearing escrow account for restoration, interest accruing to tenant.

REASONABLE MODIFICATIONS: *SUBSIDIZED DIFFERENCES*

- Made at property's expense
- Property owner does the work
- Permits paid for by property owner
- If to be restored, is at the property's expense
- Modification requested cannot cost so much that it causes an undue financial or administrative burden to property owner.



REASONABLE MODIFICATIONS

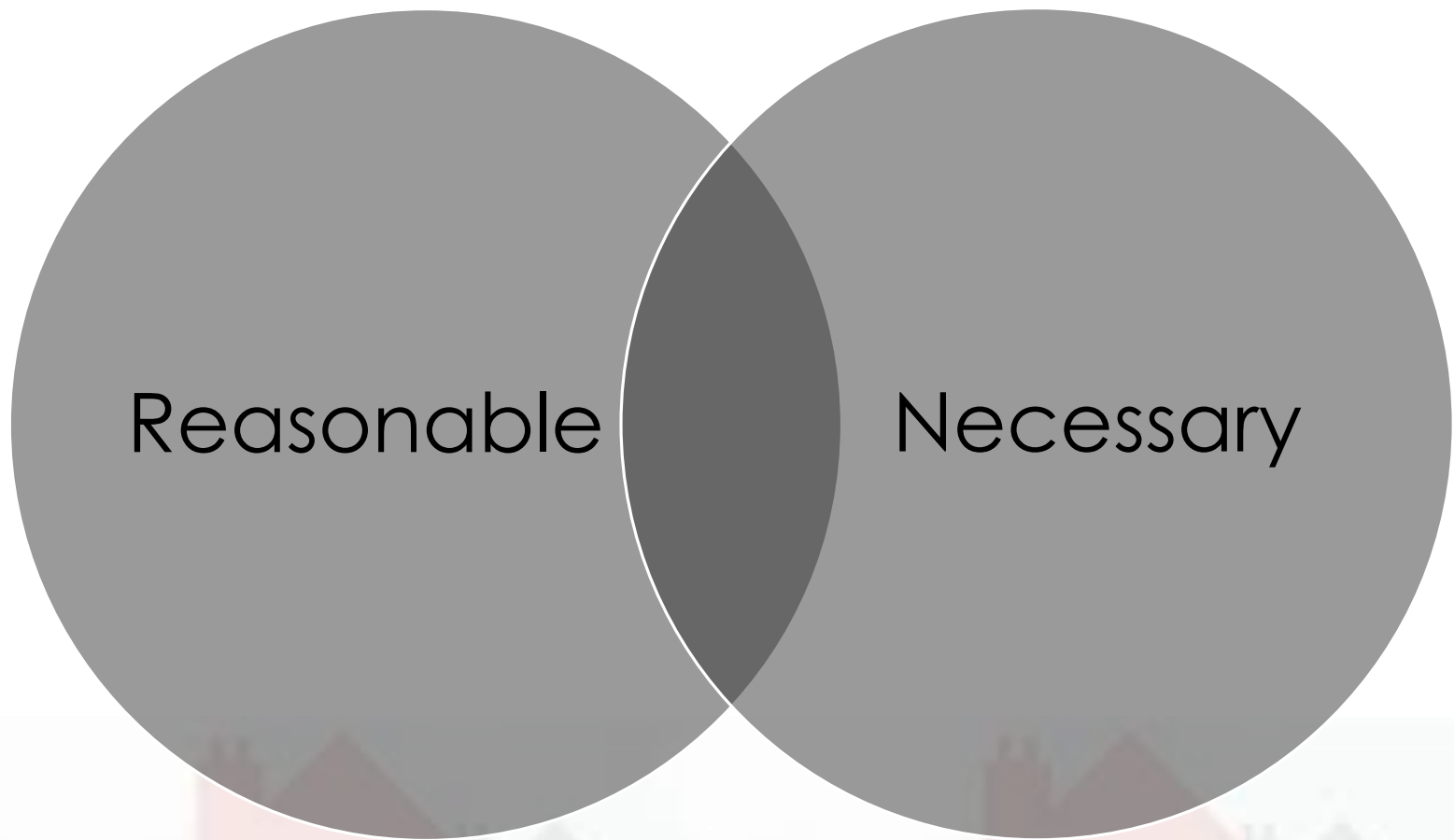
Common Examples:

- Wider doorways
- Lowered cupboards
- Ramps
- Lowered peephole
- Side by side fridge
- Grab bars
- Taller toilet
- Levered door handles
- Walk in tubs
- Roll in showers
- Lowered mirrors
- Removal of carpet
- Non-skid flooring
- Air conditioning
- Flashing detectors?

