

REASONABLE ACCOMMODATION & THE ROLE OF THE 504 COORDINATOR

Instructor: Debbie Piltch
Piltchassociates@gmail.com
Cell: (339) 364-4748

How Is This Course Organized?

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General Questions Regarding Discrimination Law

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graph TD; A[General Questions Regarding Discrimination Law] --> B[General Questions Regarding Disability As A Protected Class]; B --> C[Legal and Illegal Inquiries in the housing context]; C --> D[Questions Regarding Reasonable Accommodation]; D --> E[Hot topics housing providers commonly raise regarding reasonable accommodation: Assistance animals and Live-in Aides];
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General Questions Regarding Disability As A Protected Class

Legal and Illegal Inquiries in the housing context

Questions Regarding Reasonable Accommodation

Hot topics housing providers commonly raise regarding reasonable accommodation:
Assistance animals and Live-in Aides

GENERAL QUESTIONS REGARDING DISCRIMINATION LAW

Why Are Management Companies Committed To Fair Housing And Non Discrimination?

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- ❑ Treating all people fairly is the right thing to do;
- ❑ Treating people fairly is a good business practice;
- ❑ Discrimination on the basis of protected status is illegal and the penalties for violating the law are steep.

Why Do All Employees Have To Understand Fair Housing?

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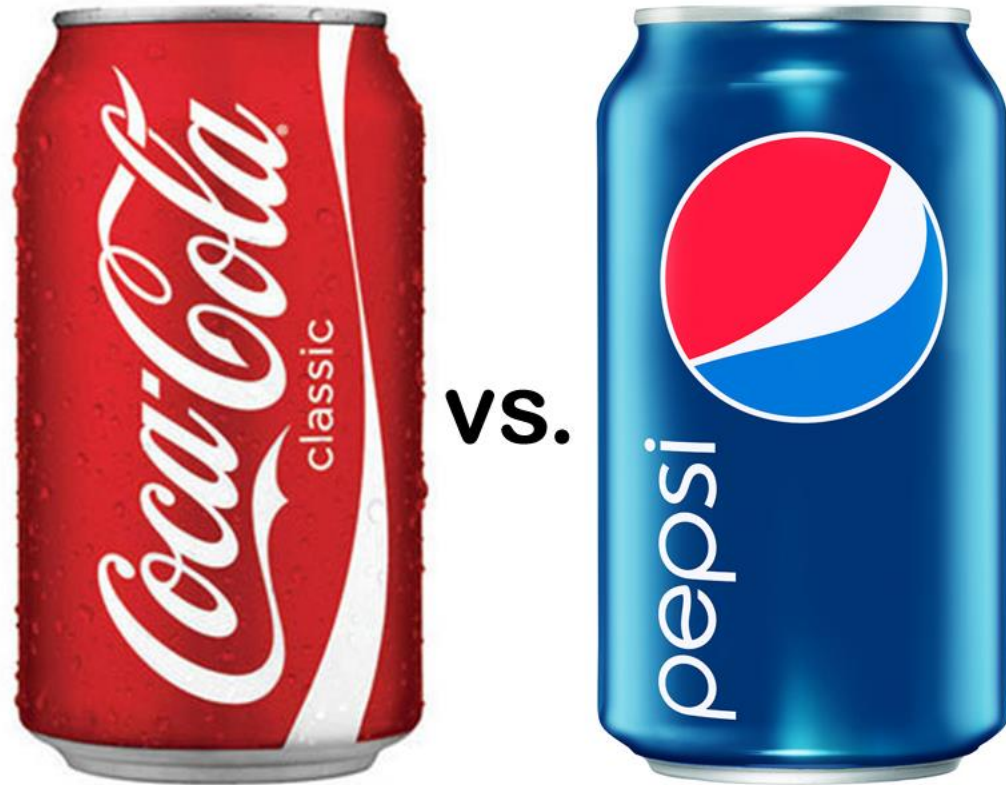
- ❑ Federal and state fair housing laws are applicable to everyone associated with housing, including everyone who works for your company;
- ❑ A company is liable for their employees discriminatory actions; and
- ❑ Individuals are liable for their own discriminatory actions.

What Is Discrimination?

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To discriminate means to differentiate or distinguish; **Not all discrimination is illegal.**

Make Your Vote!



What Makes Discrimination Illegal?

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- Illegal discrimination is when we differentiate between people in a “protected class” on a basis other than merit.

What Is A Protected Class?

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- ❑ A protected class is a group of people a “law” says you can’t discriminate against.
- ❑ Generally, it is groups that have historically been treated unfairly.

What Types of Discrimination Are Currently Recognized As Illegal?

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Disparate treatment

- When a rule, policy or procedure is based on a person's protected status or you treat a person in a "protected class" differently from a similarly situated person who is not in the protected class.

Disparate impact

- Rules, policies, practices that appear neutral but have the effect of differentiating or a having a greater negative effect on people in a protected class and can't be justified by a legitimate business reason.
- HUD published a disparate impact rule under the Fair Housing Act.

What Makes Up Discrimination “Law”?

