

# Fair Housing Law Training

Legal Aid Society of San Diego  
(844) 449-3500  
WWW.LASSD.ORG



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Purpose of presentation is to provide general information about your rights and responsibilities and not to provide specific legal advice.




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What is fair housing?

- Housing choice
- People with similar income levels in the same housing market should have the same range of choices available to them despite their protected class status.

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What is not fair housing?

- Landlord/tenant disputes – unless they are based on protected class

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## Federal Protected Classes

- Federal
  - Race
  - Color
  - National origin
  - Religion
  - Familial status
  - Sex (2021 Update)
  - Disability

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## California Protected Classes

- Race, color –
  - technically different but often alleged together
- Ancestry, national origin –
  - can include language
- Religion
  - includes all aspects of religious belief, observance, grooming
- Disability - mental, physical, developmental
- Sex, gender, pregnancy
- Sexual orientation
- Age

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## California protected classes

- Gender identity, gender expression
- Marital status-
  - marriage, non-marriage, divorced, separated etc.
- Familial status –
  - Rules that single out children are not ok (except pool)
  - Inquiries about children/refusing to rent
  - Overly restrictive occupancy standards
- Citizenship, primary language, immigration status (Covered under Unruh)
  - Cannot inquire on status, disclose citizenship status with the purpose of harassment/intimidation
  - Can request information to verify financial qualifications
- Source of income
  - Lawful, verifiable, income
  - Illegal to refuse because it came from family daycare,
  - City of San Diego Local Ordinance
  - New State law
- Military/Veteran status
  - Active and reserve
- Arbitrary

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## Discrimination

- When based on the protected categories it is illegal to:
  - Refuse to sell, rent, or lease rooms, apartments, condos or houses
  - Represent that a housing accommodation is not available for inspection, sale, or rental when it is in fact available
  - Deny a home loan or homeowner's insurance

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## Discrimination continued

- Offer inferior terms, conditions, privileges, facilities or services in connection with the housing accommodation
- Refuse to permit, at a disabled tenant's expense, reasonable modifications when necessary to accommodate a disability \*
- Refuse to make reasonable accommodations in housing rules, policies, practices, or services where necessary to afford a disabled person equal opportunity to use and enjoy a dwelling
- Retaliate against someone filing a complaint or asserting their rights under the fair housing law.

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## Updates in LGBT+ Fair Housing Protections

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## Executive Order 13988

- On January 20, 2021, President Biden issued Executive Order 13988 regarding LGBT+ protections under federal Fair Housing Act
- What changed?
  - “sex discrimination,” which is prohibited under fair housing laws, includes discrimination based on sexual orientation and gender identity
- What does this mean?
  - Someone who feels like they have been discriminated against based on their sexual orientation and/or gender identity can file an administrative complaint with HUD or file a federal lawsuit alleging fair housing violations
- Resources
  - Executive Order: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>
  - HUD Guidance: <https://www.hud.gov/sites/dfiles/FHEO/documents/WordenMemoEO13988FHActImplementation.pdf>

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## State Protections for LGBT+ Community

No change in California State law

Protections for gender identity, gender expression, and sexual orientation already exist in state fair housing laws

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## Fair Housing Protections for People with Disabilities

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### Laws

- Federal Fair Housing Act: 42 U.S.C. §§ 3604, et seq
- Section 504 of Rehabilitation Act: 29 U.S.C. §794
- Americans with Disabilities Act: 42 U.S.C. §§12131, et seq (and ADA Amendments Act of 2008)
- State laws (e.g., California's Fair Employment & Housing Act and implementing regulations)

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# Disability?

A disability is defined as a physical or mental impairment that

- substantially\* limits one or more life activities OR
- a record of such an impairment OR
- is regarded as having such an impairment.

CA law does not require that the disability "substantially" limits.

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## Covid-19 and Disability?

- Certain health conditions are at a high risk for complications if you contract Covid.
  - DFEH Guidance: Being diagnosed with Covid-19 can lead to a disability, especially if it results in inpatient care, continuing medical treatment, supervision by a health care provider, or lead to other conditions such as pneumonia.
    - <https://www.dfeh.ca.gov/covid-19-resources-and-guidance/>
- What is clearly illegal?
  - Tenants are protected from being denied housing because of their disability (I don't want you here because you are at higher risk of covid)

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## 504 Obligations

- If a property receives federal assistance they must not only follow the law but also make affirmative steps to make federally assisted housing accessible to people with disabilities.