UN-REASONABLE MODIFICATIONS

- Removal of load-bearing wall
- Installing an elevator (*lift could be OK*)
- Adding a garden window
- Installing a costly step-in tub in a subsidized property (*subsidized properties pay for accommodations unless unreasonable*)





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

What is Reasonable?

1. Party requesting accommodation bears the initial burden of showing that the request is “reasonable.”
 - a. Reasonable on its face?
 - b. Ordinarily or in the run of cases?
 - c. Plausible?

2. Once this showing is made, the burden shifts to the housing provider to disprove reasonableness. Unless housing provider can prove that the requested accommodation is not reasonable, the accommodation must be provided.



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.** can't alter the essential nature of the operations.

What is “Necessary”?

Frees the tenant from a rule, policy, or practice that interferes with the person’s right to use and enjoy the dwelling.

Improves the tenant access to the unit by removing architectural barriers

Enhances the tenant’s quality of life by ameliorating the effects of the disability.

Enables the tenant to satisfy the essential requirements of tenancy the same as a non-disabled person can.



Nexus Required

There must be a connection between the disability, the requested change and the ability of the individual with disabilities to use and/or enjoy his or her housing.



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.



Verification

Housing provider may request reliable disability - related information

- 1) Necessary to verify that the person has a qualified disability,
- 2) Describes the needed accommodation, and
- 3) Shows the relationship between the disability and the need for the RA.



Verification

- If a person's disability is obvious or known, and the need for the requested accommodation is known, then the housing provider should not ask for any more information.



Verification

- If the disability is known or obvious, but the need is not, then the housing provider should ask only for information necessary to verify the need for the accommodation.



Verification

- If neither the disability nor the need for the accommodation is readily apparent, the housing provider should ask for verification of both the disability and the need for the accommodation.



Verification

- Usually not necessary:

To provide medical records or detailed information about nature of disability

Laflamme v. New Horizons



Common Issues

- Non-compliance with Lease Terms
- Direct Threat
- Service & Support Animals

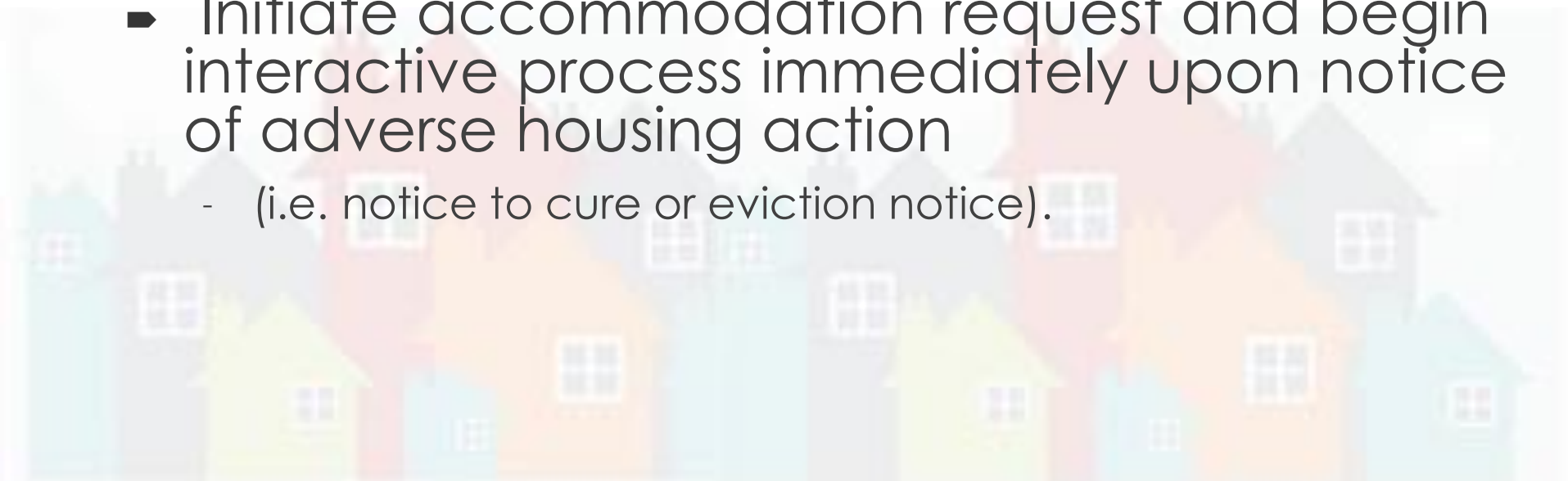


Non-Compliance with Lease Terms



Disability-Related Lease Violations

- Disability-related behaviors or needs may create a nuisance
 - (e.g. yelling at manager; night terrors) or otherwise breach lease terms.
- Initiate accommodation request and begin interactive process immediately upon notice of adverse housing action
 - (i.e. notice to cure or eviction notice).



Request for Accommodation

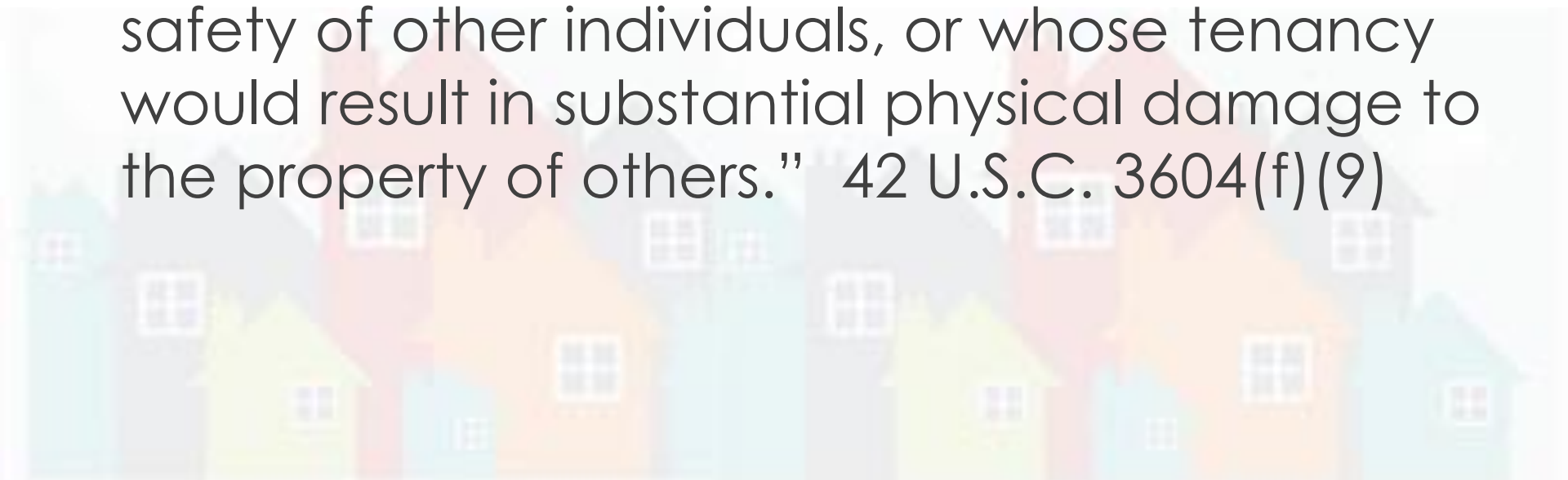
Must show:

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

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

“Direct Threat”

The Fair Housing Amendments Act does not protect 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)



Establishing Direct Threat

Analysis is objective, not subjective.

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.

DIRECT THREAT- HUD-DOJ JOINT STATEMENT at 4-5

In evaluating a recent history of overt acts, provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (i.e., a significant risk of substantial harm).

Provider may then:

- request that the individual document how the circumstances have changed so that he no longer poses a direct threat;
- obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy.