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Statutes (passed by legislature)

Regulations (created by agencies)

Executive Orders (president, governor or mayor)

Administrative Directive Systems (created by agencies)

Case Law (Judges)

- If more than one law applies, you must adhere to the most stringent requirement.

What Laws Apply to My Site?

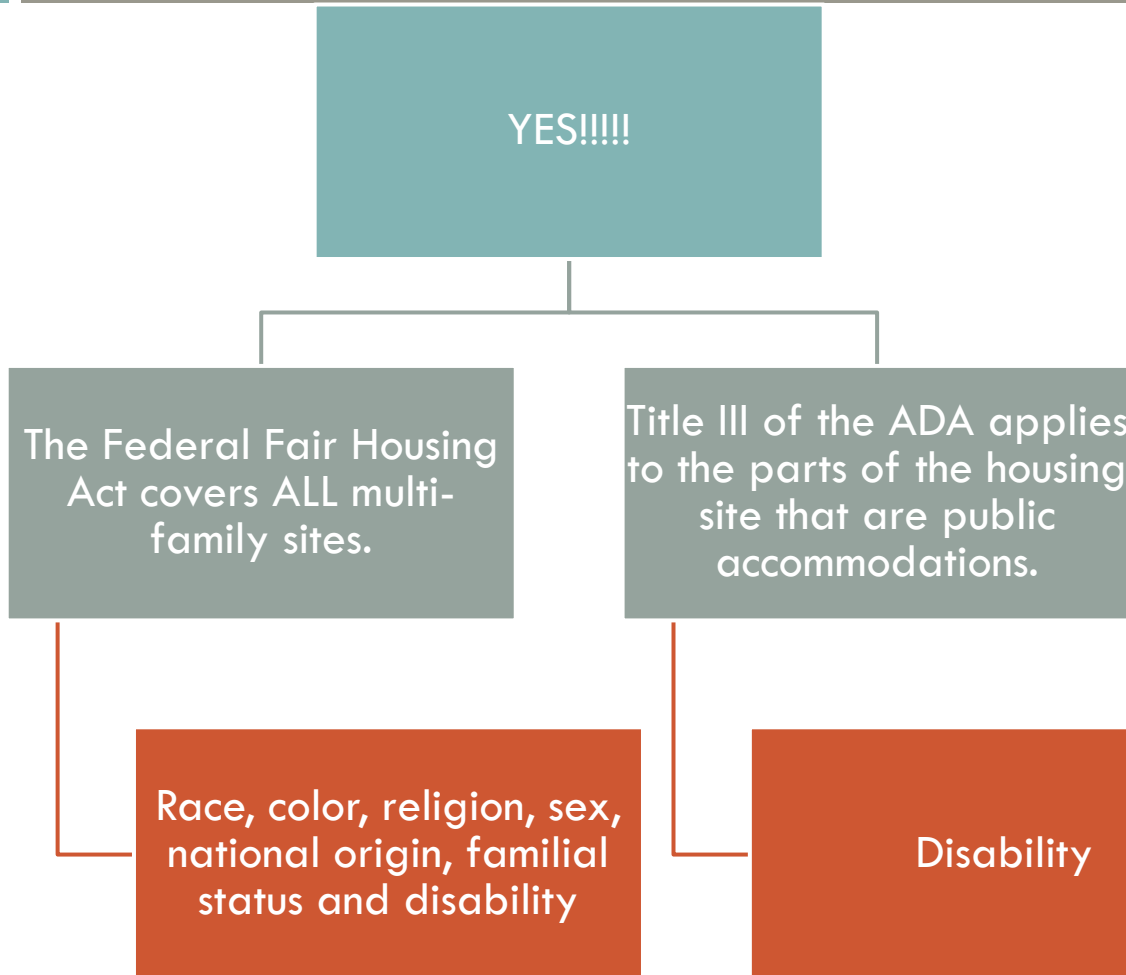
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To identify which laws apply to your site you need to know:

- How the site was financed;
- What subsidies (if any) your site has; and
- What the site's controlling documents require.
 - Controlling documents include regulatory agreements between the entities that finance the site (such as HUD, USDA, DHCD...) and the owner.

Do Any Federal Laws Apply To Sites Regardless of Funding?