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## Additional Protections for People with Disabilities

- Reasonable accommodations:
  - It is illegal to refuse to make reasonable accommodations in housing rules, policies, practices, or services where necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling
- Reasonable modifications:
  - It is illegal to refuse to permit, at a disabled tenant's expense, reasonable modifications when necessary to accommodate a disability
  - If the housing provider is a recipient of federal funds – at the housing provider's expense

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## The Interactive Process

### 2 CCR § 12177

- "Whenever a person who receives a request for a reasonable accommodation cannot immediately grant the requested accommodation, the Act requires the person considering the request to engage in an interactive process with the individual with a disability or the individual's representative."
- Purpose: to exchange information to identify, evaluate, and implement a reasonable accommodation that allows the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity.
  - Identifying alternatives
- Must be timely and done in good faith

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## Making a Request

- Must make a request (the person with a disability or an authorized representative)
- Writing is encouraged, but not required
- No magic words
- Medical verification of disability and disability related need may be requested, if not apparent
- Housing provider must consider the request and must enter into an interactive process and must do so in a timely manner
- Denial?
  - Not disabled
  - No disability related need
  - The accommodation would cause a change in services (fundamental alteration)
  - Undue financial and administrative burden
  - Direct threat to the health and safety of others or property

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## Timing of Request

- At application stage;
- At time of move-in;
- During tenancy;
- After notice of the eviction served;
- after eviction complaint is filed;
- During eviction trial;
- Until writ is issued.

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When must a housing provider grant the request?

- When a person with a disability makes a request that is necessary and reasonable.
  1. Person with a disability
  2. Necessary
  3. Reasonable

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**Verification of disability and need**  
Housing provider may request reliable disability related information

- Necessary to verify that the person has a disability;
- Describes the needed accommodation or modification; and
- Shows the relationship between the disability and the need for the request.

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## When Verification Can Be Asked For

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

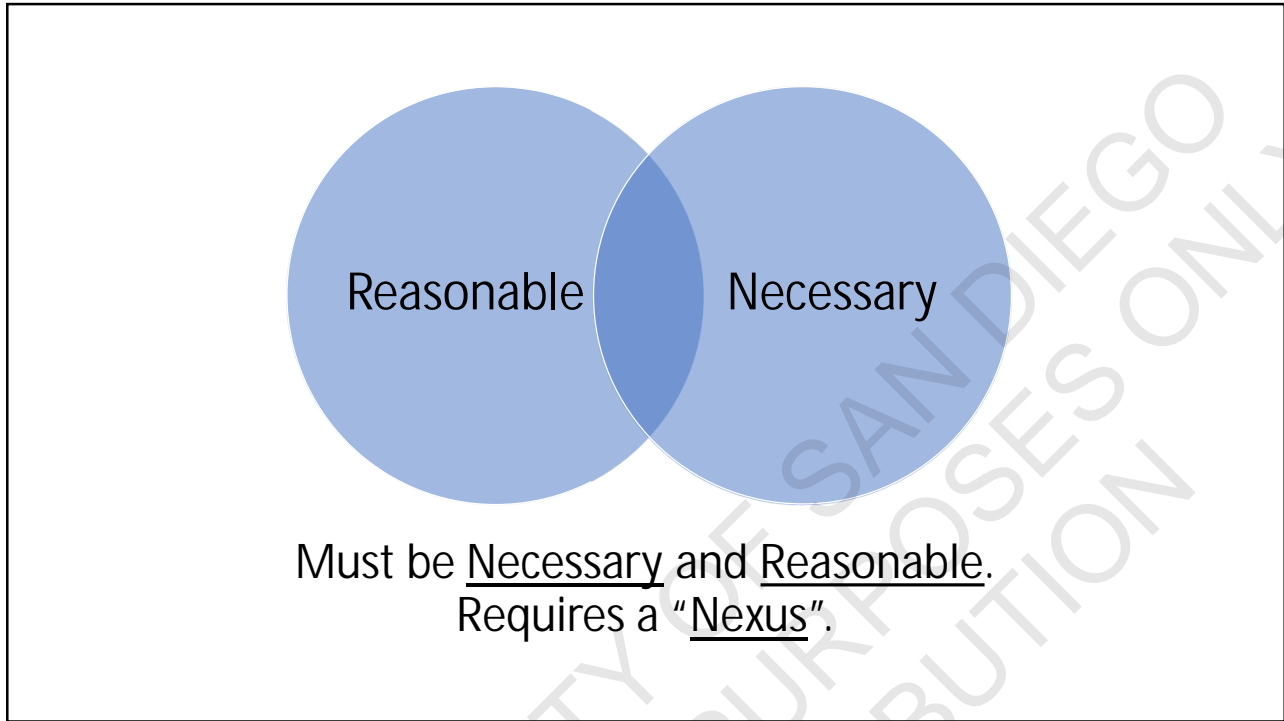
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If the disability is known or obvious, but the need is not, then the housing provider should ask only for information necessary to verify the need for the accommodation.