Timing of Request

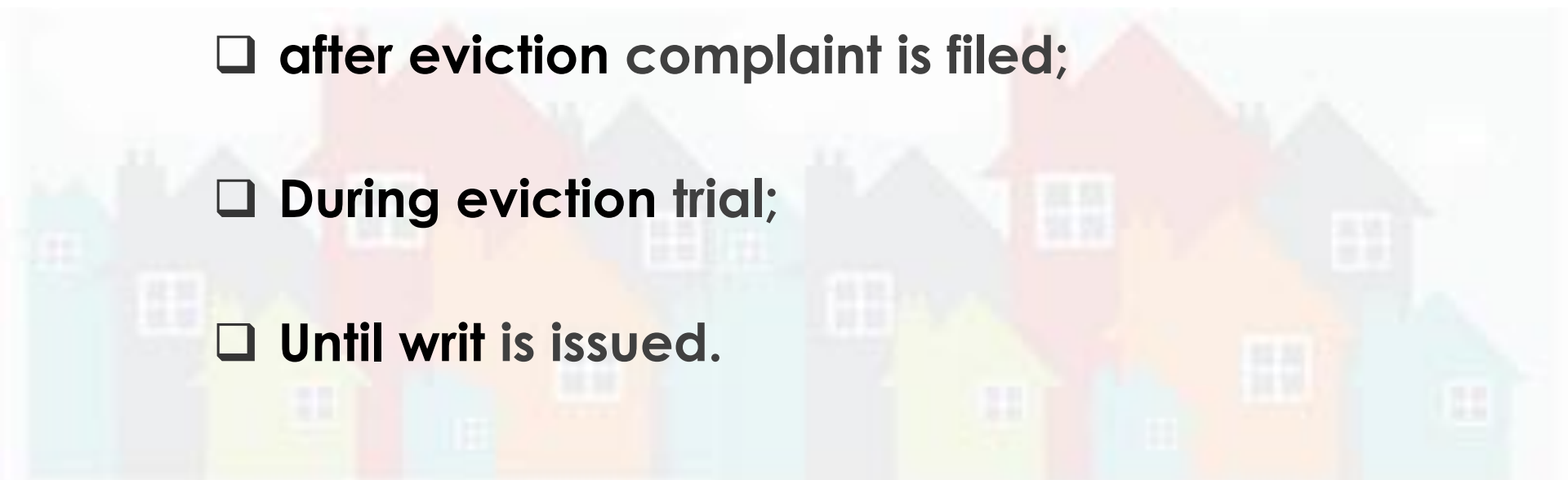
☐ Request must be considered even if housing provider learns of tenant's disability and need for the accommodation:

☐ **After notice of the eviction served;**

☐ **after eviction complaint is filed;**

☐ **During eviction trial;**

☐ **Until writ is issued.**



Assistance Animal vs. Service Dog

- ➡ Service Dogs: ADA

- ➡ Assistive Animals: Fair Housing Act



SERVICE DOGS (ADA)

Service animals are defined as dogs that are “individually trained to do work or perform tasks for people with disabilities.

“Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets.”

Miniature horse

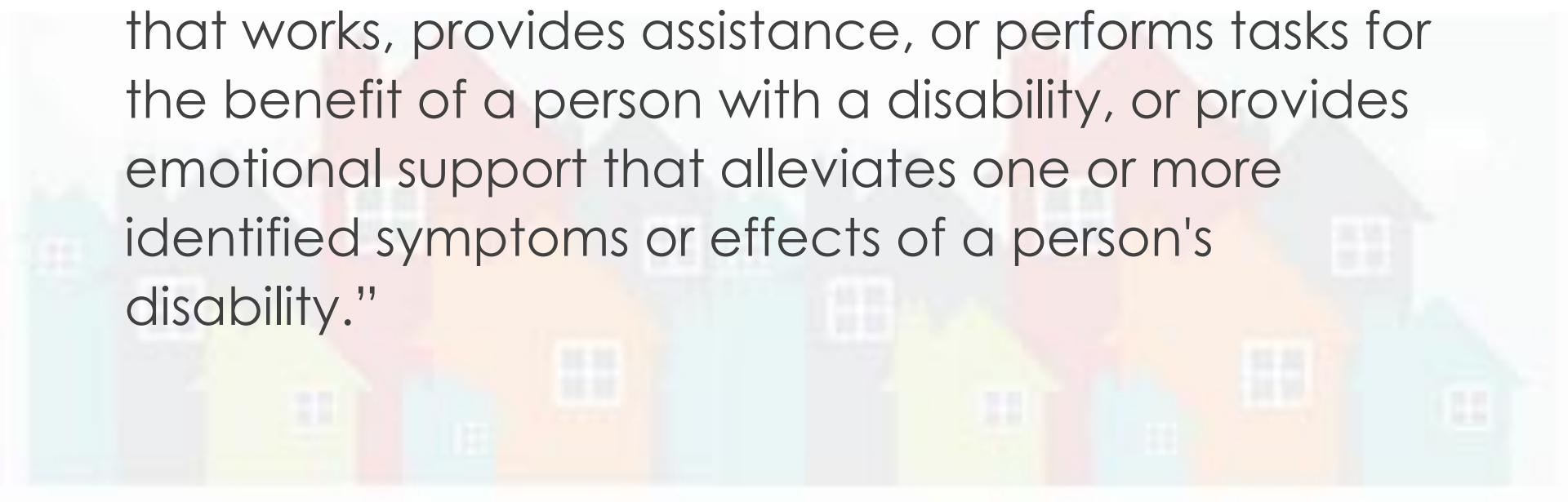


ASSISTANCE ANIMALS

(Fair Housing Act)