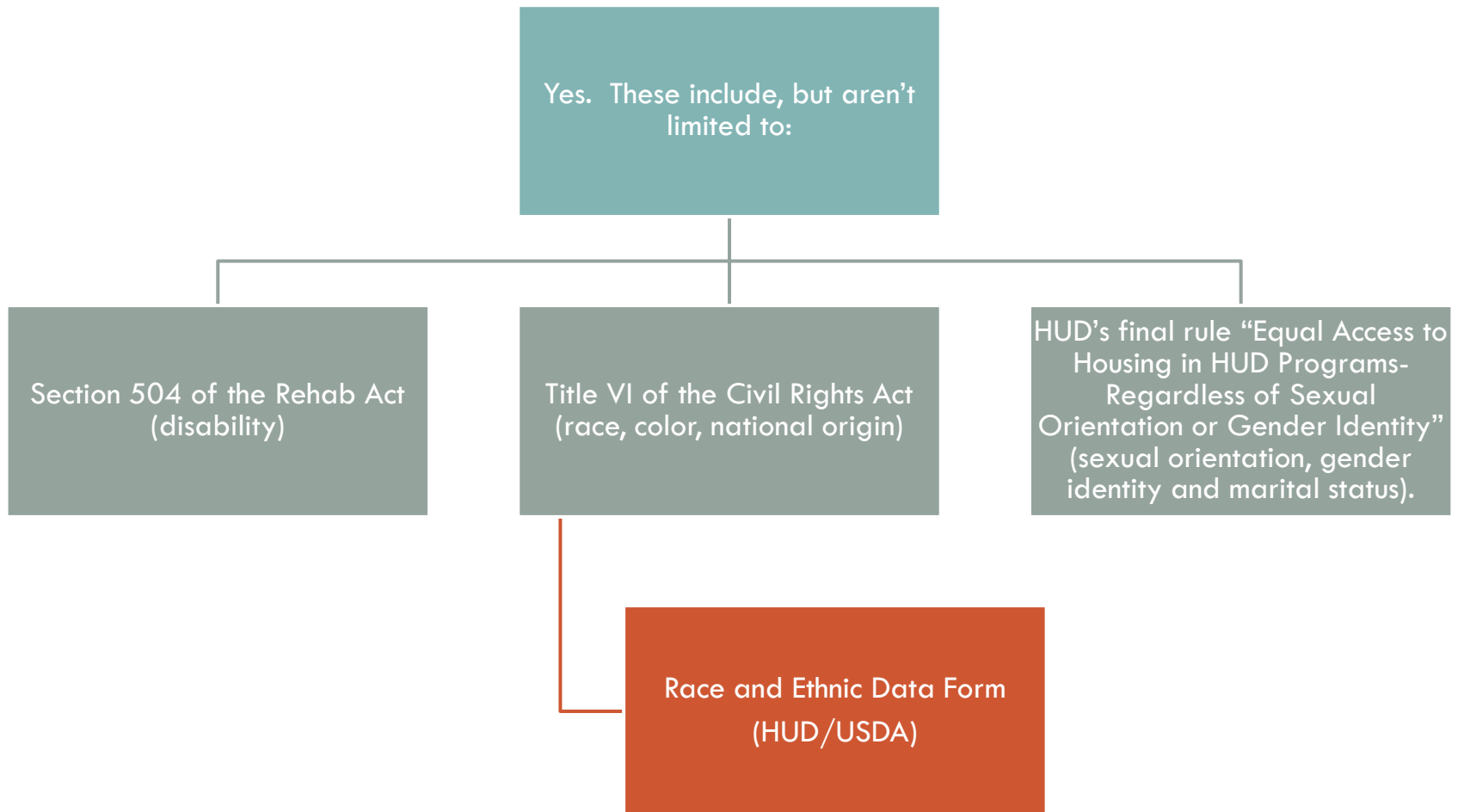
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Remember, other laws apply based on receipt of federal and state dollars or financing and the location of a site. You must always follow the most stringent requirement.

Do Any Federal Laws Prohibiting Discrimination Apply If A Site Receives Federal Dollars?

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Does The Violence Against Women's Act (VAWA), which provides protections for victims of, domestic violence, dating violence, sexual assault and stalking, Apply Only To HUD's Section 8 Programs?

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- No, it applies to additional federal programs including:
 - ▣ HUD's multifamily programs covered by the 4350.3, HOME; McKinney-Vento Homeless programs; and Housing Opportunities for Persons With AIDS (HOPWA)
 - ▣ RD's Multi-Family Housing (MFH) Programs
 - ▣ The low income housing tax credit program

Do I Need To Also Follow State And Local Fair Housing Law?

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- YES!
 - Most state and local laws prohibit discrimination against more groups of people than the federal fair housing Act does.
 - Maryland state law also includes marital status, sexual orientation and gender identity.
- Remember, you don't get to pick and choose which rule to follow.



Always follow the most stringent requirement!!!!!!

GENERAL QUESTIONS REGARDING DISABILITY AS A PROTECTED CLASS

Is Disability Is A Protected Class?

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Yes.

- ❑ A number of laws recognize Disability as a protected class.
 - ❑ Applicable Federal Laws include: The Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA).
 - ❑ Maryland State Law

What Is The Definition Of Disability For Civil Rights Purposes?

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- ❑ A person who:
 1. Has a physical or mental impairment that substantially limits one or more major life activities;
 2. Has a record of such an impairment; or
 3. Is regarded as having such an impairment

Note: the word “qualified” is included in the definition under Section 504 of the Rehabilitation Act.

Is this Definition Very Broad?

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YES.

- ❑ It isn't the same as any definition of disability for Social Security.
- ❑ It isn't the same as the eligibility definition of a person with a handicap/disability to get into public or assisted housing or to be eligible for certain allowances against income.
 - ❑ A person's disability can satisfy the civil rights definition of disability and not satisfy an eligibility definition of disability for housing.

