



**FAIR  
HOUSING  
COUNCIL**  
OF OREGON

# **MENTAL HEALTH AND FAIR HOUSING SPECTRUM**

**SEPTEMBER 19, 2019**

**LOUISE DIX, EDUCATION AND OUTREACH**

**WWW.FHCO.ORG**

**503-223-8197 EXT. 115**

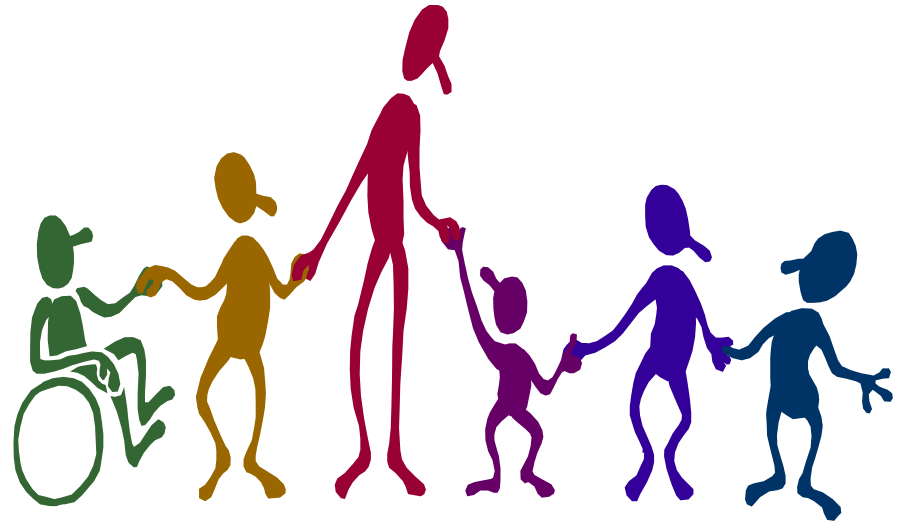
# FAIR HOUSING LAWS

- 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”



# FEDERAL PROTECTED CLASSES

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



# STATE OF OREGON PROTECTED CLASSES

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



# 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*

# 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

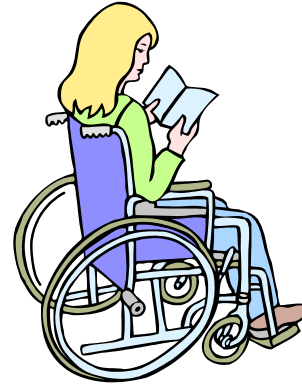
# PROTECTED CLASS OF DISABILITY

- 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

# WHAT IS A DISABILITY?

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

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





# DISABILITY CAN ALSO MEAN...



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

# 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



# 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

# REASONABLE ACCOMMODATIONS

Exception/change to a policy, standard or procedure

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



# COMMON REASONABLE ACCOMMODATIONS

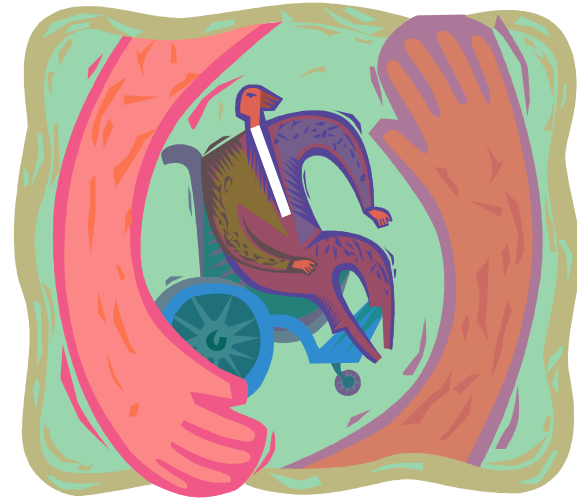
- Reserved Parking Spots
- Assistance Animals
- Caregivers
- Special Arrangements (late rent)



# 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"



# 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

# ASKING FOR REASONABLE ACCOMMODATIONS

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





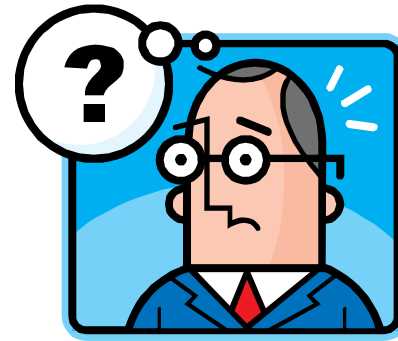
# NO REQUIREMENT TO USE PROVIDER'S FORMS



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

# CONSIDER ALL REQUESTS

Don't make  
assumptions!



# 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

# 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



# 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



# 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
- 

# 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**



# 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





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

# 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**

# 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)



# 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

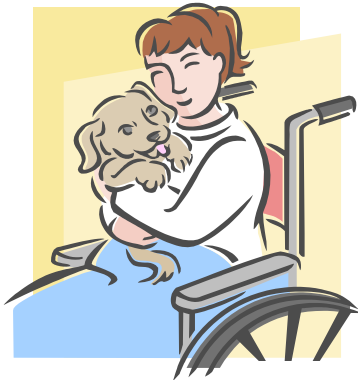
# DENIAL OF A REQUEST FOR RA

If you can't grant the accommodation, can you offer another alternative?

HUD requires you to have interactive discussion about possible alternatives



# ASSISTANCE ANIMALS ARE NOT PETS!



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

# ASSISTANCE ANIMALS

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



# RA REQUESTS

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



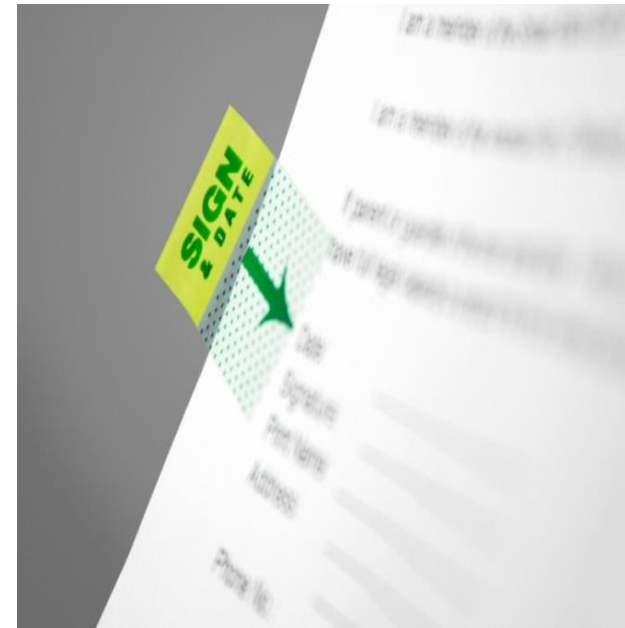
# **FAILURE TO GRANT A REASONABLE ACCOMMODATION**

**Liable for:**

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

# 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.



## 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

**HARASSMENT & MENTAL  
HEALTH  
ISSUES**

# **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

# 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.



## WHAT TO DO...

You learn of harassment

Investigate/document

“He said, she said....”

If no fair housing issue

- Ignore, mediate, bring in mediator, warning



# 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?





“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***



**REMEMBER...**

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

# CONTACT THE FAIR HOUSING COUNCIL OF OREGON FOR MORE INFORMATION

503-223-8197

[information@fhco.org](mailto:information@fhco.org)

[www.fhco.org](http://www.fhco.org)

