

# ATTACHMENT D

## Fair Employment & Housing Council Additional Modifications to Housing Regulations Regarding Harassment; Liability for Harassment; Retaliation; and Select Disability Sections, Including Assistive Animals

### CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 7. Discrimination in Housing

### TEXT

[All additions to the CA Code of Regulations]

#### Article 1. General Matters

§§ 12000-12004. [Reserved]

§ 12005. Definitions.

As used in this subchapter, the following definitions shall apply:

(a) “Adverse Action” means action that harms or has an undesirable effect on an Aggrieved Person. The adverse action need not be related directly to the Dwelling or Housing Opportunity forming the basis for the lawsuit or administrative complaint; for example, filing false allegations about a tenant with a tenant’s employer may constitute adverse action. Adverse action includes:

(1) In Dwellings that are rented, leased, or otherwise made available for occupancy whether or not for a fee, it includes failing or refusing to rent or lease real property, failing or refusing to continue to rent or lease real property, failing or refusing to add a household member to an existing lease, reducing any tenant subsidy, increasing the rent, reducing services, changing the terms or conditions or privileges, threatening to or actually filing false reports with tenant reporting agencies, unlawfully locking an individual out of, or otherwise restricting, access to all or part of the Premises, harassment, termination, or threatened termination of tenancy, serving a notice to quit, filing an eviction action, evicting a tenant, refusing to provide a reasonable accommodation or reasonable modification, or engaging in any other Discriminatory Housing Practice;

(2) Refusing to sell a Dwelling or Residential Real Estate or otherwise failing or refusing to enter into a Residential Real Estate related transaction;

(3) Refusing to provide Financial Assistance related to a Dwelling or Residential Real Estate; or

(4) Taking other action that has an adverse effect on an Aggrieved Person.

(b) “Aggrieved Person” includes any person who:

(1) claims to have been injured by a Discriminatory Housing Practice; or

(2) believes that they will be injured by a Discriminatory Housing Practice that is about to occur.

(c) “Building” means a structure, facility, or portion thereof that contains or serves one or more Dwelling Units.

(d) “Common Use Areas” means rooms, spaces, or elements inside or outside of a Building that are made available for the use of residents of a Building or the guests thereof. Examples of Common Use Areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, elevators, parking areas, garages, pools, clubhouses, dining areas, physical fitness areas or gyms, children’s play areas, recreational areas, and passageways among and between Buildings.

(e) “Complainant” means a “person,” as that term is defined by Government Code section 12925(d) or 12927(g), who files a complaint with the department alleging that the person has been aggrieved by a practice made unlawful by any law the department enforces.

(f) “Discriminatory Housing Practice” means an act that is unlawful under federal or state fair housing law, including, but not limited to, housing-related violations of the Fair Employment and Housing Act, the Fair Housing Act as amended by the Fair Housing Amendments Act, the Unruh Civil Rights Act, the Ralph Civil Rights Act, the Disabled Persons Act, and the Americans with Disabilities Act.

(g) “Dwelling Unit” means a single unit of a Housing Accommodation for a family or one or more individuals.

(h) “Financial Assistance” includes the making or purchasing of loans, grants or the provision of other Financial Assistance relating to the purchase, organization, development, construction, improvement, repair, maintenance, rental, leasing, occupancy, or insurance of Dwellings or which are secured by Residential Real Estate, including, but not limited to:

(1) Mortgages, reverse mortgages, home equity loans, and other loans secured by Residential Real Estate;

(2) Insurance and underwriting related to Residential Real Estate, including but not limited to construction insurance, property insurance, liability insurance, homeowner’s insurance, and renter’s insurance.

(3) Loan modifications, foreclosures, and the implementation of the foreclosure process.

(i) “Housing Accommodation” or “Dwelling” includes:

(1) one or more Dwelling Units;

(2) any Building, structure, or portion thereof that is used or occupied as, or designed, arranged, or intended to be used or occupied as, a home, residence, or sleeping place by one individual who maintains a household or by two or more individuals who maintain a common household, and includes all public and Common Use Areas associated with it, if any, including, but not limited to, single family homes; apartments; community associations, condominiums, townhomes, planned unit developments, and other common interest developments as defined in the Davis-Stirling Common Interest Development Act (known colloquially as homeowner associations (HOAs)); housing cooperatives, including those defined under Civil Code 4100(d); rooms used for sleeping purposes; 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 room or portion of the Dwelling; bunkhouses; dormitories, 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 housing farmworkers; hospices; manufactured homes; mobilehomes and mobilehome sites or spaces; modular homes, factory built houses, multi-family manufactured homes, floating homes and floating home marinas, berths, and spaces; communities and live aboard marinas; and recreational vehicles used as a home or residence.