Are Individuals Who Have Alcoholism, Currently Use Illegal Drugs Or Have A History Protected?

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Individuals with alcoholism are protected.

- This doesn't mean if the person is violating the lease as a result of their alcohol abuse that you can't take legal action.

Individuals who currently illegally use controlled substances aren't protected under 504/ADA; Otherwise "disabled" persons who illegally use drugs aren't excluded under the Fair Housing Act; but the use of illegal drugs is not protected-i.e. medical marijuana wouldn't be a reasonable accommodation because it would pose a fundamental change in the program. See HUD Memos.

A person with a history of illegal drug use IS protected if not currently illegally using, successfully completed rehab, has otherwise been rehabbed, or is participating in a rehab or self-help program.

- Please note that just because someone has a history of illegal drug use doesn't mean you can't reject him/her if the person doesn't meet your eligibility and suitability criteria, such as that related to criminal behavior.

Do Non-Discrimination Laws Protect People with Disabilities Even If They Are Bad Tenants?

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Yes and No.



You **must** enforce the lease even if someone has a disability.



If the negative tenancy related behavior is a result of a person's disability you **must** consider if an accommodation will enable lease compliance **if** requested to do so.

No behavior is so egregious that you can refuse to consider it; however, if you determine that the accommodation won't solve the lease violating behavior/or mitigate the risk then you don't have to provide it. Documentation of all management efforts is essential. Legal action can't effectively be pursued without it.

What Common Types of Behavior Are Owner's/Agent's Prohibited From Engaging In Re To Applicants/Residents With Disabilities?

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- Fair Housing laws prohibit Owners/Agents from:
 - ▣ Treating persons with disabilities less favorably than others because of their disability;
 - ▣ Making illegal inquiries regarding a person's disability;
 - ▣ Refusing to satisfy their legal obligations regarding reasonable accommodation/physical modifications.

Are Companies Required By Federal Laws to Have Someone Coordinate Compliance Around Disability Discrimination?

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- Yes.
 - If a site receives federal dollars and has 15 or more employees, Section 504 requires a coordinator.
 - If a site is covered by Title II and has 50 or more employees it must have a coordinator.

NOTE: Number of employees is company wide; not per site.

What Does A 504/ADA Coordinator Typically Do?

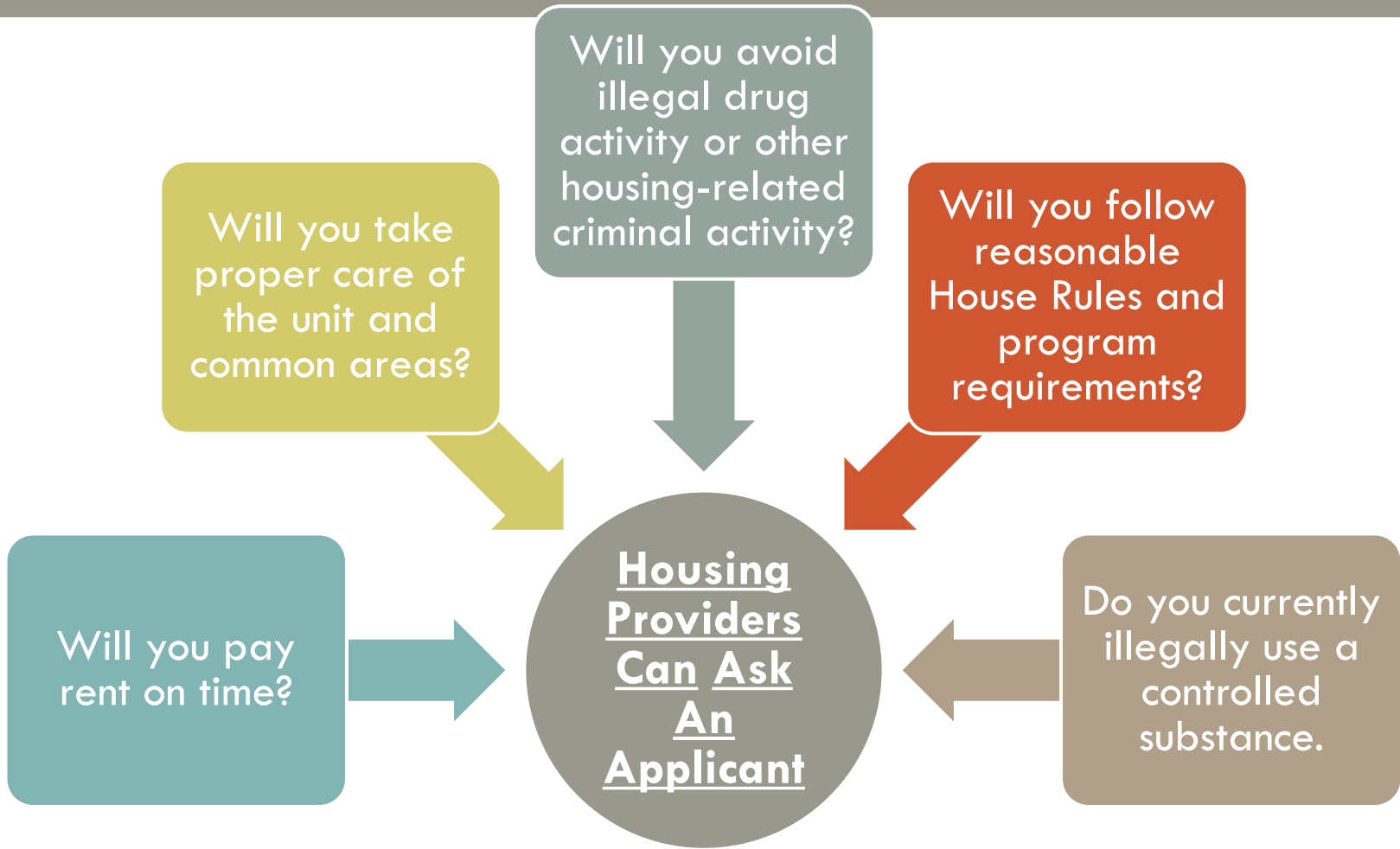
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- ❑ Varies from company to company.
 - ❑ Can be site specific or company-wide.
- ❑ Typically:
 - ❑ Responsible for making sure procedures are followed and staff complies with requirements;
 - ❑ Investigates any complaint communicated alleging noncompliance; and
 - ❑ Facilitates and tracks reasonable accommodation request.