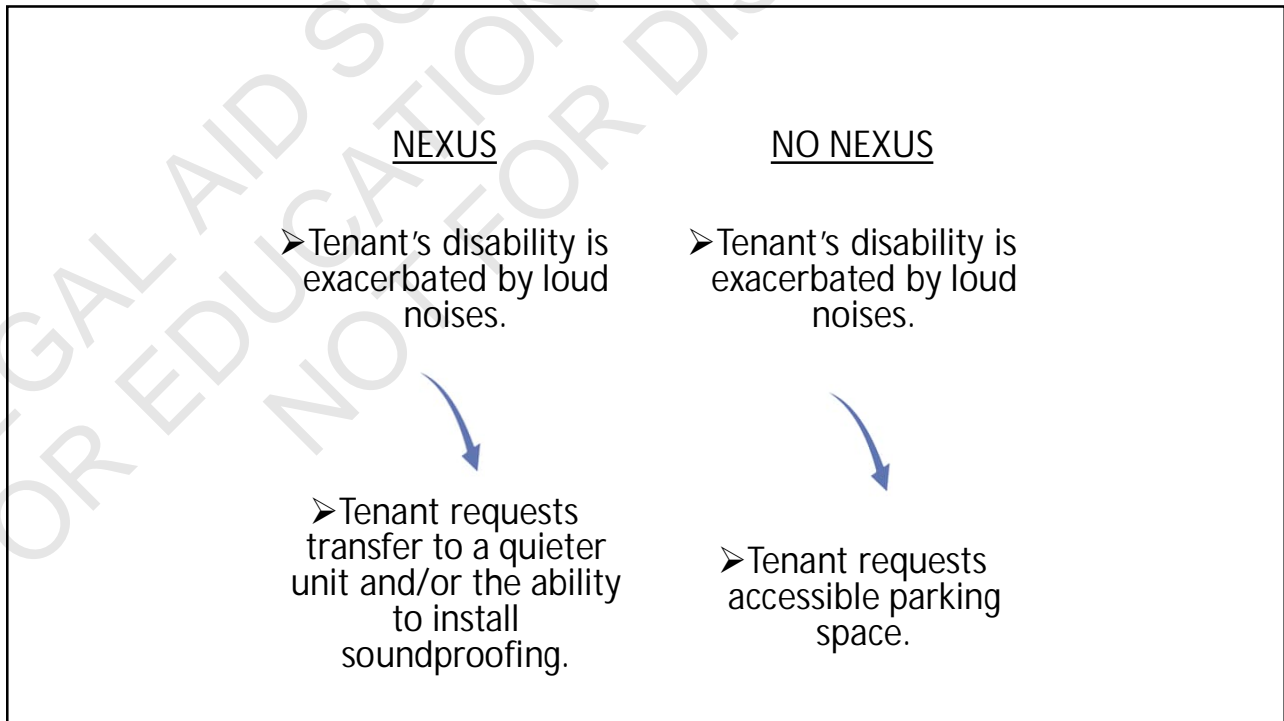
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If neither the disability nor the need for the accommodation is readily apparent, the housing provider should ask for verification of both the disability and the need for the accommodation.

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## Common Examples of Reasonable Accommodations

Parking Spaces - A resident with a mobility impairment requests an assigned parking space close to her unit.

Additional time- to complete/meet rules (paperwork etc.)

Changes in communication - Housing provider has a policy of requiring tenants to pay rent in person. Tenant has a mental health disability that makes her afraid to leave her unit. She requests that she be allowed to have her friend mail the rental payment.

Unit Transfers- Allowing someone to transfer to a quieter unit because noise aggravates his or her disability or needs accessible unit

Waiver of a no pets policy

More time to cure lease violations- (hoarding)

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## Common Violations for Assistance Animals

- Pet fee or pet deposit for an assistance animal RA
- No formal training required
- No breed, size, or weight restrictions for an RA
- Resources:
  - HUD's fact sheet: <https://www.hud.gov/sites/dfiles/PA/documents/AsstAnimalsGuidFS1-24-20.pdf>

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## Reasonable Modifications

- Same analysis as reasonable accommodation requests, but instead of a rule or policy change we are dealing with a physical change.
- Modifications can be made to the interior of unit, exterior of premises, and common use areas
  - *Ramps*
  - *Flashing Doorbells*
  - *Grab Bars*
  - *Soundproofing*

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## Pandemic Trends

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## COVID-19 – Age and Sex

- Age is protected class in CA – there may be housing discrimination based on age/COVID-19 because people over 65 are more likely to have COVID-19 complications
- Sex is a protected class and with tenants unable to pay rent there have been increased reports of sexual harassment

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## COVID-19 and Familial Status

- Illegal for housing providers to discriminate against families with minors in the household.
- Increased scrutiny of children in apartment complexes.
  - Could include new rules about children.
  - Noise complaints.