(3) any vacant land that is offered for sale or lease for the construction of any Housing Accommodation, Dwelling, or portion thereof as defined in subdivision (2); or

(4) all Dwellings as defined in and covered by the federal Fair Housing Act (42 U.S.C. § 3602(b)).

(j) “Housing Opportunity” includes the opportunity to obtain, use or enjoy a Dwelling, a Residential Real Estate-Related Transaction, Financial Assistance in relation to Dwellings or Residential Real Estate, land use benefits in relation to Dwellings or Residential Real Estate, or other housing related services and facilities, including but not limited to governmental services.

(k) “Includes” or “including” has the same meaning as “includes, but not limited to” or “including, but is not limited to.”

(l) “Owner” includes any Person having any legal or equitable right of ownership, governance, possession or the right to rent or lease Housing Accommodations. This may include:

(1) a lessee, sublessee, assignee, managing agent, real estate broker or salesperson;

(2) a trustee, or receiver;

(3) any Person that is defined as a “housing provider” in a statute, regulation or government program or that is commonly referred to as a “housing provider” in the housing industry;

(4) the state and any of its political subdivisions and any agency thereof;

(5) agencies, districts and entities organized under state or federal law, and cities, counties, and cities and counties (whether charter or not), and all political subdivisions and agencies thereof having any legal or equitable right of ownership or possession or the right to rent or lease Housing Accommodations; and

(6) governing bodies of the common interest developments.

(m) “Person” includes:

(1) all individuals and entities that are included in the definition of “Owner”;

(2) all individuals and entities that are described in 42 U.S.C. § 3602(d) and 24 C.F.R. 100.20, including one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the U.S.C, receivers, and fiduciaries;

(3) all institutional third parties, including the Federal Home Loan Mortgage Corporation, Fannie Mae, and any other entities that comprise the secondary loan market;

(4) community associations, condominiums, planned developments, and other common interest developments, including those defined in the Davis-Stirling Common Interest Development Act (Civil Code Section 4000, et seq.);

(5) the state and any of its political subdivisions and any agency thereof; agencies, districts, and entities organized under state or federal law; and cities, counties, and cities and counties (whether charter or not), and all political subdivisions and agencies thereof; and

(7) any entity that has the power to make housing unavailable or infeasible through its Practices, including, but not limited to, government entities and agencies, insurance companies, real estate brokers and agents, and entities that provide funding for housing

(8) “Person” shall be interpreted broadly.

(n) “Practice” includes the following, whether written or unwritten or singular or multiple: an action, failure to act, rule, law, ordinance, regulation, decision, standard, policy, procedure, and common interest development governing documents pursuant to Civil Code sections 4340-4370. Practice also includes “practices” as used in 24 C.F.R. Part 100.

(o) “Premises” means the interior or exterior spaces, parts, components, or elements of a Building, including individual Dwelling Units and the public and Common Use Areas of a Building.

(p) “Protected Bases” or “Protected Classes” include race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status, arbitrary characteristics, and all other classes of Persons protected from discrimination under federal or state fair housing laws, and Persons perceived to be a member of any of the preceding classes or associated with any of the preceding classes.

(q) “Public Use Areas” means interior or exterior rooms or spaces of a Building that are made available to the general public. Public use areas may be provided at a Building that is privately or publicly owned.

(r) “Residential Real Estate” means all real property, whether improved or unimproved, that includes or is planned to include Dwellings, or is zoned or otherwise designated or available for the construction or placement of Dwellings.

(s) “Residential Real Estate-Related Transaction” includes:

(1) providing financial assistance; or

(2) buying, selling, brokering or appraising of Residential Real Estate.

(t) “Respondent” means an entity or person alleged to have committed a practice made unlawful by a law the department enforces and against whom a complaint has been filed with the department or civil action has been filed.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12955.8, Government Code.

§§ 12006-12009. [Reserved]

§ 12010. Liability for Discriminatory Housing Practices.

