



FAIR HOUSING COUNCIL OF OREGON

MENTAL HEALTH AND FAIR HOUSING SPECTRUM

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FAIR HOUSING LAWS

- Civil rights laws promoting "equal access" to housing
- Discrimination means treating a person differently in any housing transaction because that person is a member of a "protected class"




EQUAL HOUSING OPPORTUNITY

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FEDERAL PROTECTED CLASSES


- Race
- Color
- National Origin
- Religion
- Gender
- Familial Status
- Disability – includes mental health disabilities



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STATE OF OREGON PROTECTED CLASSES

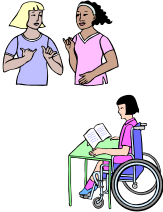
- Marital Status
- Source of Income
- Sexual Orientation/
Gender Identity



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DISABILITY AS A PROTECTED CLASS



- Added as a federal protective class in 1988
- Under the Fair Housing Act, the following are considered disabilities of EQUAL LEGAL STANDING:
 - *Physical disabilities you can see
 - *Physical disabilities you can't see
 - *Emotional or mental disabilities

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MOST COMMON FAIR HOUSING ISSUE


- More complaints and lawsuits are brought forward by people with disabilities against landlords/property managers where they are currently residing
- Complaints related to reasonable accommodations are the most frequent (about 50%) and the most costly

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PROTECTED CLASS OF DISABILITY

- The protected class of Handicap (Disability) and the ADA were a result of the disability rights movement in the 1970s and 1980. More people were starting to live independently
- About half of all complaints relate to disability...aging population, increase in autism and chemical sensitivity and asthma
- Mental health problems



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WHAT IS A DISABILITY?

Any physical or mental condition that substantially impairs a major life activity:


- Seeing
- Walking
- Hearing
- Breathing
- Thinking
- Caring for oneself




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DISABILITY CAN ALSO MEAN...



- A record of having a physical or mental impairment
- Being regarded as having such an impairment



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THE PROTECTED CLASS OF DISABILITY

- Includes ongoing chronic medical conditions
- Includes alcoholics and recovering drug addicts(not current users of illegal controlled substances)
- Does not excuse any violation of the rental agreement



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MENTAL HEALTH & FAIR HOUSING ISSUES

- Reasonable Accommodations
- Criminal conviction based on a mental health condition/criminal background screening
- Harassment- either harassing other tenants or being harassed by others


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REASONABLE ACCOMMODATIONS

Exception/change to a policy, standard or procedure

- Affords equal opportunity to use and enjoy dwelling
- Includes public and common use areas



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COMMON REASONABLE ACCOMMODATIONS

- Reserved Parking Spots
- Assistance Animals
- Caregivers
- Special Arrangements (late rent)




RESERVED FOR APARTMENT
APT#

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ASKING FOR REASONABLE ACCOMMODATIONS

Resident/Tenant:


- Has to initiate the request
- *Can ask at any time*
- Can ask in writing or verbally
- Doesn't need to use the term "Reasonable Accommodation"



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REQUESTING A REASONABLE ACCOMMODATION



Request must be necessary to obtaining or maintaining housing


- Includes being able to enjoy the unit
- Includes being able to meet the requirements in the rental agreement

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ASKING FOR REASONABLE ACCOMMODATIONS


- Whoever they ask needs to move it forward
- Let them know your process
- Give them a form or take information



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NO REQUIREMENT TO USE PROVIDER'S FORMS




You cannot require a disabled person to use your preferred forms or procedures when making a RA request

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CONSIDER ALL REQUESTS

Don't make assumptions!



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RA AND CRIMINAL HISTORY

Rental barriers that may be related to disability:

Addiction	Mental Health	Developmental Disability
Public intoxication Assault Public indecency Resisting arrest Theft/burglary Possession (drug) Forgery/identity theft	Disorderly conduct Offensive littering Trespass Theft Assault Possession (self-medication) Stalking	Unwitting accomplice in a crime due to vulnerability


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REQUESTS MADE DURING THE APPLICATION PROCESS

Rental history
Credit history
Criminal history

Requests reviewed on a case-by-case basis

- Applicant should be otherwise eligible
- Applicant should bring reference letters
- Applicant can be turned down if there is evidence of a danger to others



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RA REQUESTS DURING APPLICATION

At application, a person needs to demonstrate what has changed

Barrier → What has changed → verification

An applicant can ask for a RA related to:

Rental history


- Ex. Eviction related to untreated disability

Credit history

- Ex. Poor credit history related to disability

Criminal history

- Ex. Assault charge related to previously undiagnosed mental health issue




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INDIVIDUALIZED ASSESSMENT

What is an Individualized Assessment?