Note: Written communication must provide name (or position) of coordinator and contact information.

LEGAL AND ILLEGAL INQUIRIES IN THE HOUSING CONTEXT

Legal and Illegal Inquiries



Are There Legal and Illegal Inquiries Regarding An Applicant/Resident's Disability?

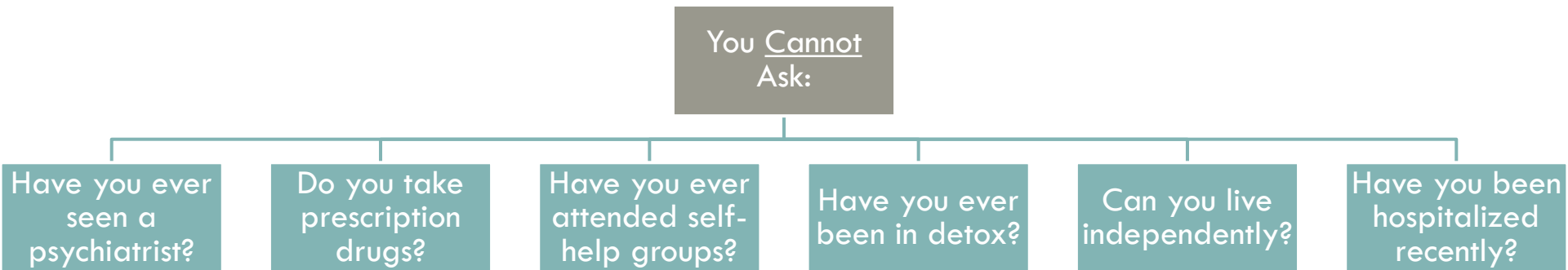
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It is generally against the law to make any inquiries about whether or not someone has a disability, or to make inquiries into the nature or severity of the disability.

- There are exceptions:
 - Determining eligibility for housing that is available to people with disabilities or a type of disability;
 - Determining if a person qualifies for a priority available to persons with disabilities or a type of disability;
 - Determining if people are entitled to deductions used in determining adjusted income.
 - To establish eligibility and need for reasonable accommodations; and
 - If an applicant discloses a disability for the purpose of explaining mitigating circumstances regarding a criminal check, reference information or a lease problem.

Legal and Illegal Inquiries Cont'd

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Again, Only Ask What You Need To Know, Not What You Want To Know

Legal and Illegal Inquiries Cont'd

More Common Illegal Questions and Inappropriate Remarks

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- Often times, staff ask illegal questions during innocent conversations when applicants or residents start talking about their lives, such as:
 - Oh, I didn't know that's what was wrong with you. How long have you had it?
 - Oh, so what are you doing for the cancer, are you getting chemo? Have you tried acupuncture?
 - Oh, you know, my sister has MS just like you, do you know Dr. Jones? She's a really great doctor....
 - Because you have a service animal, would you maybe prefer a first floor apartment?

QUESTIONS REGARDING REASONABLE ACCOMMODATION

Do The Fair Housing Act and Section 504 Use The Same Terminology to Describe An Owner/Agent's Obligation to Make Changes To Enable a Person With A Disability An Equal Opportunity?

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- No. The terminology is different:
 - The Fair Housing Act (which applies to all sites) uses two terms: Reasonable Accommodation to describe rules, policies, procedures and services and Physical Modifications to describe physical changes to a unit or the common area;
 - Section 504 which applies only to sites that receive federal dollars uses one term, reasonable accommodation to describe both.

How Do The Laws Compare In Relation To Paying For Applicants and Residents With Disabilities Requests For Changes?