(a) Direct Liability.

(1) A Person is directly liable for:

(A) The Person’s own conduct that results in a Discriminatory Housing Practice.

(B) Failing to take prompt action to correct and end a Discriminatory Housing Practice by that Person’s employee or agent, where the person knew or should have known of the

discriminatory conduct, including because supervisors, managers, or principals of the person had or should have had such knowledge.

(C) Failing to take prompt action to correct and end a Discriminatory Housing Practice by a third-party, where the Person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a Discriminatory Housing Practice by a third-party depends upon the extent of any legal responsibility or authority the person may have with respect to the conduct of such third party. The power, responsibility, or authority can be derived from sources including, but not limited to contracts, leases, common interest development governing documents, or by federal, California, or local laws, regulations, or Practices.

(2) For purposes of determining liability under this section, prompt action to correct and end the Discriminatory Housing Practice may not include any action that penalizes or harms the Aggrieved Person, such as eviction of the Aggrieved Person.

(3) An employee or agent may be directly liable for a Discriminatory Housing Practice, regardless of whether the person's employer or principal knew or should have known of the conduct or failed to take appropriate corrective action.

(b) Vicarious Liability. To the extent permissible by applicable California laws concerning agency, and so long as it is not inconsistent with interpretations of agency under the Fair Housing Act, a Person is vicariously liable for a Discriminatory Housing Practice by the Person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a Discriminatory Housing Practice.

(1) Whether liability for a Discriminatory Housing Practice is consistent with agency law is a question of fact. However, a Discriminatory Housing Practice can be found to occur even if it violates an agent's or employee's official duties, does not benefit the agent or employer, is willful or malicious, or disregards the agent's or employer's express orders.

(2) An agent or employee shall be considered to be acting within the course and scope of the agency or employment relationship even if his or her Discriminatory Housing Practice occurs incidental to the agent's or employee's job-related tasks. This includes being on the Premises of a Dwelling for work-related reasons such as conducting repairs.

(c) An Aggrieved Person has a right to raise the Discriminatory Housing Practice as an affirmative defense to an unlawful detainer action.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12983, Government Code.

Articles 2-7. [Reserved]

Article 8. Harassment and Retaliation

§§ 12011-12049. [Reserved]

§ 12050. Harassment.

(a) General. Quid pro quo and hostile environment harassment because of membership in a Protected Class constitute Discriminatory Housing Practices.

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to any of the following: the sale, rental, or availability of a Dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, conditions, or privileges of a Housing Opportunity. An unwelcome request or demand may constitute quid pro quo harassment even if an individual acquiesces in the unwelcome request or demand.

(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with any of the following: the availability, sale, rental, or use or enjoyment of a Dwelling; the terms, conditions, or privileges of the sale or rental; or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, conditions, or privileges of a Housing Opportunity, or constitute any kind of Adverse Action. Hostile environment harassment does not require a change in the terms, conditions, or privileges of the Dwelling, Housing Opportunity, or housing-related services or facilities.

(A) Whether hostile environment harassment existed or exists depends upon the totality of the circumstances.

(i) Factors to be considered in determining whether hostile environment harassment existed or exist include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.

(ii) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment existed or exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment exists or existed, as well as the amount of damages to which an Aggrieved Person may be entitled.

(iii) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is viewed from the perspective of a reasonable person in the Aggrieved Person's position.

(b) Title VII Affirmative Defenses Not Available. The affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor under Title VII of the Civil Rights Act of 1964 is not available in housing cases.

(c) Type of Conduct. Quid pro quo and hostile environment harassment in housing can be written, verbal, or other conduct and does not require physical contact. Quid pro quo and hostile environment harassment in housing include:

- (1) Verbal harassment, including, but not limited to, epithets, derogatory comments, or slurs;
- (2) Physical harassment directed at an individual, including, but not limited to, assault, impeding or blocking movement, or any physical interference with normal movement;
- (3) Visual forms of harassment, including, but not limited to, derogatory posters, cartoons, drawings, writings, or other documents related to membership in a Protected Class. Nothing herein shall be construed to contravene the protections provided by Civil Code sections 1940.4 and 4710;
- (4) Unwelcome sexual conduct, or other unwelcome conduct, linked to an individual's sex, gender, gender identity, gender expression, or sexual orientation;
- (5) Any coercion, intimidation, threats, or interference with an individual's exercise or enjoyment of a Housing Opportunity;
- (6) Taking any Adverse Action against a Person in a manner that constitutes quid pro quo or hostile environment harassment, such as representing to an applicant that a Dwelling or Housing Opportunity is unavailable because of the applicant's response to a request for a sexual favor or other harassment;
- (7) Revealing private information to a third party about a Person, without their consent, in a manner that constitutes quid pro quo or hostile environment harassment, unless such disclosure is required by federal or state law or permitted by an exception set forth in section 12065(b);
- (8) Subjecting a person to conduct constituting quid pro quo or hostile environment harassment that causes any of the following:
  - (A) any limitation or restriction of the availability of a Dwelling, including the price, qualification criteria, or standards and procedures for securing the Dwelling;
  - (B) imposing different terms, conditions, or privileges relating to the sale or rental of a Dwelling or denying or limiting service or facilities in connection with the sale or rental of a Dwelling;
  - (C) the individual to vacate a Dwelling or abandon efforts to secure the Dwelling;
  - (D) discouraging or denying access to brokerage services;



(E) any limitation or restriction of availability of a Financial Assistance to be provided with respect to a Dwelling, or the terms, conditions, or privileges thereof;

(F) any limitation or restriction of an appraisal of residential real property in connection with the sale, rental or financing of a Dwelling; or

(G) any limitation or restriction on the availability, terms, conditions, or privileges of a Housing Opportunity.

(d) Number of Incidents. A single incident of harassment because an individual is a member of a Protected Class may constitute a Discriminatory Housing Practice, where the incident is sufficiently severe enough to constitute hostile environment harassment, or evidences quid pro quo.

(e) Individuals Protected. The prohibition on harassment extends to conduct that is based on an individual's membership in a Protected Class, being perceived as a member of a Protected Class, or on account of having aided or encouraged any person in the exercise of the rights protected by this Act.

(f) Nothing herein is designed to contravene an individual's right to petition the government or exercise their rights under the First Amendment to the United States Constitution.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12948, 12955, and 12955.7, Government Code.

§§ 12051-12055. [Reserved]

§ 12056. Retaliation.

(a) It shall be unlawful for any Person to take Adverse Action against an Aggrieved Person when a purpose for the Adverse Action is retaliation for engaging in protected activity.

(b) Individuals Protected. For purposes of a retaliation claim, an Aggrieved Person includes any Person who has alleged harm due to engagement in a Protected Activity, and that Person does not need to have an independent discrimination claim under other provisions of the Act.

(c) "Protected Activity" includes making a complaint, testifying, assisting or participating in any manner in a proceeding under the Fair Housing Act, Fair Employment and Housing Act, the Americans with Disabilities Act, Section 504, the Unruh Act, or any other federal, state or local law protecting fair housing rights or prohibiting discrimination in housing, opposition to housing Practices believed to be discriminatory or made unlawful by a fair housing law, informing law enforcement or other government agencies of Practices believed to be discriminatory or made unlawful by a fair housing law, assertion of rights protected by fair housing laws (including in response to perceived harassment), aiding or encouraging a person to exercise their fair housing rights, meeting or assembling with other individuals in order to address potential or actual violations of fair housing rights (including, for example, by joining or organizing a tenant union),

making a request for a reasonable accommodation or reasonable modification for an individual with a disability, or any other action related to access to statutory or constitutional remedial processes or remedies for violations of fair housing laws or laws prohibiting discrimination in housing.

(d) Burden-shifting rule. To establish a prima facie case of retaliation, a complainant must show that (1) the complainant was engaged in a Protected Activity; (2) the respondent subjected the complainant to an Adverse Action; and (3) a causal link exists between the Protected Activity and the Adverse Action. If the complainant can establish a prima facie case, the respondent must then offer a legitimate non-retaliatory reason for the Adverse Action, whereupon the burden shifts back to the complainant to demonstrate that the proffered reason is pretextual.

(e) “Purpose” means that retaliation formed some part of the basis for the Respondent’s action even if it was not the sole motivating factor. The purpose must be more than a remote or trivial factor. Purpose may be established by evidence which indicates that the timing of the Adverse Action in relation to the Respondent’s notification of the Protected Activity is such that retaliatory motivation can be inferred, may be established by the non-existence of another plausible purpose for the Respondent’s Adverse Action, or by other direct or circumstantial evidence. For purposes of section 12955(f) of the Act, “dominant purpose” shall have the same meaning as purpose under this subsection.