- Facts/Circumstances surrounding the criminal conduct
- The age of the person at the time of the crime
- Evidence of applicant's good tenant history before/after the conviction
- Evidence of rehabilitation efforts





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RA REQUESTS DURING TENANCY

A resident can request a Reasonable Accommodation during tenancy if it's needed to stay stable in housing

Examples:

- Reminder to pay rent for someone with a disability that affects memory
- Reserved parking space
- Assistance animals
- Live-in caregiver

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REQUESTS MADE DURING END OF TENANCY



Could be either the housing provider's or tenant's choice to move

Common requests could include:

- Request for additional time
- Waiver of penalties such as lease break fee
- Request not to evict if resident comes up with verification of action plan


Examples:

- Noise
- Hoarding
- Harassment

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Your issue is not the diagnosis, but the impact to your property...




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REASONABLE ACCOMMODATIONS

It is unlawful to refuse to make reasonable accommodations in rules, practices, policies or services when such accommodations may be necessary to allow a person with a disability equal opportunity to use and enjoy a dwelling





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WHAT IS CONSIDERED UNREASONABLE

Too costly
Undue financial burden
May be some cost involved

- Too costly depends on budget relative to overall operation
- Staff time
- Impacts neighbors (causing them to move out)




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WHAT IS CONSIDERED UNREASONABLE

- Undue Administrative or Financial Burden
- Fundamental Alteration of Your Job or Program
- Direct Threat to Others (Based on evidence and not assumptions)
- Manufacturing/Distribution of Illegal Drugs





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DENIAL OF A REQUEST FOR RA

If you can't grant the accommodation, can you offer another alternative?
HUD requires you to have interactive discussion about possible alternatives



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ASSISTANCE ANIMALS ARE NOT PETS!



- Pets are animals of choice
- Assistance animals are animals of need




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ASSISTANCE ANIMALS

- Assistance, service, aid, companion and therapy & emotional support animals
- Treated as the same under FHA
- Fair Housing Law is different from ADA



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RA REQUESTS

- There is no limit on the number of accommodations a resident can request
- Each request is evaluated on its own merits

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FAILURE TO GRANT A REASONABLE ACCOMMODATION

Liable for:


- Medical costs
- Lost housing opportunities
- Attorney fees
- Emotional distress
- Civil penalties of up to \$11,000 per violation for first time offenders

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DOCUMENTATION

- Two year statute of limitations
- Keep a spiral notebook that is time/date stamped or computerized notes
- What to include: date, what happened, quotes, photos
- Screening, RAs, neighbor complaints , etc.



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IN SUMMARY...

- Consider all requests
- Prior to denying a request, engage in interactive process
- Ask the individual to put the request in writing

But remember...

- A person is not required to put it in writing
- A person is not required to provide medical verification from a medical professional

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HARASSMENT & MENTAL HEALTH ISSUES

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HARASSMENT IN RENTALS AND HOAS-GOVERNED COMMUNITIES

Oregon State Landlord-Tenant Law

- Right to peaceful enjoyment of housing
- (839-005-0206 (5))

Federal Fair Housing Law (Section 818)

- September 2016 HUD Ruling
- Harassment based on protected class violates civil rights
- Housing Provider responsible for investigating & taking action if both harasser & harassee are residents

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FORMS OF HARASSMENT

- Words-especially if threat and/or continuing – Name calling
- Actions (spying, touching, leaving derogatory messages on car, etc.)
- Emails, texts, social media
- Displaying swastikas, etc.





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WHAT TO DO...

You learn of harassment
Investigate/document
“He said, she said....”
If no fair housing issue

- Ignore, mediate, bring in mediator, warning




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HARASSMENT AS FAIR HOUSING ISSUE

If fair housing issue...

- Take prompt corrective action-warning, notice
- Document every step of the way
- Follow up with victim
- Failure to act violation of FHA



▪ What if harasser's behavior is related to a mental disability?



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“Corrective action may include verbal and written warnings, enforcing lease provisions to move, evict or otherwise sanction tenants who harass or permit guests to harass. “

“Housing provider should follow up to make sure the corrective action was effective.”

“Liability arises when the person/entity knew or should have known that a resident was harassing another resident and yet, did not take prompt action to correct and end it.”

Language from 2016 HUD Ruling on Harassment



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REMEMBER...

- Don't make assumptions
- Choose your battles
- Seek legal counsel
- Research similar case law



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**CONTACT THE FAIR HOUSING
COUNCIL OF OREGON FOR MORE
INFORMATION**

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