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# COVID-19 and Domestic Violence

Increase reports of domestic violence during pandemic.

## Violence Against Women Act

- For federally financed/subsidized housing
- Lease bifurcation
- Emergency transfer

## California Protections

- Have locks changed
- Early lease termination

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# Tenant Protections

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## Resources

- AB 832
  - [https://www.laszd.org/sites/default/files/imce/Articles/AB%20832%20post%2010.01.2021%20FAQs\\_10.07.2021%20%28FINAL%29.pdf](https://www.laszd.org/sites/default/files/imce/Articles/AB%20832%20post%2010.01.2021%20FAQs_10.07.2021%20%28FINAL%29.pdf)
- AB 1482
  - [https://www.laszd.org/sites/default/files/imce/Articles/AB%201482\\_One-Page\\_FINAL\\_0.pdf](https://www.laszd.org/sites/default/files/imce/Articles/AB%201482_One-Page_FINAL_0.pdf)

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## LASSD Resources

- <https://www.laszd.org/>
- Includes information and resources on fair housing laws and COVID-19

The screenshot displays the Legal Aid Society of San Diego website. The main content area is titled "Housing Discrimination" and includes the following text:

If your landlord has discriminated against you, we can help.  
Call our Fair Housing Center at 1-844-449-3500  
TTY 1-800-735-2929

Housing Discrimination Can Take a Variety of Forms

It is illegal for a landlord, managing agent, real estate broker, or salesperson to discriminate against any person because of their: race, color, religion, sex (including pregnancy, childbirth or medical conditions related thereto, as well as gender and perception of gender), sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, medical condition, or age.

Housing Discrimination can occur in any of the following ways:

- Refusing to sell, rent, or lease.
- Refusing to negotiate for a sale, rental, or lease.
- Representing that housing is not available for inspection, sale, or rental when it is, in fact, available.
- Otherwise denying or withholding housing accommodations.
- Providing inferior housing terms, conditions, benefits, facilities, or services.
- Harassing a person in connection with housing accommodations.
- Sexual Harassment.
- Canceling or terminating a sale or rental agreement.
- Providing segregated or separated housing accommodations.

On the right side of the screenshot, there is a section titled "LEGAL AID SOCIETY OF SAN DIEGO'S GUIDE TO SAN DIEGO COUNTY, CITY, AND SEATEL EVICTION NOTIFICATIONS RELATED TO COVID-19". Below this title, it states "WHAT TENANTS AND LANDLORDS NEED TO KNOW" and includes a disclaimer: "Please be advised that due to the U.S. being in a state of emergency, government directives and orders, and associated enforcement procedures are rapidly changing." It then lists several resources with "Click Here" links:

- California Judicial Council FAQ updated April 6, 2020. [Click Here \(External\)](#)
- Eviotion Rights for the State of California for all residents updated 4/15/20. [Click Here \(External\)](#)
- Eviotion Rights for Chula Vista Residents updated 4/17/20. [Click Here \(External\)](#)
- Eviotion Rights for City of Imperial Beach Residents updated 4/17/20. [Click Here \(External\)](#)
- Eviotion Rights for County of San Diego Unincorporated Residents updated 4/17/20. [Click Here \(External\)](#)
- Eviotion Rights for Escondido Residents updated 4/15/20. [Click Here \(External\)](#)
- Eviotion Rights for City of Escondido Residents updated 4/17/20. [Click Here \(External\)](#)
- Eviotion Rights for City of Poway Residents updated 4/15/20. [Click Here \(External\)](#)
- Eviotion Rights for City of San Diego Residents updated 4/17/20. [Click Here \(External\)](#)
- Eviotion Rights for City of San Marcos Residents updated 4/17/20. [Click Here \(External\)](#)
- Eviotion Rights for City of San Juan Capistrano Residents updated 4/17/20. [Click Here \(External\)](#)
- Eviotion Rights under the Federal CARES Act updated 4/17/20. [Click Here \(External\)](#)

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THANK YOU

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