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Type of Change	Section 504	The Fair Housing Act	State Laws
Changes In Rules, Policies and Procedures	The owner pays up to limits that will be discussed later.	The owner pays up to limits that will be discussed later.	Usually mirror the Fair Housing Act
Physical Modifications	The owner pays up to limits that will be discussed later.	The Resident Pays. O/A may require: 1) the work be done in a workmanlike manner; 2) all necessary permits be pulled; 3) the resident return the unit (not common area) back to its original manner if the modification interferes with marketability; and 4) the resident put money in escrow if he/she has bad credit.	Usually mirror the Fair Housing Act.

Limits On Owner's Obligations

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- ❑ A housing provider (and HUD) does not have to take any action that:
 - ❑ fundamentally alters the nature of their program; or
 - ❑ poses an undue financial and administrative burden.

Do the Laws Define Undue Financial And Administrative Burden?

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- Not Really. Provide “guidance” and parameters.

What Is A Fundamental Alteration?

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- ❑ A fundamental alteration is a basic change in the nature of the housing program.
- ❑ To determine if an accommodation would result in a fundamental alteration requires a determination of the primary purpose of the program and the practical components necessary to achieve the purpose. This is not a cost based analysis.
- ❑ If the reasonable accommodation request would require management to provide a service that isn't part of the site's housing program it can be denied.
 - ❑ For example, walking an assistance animal for a resident with a disability.

How Is Undue Financial and Administrative Burden Determined?

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- ❑ Whether an accommodation will pose an undue financial and administrative burden must be determined on a request by request basis.
- ❑ Each property's administrative and financial capacity is different and can change during a fiscal year.
- ❑ Satisfied when a property would not to be able to operate in a way that meets its Legal and contractual obligations.

What Is The Next Step For When An Accommodation is Determined Unreasonable?

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Your obligation doesn't end if the initial request is determined to be unreasonable.



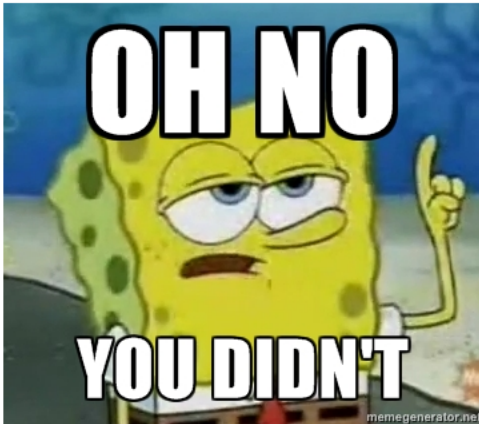
You must engage in interactive dialogue with the applicant/resident to determine what will meet their disability-related need, but not pose a fundamental change or undue financial and administrative burden to the property; failure to do so is a denial.

In the case of undue financial and administrative burden you must explore if and when the work or a portion of the work can be done. Person with a disability always retains the right to pay for the requested accommodation or up to the portion that makes it not an undue financial and administrative burden.

Should I Document My Responses To Reasonable Accommodation Requests?

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- Yes.
 - If you don't document it, it didn't happen.



You need to be able to provide investigators your reasonable accommodation log and the factual basis for how you reached your decision. Unless you have documentation of your efforts it can easily turn into a “he said”/ “she said” situation and you will have difficulty establishing compliance.

Concerns Housing Providers Commonly Raise Relating to Reasonable Accommodation/Modification

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- Bad Precedent
- Not Treating People the Same is Discriminatory
- Number of Requests
- Timing of Requests

Concerns Housing Providers Raise In Relation To Reasonable Accommodation: Bad Precedent

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- “Providing an accommodation/modification will set a bad precedent and result in other residents wanting the same request.”
 - ▣ This cannot be a basis for denying an accommodation.

Concerns Housing Providers Raise In Relation To Reasonable Accommodation: Not Treating People The Same Is Discriminatory

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- ❑ Providing an accommodation for a resident and not doing it for another resident -who wants and needs it or who wants and doesn't need it will be “discriminatory” or perceived as “discriminatory”.
- ❑ **It isn't illegal for you to deny a person an accommodation if they don't have a disability; or**
- ❑ **do not need the accommodation because of a disability; or**
- ❑ You could also deny it if the accommodation would pose an undue financial and administrative burden; it would be difficult to establish the accommodation poses a fundamental change if you had previously provided it.
- ❑ You may need to diffuse situations where residents believe you are acting out of favoritism.

Concerns Housing Providers Raise In Relation To Reasonable Accommodation: Number of Requests

42

- “There must be a limited number of accommodations a resident can request.”
 - ▣ The law doesn’t set a specific number.
 - ▣ Regardless of how many requests you receive from someone, the same process must be followed.

Concerns Housing Providers Raise In Relation To Reasonable Accommodation: Timing of Request

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- “A person with a disability should be required to let a provider know they need an accommodation/modification at move-in.”
 - ▣ It is the applicant’s/resident’s choice when he/she makes a request.
 - ▣ An applicant/resident doesn’t waive their right to make a request because they didn’t ask at application.
 - ▣ An applicant/resident may make a request at any time during application or during tenancy.