(f) An Aggrieved Person under this Act may raise retaliation as an affirmative defense in an unlawful detainer action. Nothing in this subsection is intended to cause or permit the delay of an unlawful detainer action due to asserting retaliation as an affirmative defense. Raising retaliation as a good faith affirmative defense does not in and of itself constitute a delay of an unlawful detainer action.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12948, 12955, and 12955.7, Government Code.

## Article 9. Disability

### § 12057. Definitions.

As used in this article, the following definitions shall apply unless the context otherwise requires:

(a) “Assistance animal” means an animal that is necessary as a reasonable accommodation for an individual with a disability. See also, section 12070. Assistance Animals include service animals and support animals. An Assistance Animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of an individual’s disability.

(1) “Service animals” are animals that are trained to perform specific tasks to assist individuals with disabilities, including people with mental health disabilities. Service Animals do not need to be professionally trained or certified, but may be trained by the

individual with a disability or another individual. Specific examples include, but are not limited to:

(A) “Guide dog,” as defined at Civil Code section 54.1, or other animal trained to guide a blind individual or individual with low-vision.

(B) “Signal dog,” as defined at Civil Code section 54.1, or other animal trained to alert a deaf or hard-of-hearing individual to sounds.

(C) “Service dog,” as defined at Civil Code section 54.1, or other animal individually trained to the requirements of an individual with a disability.

(D) “Miniature horses” meeting the requirements of 28 CFR 35.136(i) and 28 CFR 36.302(c)(9).

(E) “Service animals in training,” including guide and signal dogs being trained by individuals with disabilities or authorized trainers under Civil Code section 54.2(b).

(2) “Support animals” are animals that provide emotional, cognitive, or other similar support to a person with a disability. A Support Animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, and 12955, Government Code; *Auburn Woods I Homeowners Ass’n v. Fair Employment and Housing Com’n* (2004) 121 Cal.App.4th 1578.

§§ 12058-12064. [Reserved]

§ 12065. Reasonable Accommodations.

(a) It is a Discriminatory Housing Practice for any Person to refuse to make reasonable accommodations in rules, policies, Practices, or services when such accommodations may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a Dwelling Unit and public and Common Use Areas, or an equal opportunity to obtain, use, or enjoy a Housing Opportunity unless providing the requested accommodation would constitute an undue financial or administrative burden or a fundamental alteration of its program, or if allowing an accommodation would constitute a direct threat to the health and safety of others or would cause substantial physical damage to the property of others, as defined in Section 12067 or 12068(d).

(1) Subsection (b) of this section describes confidentiality requirements regarding reasonable accommodations;

(2) Subsection (c) of this section defines requirements relating to requests for reasonable accommodations;

(3) Section 12066 of this article describes the interactive process that is required when the duty to consider a reasonable accommodations request has been triggered;

(4) Section 12067 of this article defines requirements relating to the determination of whether a requested accommodation is necessary;

(5) Section 12068 of this article defines the bases upon which a requested accommodation can be lawfully denied;

(6) Section 12069 of this article states other requirements or limitations in the provision of reasonable accommodations and provides examples of reasonable accommodations.

(b) Confidentiality regarding reasonable accommodations

(1) All information concerning an individual's disability, request for an accommodation, or medical verification or information must be kept confidential and must not be shared with other persons who are not directly involved in the interactive process or decision making about the requested accommodation unless disclosure is:

(A) required to make or assess the decision to grant or deny the request for accommodation;

(B) required to effectively implement the requested accommodation;

(C) authorized by the individual with the disability in writing; or

(D) required by law.

(c) Requests for Reasonable Accommodations.

(1) The individual with a disability seeking a reasonable accommodation must make a request for such accommodation.

(2) The request for a reasonable accommodation may be made by the individual with a disability, a family member, or someone else acting on behalf of the individual with a disability.

(3) A request for a reasonable accommodation need not be made in a particular manner or at a particular time. An individual makes a reasonable accommodation request at the time they request orally or in writing, or through a representative, an exception, change, or adjustment to a Practice because of a disability, regardless of whether the phrase "reasonable accommodation" is used as part of the request. A request for a reasonable accommodation may be made at any time, including during litigation, at or after trial.