Federal Fair Housing Act (FHA) violations are administered with consideration of Section 504 & HUD's definition per HUD/DOJ Joint Statement of April 25, 2013:

“An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.”



Assistance Animals Requirements?

- ILLEGAL TO CHARGE A “PET DEPOSIT” or a “PET FEE” for a Assistance Animal a reasonable accommodation.
- No formal training required.
- NO breed, size, or weight RESTRICTIONS allowed for a REASONABLE ACCOMMODATION.
- Insurance company must allow.



Requirements?

- No restrictions about who may train the animal.
- No requirement that the animal be specially trained.
- Special tags, equipment, "certification" or special identification cannot be required.
- No species, breed or size limitations.



ASSISTANCE ANIMALS

When can assistive animal be denied as a direct threat to health and safety of other?

1. the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or
2. the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

ASSISTANCE ANIMALS

(Fair Housing Act)

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The Fair Housing ENFORCEMENT Process



LEGAL THEORIES

1. Intentional Discrimination:

- Actions where “Intent” to discriminate is discernible through evidence.

Examples:

1. Intentionally refusing to sell to an African American home buyer.
2. Intentionally steering Caucasian buyers away from minority neighborhoods.



LEGAL THEORIES cont.

DISPARATE IMPACT THEORY

- Actions, although unintentional, which result in discriminatory/disparate impact upon a “protected class”.

Example

1. Enforcing a “zero tolerance” policy on crime by evicting both the victim and perpetrator of domestic violence when women are more likely to be victims of domestic violence.

Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc. 576 U.S. ____ (2015). AND See New HUD Rule Issued to February 8, 2013

WHO MAY SUE?

- **ANY** aggrieved person
- Includes “any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur.”

[42 U.S.C. § 3610(a)]



WHO MAY SUE?

Parties to the litigation

► AGGRIEVED PARTIES MAY INCLUDE:

- Housing applicants;
- Their spouses, children and others who are closely associated;
- Neighborhood residents;
- Communities;
- Fair housing testers who are given false information;
- Fair Housing Organizations.



Who Can Be Held Liable?

1. Property Owners
2. Property Managers and Assistants
3. Maintenance Personnel
4. Lenders
5. Property Insurers
6. Public Housing Authorities
7. Subsidized Housing Programs



Who Can Be Held Liable?

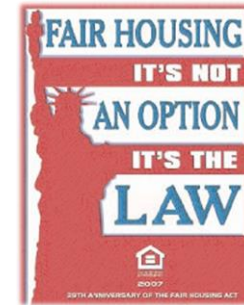
Cont'd

1. Affordable Housing Providers
2. Special Needs Housing
3. Assisted Care Homes
4. Low Income Housing Programs
5. Condo and Homeowner Associations
6. Time Shares
7. Others in Chain of Command
8. Homeless Shelters



Who Can Be Held Liable?

Cont'd



NOTE:

- Fair Housing Liability Is Non-Delegable and Ignorance of the Law or Circumstance is not an excuse that will avoid Liability.



Types of Enforcement

1. Conciliation
2. Out of Court Resolution very similar to mediation
3. Administrative Complaint Process
4. U.S. Department of Housing And Urban Development (HUD), a federal enforcement agency
5. U.S. Department of Justice (DOJ), a federal enforcement agency
6. California State Department of Fair Employment and Housing (DFEH), a state enforcement agency



Legal Remedies

- Compensatory damages for lost housing opportunity
- Punitive damages for egregious, willful and pattern behaviors
- Attorney's fees & costs
- Injunctive relief
- Criminal Prosecution (for Violence/Hate Crimes)



THANK YOU

Legal Aid Society of San Diego, Inc.

1-877-Legal Aid

(1-877 534-2524)

TTY 1-877-735-2929