Do Most Companies Have a Reasonable Accommodation Procedure?

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- ❑ YES!

- ❑ Every site must follow its policy, which should be based on the guidance provided by HUD/DOJ, which will be reviewed.

- ❑ Know your site's policy:
 - ❑ How a request is made;
 - ❑ The process for determining if an accommodation is provided;
 - ❑ Applicable forms and documentation procedures, i.e. tracking requests in a master log, and in a site's Reasonable Accommodation Binder; and
 - ❑ Who at the site/company is responsible for compliance with Section 504

How Does Someone Get A Reasonable Accommodation?

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- ❑ Someone must make a request.
- ❑ The words reasonable accommodation aren't required.
 - ❑ Would a reasonable person know/understand a request is being made?
 - ❑ If yes, then a request has been made.

Does The Person Making The Request Have To Be The Person With The Disability?

46

- No. It can be someone acting on his/her behalf.

Can I Require Someone To Fill Out A Request Form?

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- ❑ **No.** You can encourage them to do so, but you can't require it.
 - ❑ If someone doesn't want to fill out a form:
 - ❑ Explain that the purpose in having the request in writing is to avoid misunderstandings and ensure that you meet their needs.
 - ❑ Offer to help them fill it out or do it for them and have them initial its accuracy.
 - ❑ If someone still refuses to fill out the form send a letter confirming your understanding of the request.

Note: the person must sign a release form for you to be able to verify he/she has a disability and/or the nexus if not otherwise documented or obvious even if they refuse to fill out the request form.

What Do I Do When Someone Requests An Accommodation/Modification?

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- ❑ Process it in accordance with your company's policies, i.e. document it by writing it in a reasonable accommodation log.

The Process For Determining If A Person's Request is Granted

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- The following always must be considered:
 - ▣ Does the person have a disability that meets the civil rights definition?
 - ▣ Does the person need the accommodation because of the disability? (Is there a nexus)
 - ▣ Does the accommodation pose a fundamental change in the program?
 - ▣ Will the accommodation result in an undue financial and administrative burden?

If The Person's Disability Is Readily Apparent, Obvious Or Otherwise Known Can I Verify It?

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No!!!!!!

If The Nexus Between The Person's Disability And The Requested Accommodation Is Readily Apparent, Obvious Or Otherwise Known Can I Verify It?

51

No!!!!!!

How Is Readily Apparent Defined?

52

- HUD's guidance uses readily apparent and "obvious" interchangeably and suggests readily apparent is whether a "reasonable person" would find it so.

How Do I Verify The Information That I Need To Know To Process The Request

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- ❑ Use your company's standard third party verification form to verify any necessary information that is not obvious.

What Happens Next?

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- ❑ If the disability is obvious and the nexus is obvious or third party verifies the person has a disability and/or the nexus, make a determination regarding the request:
 - ❑ Does it pose a fundamental change in the program?
 - ❑ Will it result in an undue financial and administrative burden?

What Do I Do If The Accommodation Is Reasonable?

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- ❑ Approve the Request.
- ❑ Inform the person of the request in writing, stating the approval and when any requested work will take place.
 - ❑ If you anticipate a legitimate delay in implementation explain why.
- ❑ Suggestion: provide a copy of the request, all supporting materials, and letter to the Company's 504 Coordinator.

What Do I Do If I Want To Deny The Request?

56

- ❑ You can only deny the request if:
 - ❑ the person doesn't have a disability;
 - ❑ there is no nexus between the disability and the requested accommodation;
 - ❑ the request poses an undue financial and administrative burden or a fundamental change in the program.
- ❑ Follow your company's procedures.

Next Step When An Accommodation is Determined Unreasonable

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- ❑ A housing provider's obligation doesn't end. Do anything up to the limit.
- ❑ “Should”* engage in an interactive dialogue with the requester: what will meet the person's disability related need but not pose a fundamental change or undue financial and administrative burden.
 - ❑ 504 Coordinator can assist.
 - ❑ *Please note that although the 4350.3 uses the term “should”, failure to engage in the dialogue may be considered discriminatory.
 - ❑ It is a good business practice and in accordance with the spirit of the law to engage in the dialogue.

If Undue Financial And Administrative Burden is Established

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- Explore if and when the work or a portion of the work can be done.
- Person with a disability always retains the right to pay for the requested accommodation or up to the portion that makes it not an undue burden.

HOT TOPICS HOUSING PROVIDERS
COMMONLY RAISE REGARDING
REASONABLE ACCOMMODATION:
ASSISTANCE ANIMALS AND LIVE-IN AIDES

Assistance Animals vs. Pets

60

- ❑ Service animals and companion animals are not pets.
- ❑ They are “Assistance Animals” –animals that work to meet the disability related needs of a person with a disability.

If I Have A No Pets Policy Do I Have To Allow Assistance Animals?

61

Yes.

If The Person's Disability Isn't Obvious Or Otherwise Known To Me Can I Ask For Documentation?