(4) The duty to provide reasonable accommodations is an ongoing one. Some individuals with disabilities require only one reasonable accommodation, while others may need more than one. Still others may need one reasonable accommodation for a period of time, and then at a later date, require another type of reasonable accommodation. Each request must be considered separately under the standards in this article.

(5) Adopting a formal procedure may aid individuals with disabilities in making requests for reasonable accommodations or modifications and may make it easier to assess those requests and keep records of the considerations given the requests. An individual requesting an accommodation may be asked to use a form or follow a particular procedure. However, a Person may not refuse a request or refuse to engage in the interactive process because the individual with a disability or their representative did not use the preferred forms or procedures. The forms and procedures used may not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a Dwelling or Housing Opportunity, such as the information prohibited in section 12067.

(6) A Person responsible for responding to accommodation requests must treat a request by an individual with a disability for assistance in completing forms or in following procedures, or a request for alternative methods of communication during the reasonable accommodation process, as a request for reasonable accommodations that must be responded to in the same manner as any other request. In many circumstances, such requests, or the Person considering the request, may also be covered by the American with Disabilities Act and the provisions in the ADA and its accompanying regulations requiring the provision of auxiliary aids and services and alternative methods of communication.

(7) Reasonable Accommodation Requests in Unlawful Detainer Actions.

(A) An individual with a disability may raise failure to provide a reasonable accommodation as an affirmative defense to an unlawful detainer action;

(B) A request for a reasonable accommodation in unlawful detainer actions can be made at any time during the eviction process, including at or after trial, and in certain circumstances after eviction. A reasonable accommodation request that is made during a pending unlawful detainer actions is subject to the same regulations that govern reasonable accommodation requests at any other time. For example:

(i) Rowan is an individual with a disability who receives Social Security Disability on the sixth day of each month. He is served a three-day notice to pay rent or quit on the second day of the month, but is unable to pay until after the notice expires. As a result, the Owner files an unlawful detainer action. At trial, Rowan requests an accommodation to pay his rent on the sixth instead of the first, including allowing a late payment for the month at issue in the trial. The Owner should consider the request under these regulations, including considering whether it constitutes an undue financial or

administrative burden as defined in section 12068, and engaging in the interactive process under section 12066 as needed.

(ii) Chelsea is an individual who developed a physical disability that made it difficult for her to work, and because of that missed two months rent. The Owner filed a successful unlawful detainer action. Chelsea partially moved out the day after the trial, but was unable, without help, to move some larger items (e.g. her couch, bed and dresser) to her new less expensive apartment. Because of the disability, she could not lift or carry anything heavy. She requested some additional time as a reasonable accommodation to arrange for help to move her furniture. The Owner should consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12068 (for example if the Owner has the capacity to leave the items in the unit for a period of time or if the unit is not re-rented), and engaging in the interactive process under section 12066 as needed.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

#### § 12066. The Interactive Process.

(a) If a request for a reasonable accommodation is not promptly granted, the Person considering the request for accommodation must engage in a timely, good faith, interactive process with the individual with a disability, or the individual's representative, in order to identify, evaluate, or implement an effective, reasonable accommodation for an individual with a disability.

(b) If the Person considering the request for accommodation believes the information received is insufficient to establish either that a disability exists or the nature of the disability-related need for the accommodation, or if the nexus between the disability and the requested accommodation is not clear to the Person considering the request for accommodation, the Person considering the request for accommodation must seek clarification or additional information pursuant to section 12067 from the individual with a disability or the individual's representative. The Person considering the request must not deny it for lack of information without first requesting the clarification or additional information and providing a reasonable opportunity for the individual requesting the accommodation to provide it.

(c) If the Person considering the request believes that the initially requested accommodation cannot be granted for a reason permitted under section 12068, the Person considering the request must try to identify if there is another accommodation that works and must discuss with the individual with the disability or the individual's representative whether other alternative accommodations would be equally effective in meeting the needs of the individual with a disability. If an alternative accommodation would effectively meet the requester's disability-related needs of the individual and could not be lawfully denied for a reason permitted under Section 12068, the Person considering the request must grant it. The individual requesting the accommodation is not obligated to accept an alternative accommodation if the alternative accommodation will not meet the needs of the individual with the disability and the initially

requested accommodation could not be lawfully denied for a reason permitted under section 12068. In many cases, the individual with the disability has the most accurate knowledge about the functional limitations posed by their disability, and therefore should be given significant weight.