62

- ❑ Yes. You can ask for documentation that the person meets the civil rights definition of disability; not the nature or severity of the disability.

If The Need For The Animal Isn't Obvious Can I Ask For Documentation?

63

- ❑ Yes, the nexus between the disability and the need for the animal may be verified.

What Can I Require A Resident To Do In Re To Assistance Animal?

64

- ❑ Document that the assistance animal has had the appropriate vaccinations;
- ❑ Make sure the animal does not interfere with other residents' quiet enjoyment;
- ❑ Pay for damages caused by the animal;
- ❑ Pick up after the animal; and
- ❑ Provide the name of someone to care for the animal in case of an emergency.

What Can't A provider Do In Re To Assistance Animals?

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- ❑ Require the animal to have formal training.
- ❑ Require a security deposit for the animal (“pet deposit”); and
- ❑ Disclose to other residents why a tenant has the animal.

Do I Have To Allow Animals That Are Generally Thought Of As Dangerous, Such As Pit Bulls?

66

- ❑ Yes, unless the actual animal:
 - ❑ poses a direct threat to the health or safety of others that can't be reduced or eliminated by a reasonable accommodation;
 - ❑ would cause substantial physical damage to the property; or
 - ❑ the presence of the animal would pose an undue financial and administrative burden or fundamentally alter the nature of the program.

What Is A Live In Aide?

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- ❑ In accordance with HUD guidance: someone who resides with one or more elderly persons, near elderly persons, or persons with disabilities, and who:
 - ❑ Is determined to be essential to the care and well-being of the persons;
 - ❑ Is not obligated for the support of the persons; and
 - ❑ Would not be living in the unit except to provide the necessary supportive services.

Do I Need To Permit A Live-In Aide?

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- Yes, if it is a reasonable accommodation and it isn't an undue financial and administrative burden or a fundamental change in the program.

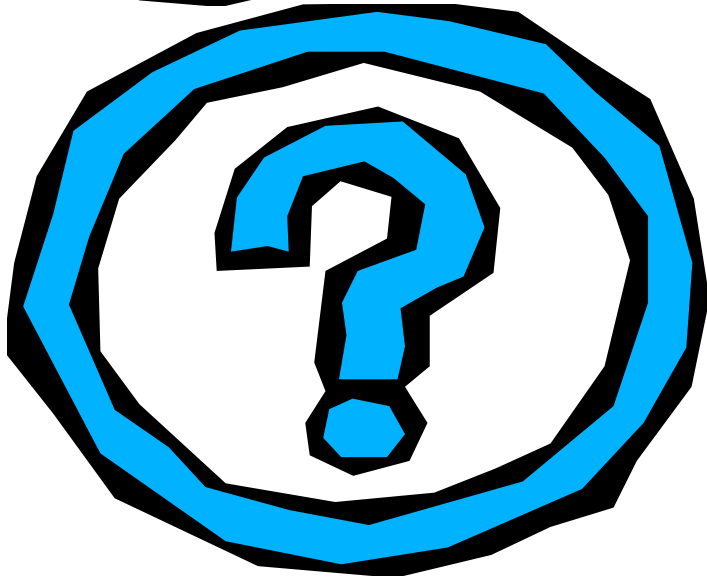
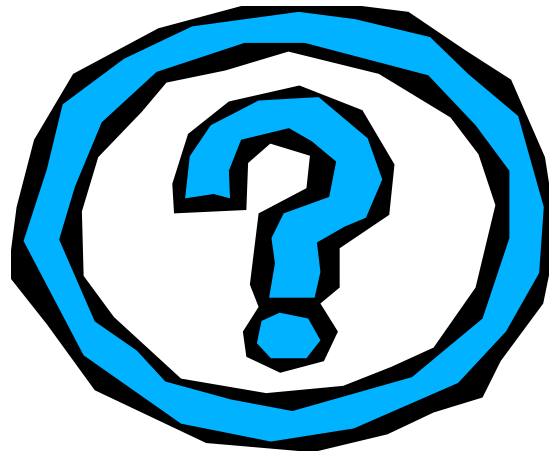
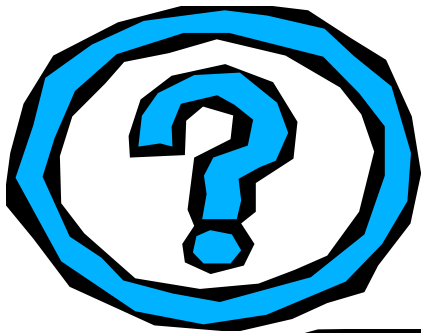
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What Does the 4350.3 Rev-1 Address?

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- Discusses verification of the need for a LIA and approval as a reasonable accommodation.
- Discusses LIA in Re to Medical Deductions
- Stipulates a family member can be a LIA.
- Stipulates LIA can't qualify as a remaining household member.
- Requires screening of Live-in Aides
- Requires Existing Tenant Search

Par. 3-6.E.3 a.(2), pg. 3-9



QUESTIONS ???