(d) Requests for reasonable accommodations must be promptly considered. The time necessary to respond to a request depends on many factors, including, but not necessarily limited to:

(1) the nature of the accommodation under consideration;

(2) whether it is necessary to obtain supporting information because the disability or the need for the accommodation is not obvious or known to the Person considering the request;

(3) whether the accommodation is needed on an urgent basis; and

(4) whether it is necessary to engage in the interactive process to resolve the request.

(e) An undue delay by the Person considering the request, for example, when there is a failure to act promptly on the need to acquire additional information pursuant to section 12067, may constitute a denial of a reasonable accommodation. Whether a request has been promptly considered is a case-by-case factual determination.

(f) A failure to reach an agreement on an accommodation request after a reasonable attempt to do so is in effect a decision not to grant the requested accommodation. If the individual requesting the accommodation or their representative has, after a reasonable opportunity, unreasonably failed to provide legally relevant information that was requested consistent with the regulations, the person considering the request may find this failure to be grounds for determining that the accommodation could not be granted. However, if a later request for a same or similar accommodation is made by the individual with a disability or their representative, the latter request must be considered pursuant to these regulations independently of the original request.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12067. Establishing that a Requested Accommodation is Necessary.

(a) If an individual with a disability or their representative makes a request for an accommodation that provides reliable information about the disability and how the requested accommodation would enable the individual with a disability equal opportunity to use and enjoy a Dwelling or Housing Opportunity, then the Person considering the request may not request any additional information about the individual's disability or the disability-related need for the accommodation.

(b) If the disability of the individual requesting an accommodation is apparent or known by the Person considering the request, and it is also readily apparent or known how the requested accommodation would enable the individual with a disability equal opportunity to use and enjoy a Dwelling or Housing Opportunity, then the Person considering the request may not request any additional information about the requestor's disability or the disability-related need for the accommodation.

(c) If the disability of the individual requesting an accommodation is apparent or known by the Person considering the request, but the need for the requested accommodation is not readily apparent or known, then in order to evaluate the disability-related need for the accommodation, the Person considering the request may request only information that:

(1) describes the needed accommodation; and

(2) shows the relationship between the individual's disability and how the requested accommodation would enable the individual with a disability equal opportunity to use and enjoy a Dwelling or Housing Opportunity.

(d) If the disability of the individual requesting an accommodation is not readily apparent to the Person considering the request, the Person may request only information that:

(1) is necessary to establish that the individual has a disability;

(2) describes the needed accommodation; and

(3) shows the relationship between the individual's disability and how the requested accommodation would enable the individual with a disability equal opportunity to use and enjoy a Dwelling or Housing Opportunity.

(e) A Person considering a request for an accommodation may not seek information about:

(1) The individual with a disability's particular diagnosis or medical condition, the severity of the disability, medical records, medical history, other disability or medical issues unrelated to the request, or other disability or health related information beyond the information identified in subdivision (d) above.

(2) Information unrelated to the inquiry in subdivision (d) above.

(f) Depending on the individual's circumstance, information establishing that the individual has a disability can usually be provided directly by the individual with a disability through a variety of means, such as a credible statement or documentation of receipt of disability benefits. A credible statement is one that a reasonable person would believe based on the available information. Information confirming that the individual has a disability, or confirming that there is a disability-related need for the accommodation, may also be provided by any reliable third party who is in a position to know about the individual's disability or the disability-related need for the requested accommodation, including but not limited to:



- (1) A medical professional;
- (2) A health care provider, including the office of a medical Practice or a nursing registry;
- (3) A peer support group. Peer support groups are mutual support groups developed as alternatives to traditional medical or psychological treatments. They provide services such as education, peer mentoring, peer coaching, and peer recovery resource connections for groups of people with disabilities or people suffering from a wide range of trauma or illness;
- (4) A non-medical service agency or individual, including In-Home Supportive Services or Supported Living Services providers; or
- (5) Any other reliable third party who is in a position to know about the individual's disability or disability-related need for the accommodation. This could include, but are not limited to, a relative caring for a child with a disability, a relative caring for an elderly family member with dementia, or others in a caregiving relationship with a person with a disability.

(g) The determination of whether a third party is reliable must be determined on a case-by-case basis. A determination of reliability may take into account:

- (1) information establishing how the third party is familiar with the individual's disability or the disability-related need for the accommodation;
- (2) information that specifies the functional limitations that underlie the request for an accommodation, but this information need not include specific medical information or terminology; or
- (3) information providing a means to contact the third party to verify that the person identified did in fact provide the documentation and to answer any questions permitted by law.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code.

#### § 12068. Denial of Reasonable Accommodation.

(a) A requested accommodation may be denied if:

- (1) The individual on whose behalf the accommodation was requested is not an individual with a disability;
- (2) There is no disability-related need for the requested accommodation (in other words, there is no nexus between the disability and the requested accommodation);

(3) The requested accommodation would constitute a fundamental alteration of the services or operations of the person who is asked to provide the accommodation;

(4) The requested accommodation would impose an undue financial or administrative burden on the Person who is asked to provide the accommodation; or

(5) The requested accommodation would constitute a direct threat to the health or safety of others (i.e. a significant risk of substantial bodily harm) or would cause substantial physical damage to the property of others, and such risks cannot be sufficiently mitigated or eliminated by another reasonable accommodation, pursuant to the following:

(A) A determination that an accommodation poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence, not on mere speculation or stereotype about the requested accommodation or a particular disability or persons with disabilities in general;

(B) The assessment of whether the specific accommodation in question poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must consider, based on objective evidence that is sufficiently recent as to be credible, and not from unsubstantiated inferences:

(i) the nature, duration, and severity of the risk of a direct threat to the health and safety of others or substantial physical damage to the property of others;

(ii) the probability that a direct threat to the health or safety of others or substantial physical damage to the property of others will actually occur; and

(iii) whether there are any additional or alternative reasonable accommodations that will eliminate the direct threat to the health or safety of others or substantial physical damage to the property of others; or

(6) A Support Animal requested as a reasonable accommodation would constitute a direct threat under Section 12070.

(b) The determination of whether an accommodation poses an undue financial or administrative burden must be made on a case-by-case basis and should consider various factors including:

(1) the cost of the requested accommodation;

(2) the financial resources of the Person who has been asked to grant the accommodation;

(3) the benefits that a proposed alternative accommodation would provide to the individual with a disability;

(4) the availability of alternative accommodations that would effectively meet the disability-related needs of the individual with a disability;

(5) where the entity being asked to make the accommodation is part of a larger entity, the structure and overall resources of the larger organization, as well as the financial and administrative relationship of the entity to the larger organization. In general, a larger entity with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller entity with fewer resources; and

(6) whether the need for the accommodation arises from the Owner's failure to maintain or repair the property as required by law or contract, or to otherwise comply with related legal obligations.

(c) A fundamental alteration is a modification that changes the essential nature of the services or operations of the Person being asked to provide the accommodation. For example, if a landlord does not normally provide shopping for residents, a request to shop for a person with a disability could constitute a fundamental alteration.

(d) A Person cannot deny a request for a reasonable accommodation based on the Person's or another individual's fears or prejudices about the individual's disability, nor can a denial be based on the fact that provision of a reasonable accommodation or modification might be considered unfair by other individuals or might possibly become an undue burden if extended to multiple other individuals who might request accommodations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code, *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12069. Other Requirements or Limitations in the Provision of Reasonable Accommodations and Examples.

(a) Other Requirements or Limitations in the Provision of Reasonable Accommodations

(1) It is unlawful to charge a fee or require an additional deposit or financial contribution as a condition of receiving, processing, or granting a reasonable accommodation.

(2) The fact that an accommodation may impose some cost on the Person providing the accommodation is not grounds for denial of a request, so long as the cost does not constitute an undue financial or administrative burden, under section 12068.

(b) Examples of Reasonable Accommodation:

(1) Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first-come, first-served basis. John applies for housing in Progress Gardens. John has a mobility disability and is unable

to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a Dwelling. The Owner should consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12068, and engaging in the interactive process under section 12066 as needed. Because the cost of reserving a space is likely minimal in light of the overall budget of a 300 unit apartment complex, the accommodation does not constitute an undue burden as defined in section 12068(b). Since providing parking spaces is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12068(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(2) Miguel is an individual with cognitive impairments that limit his ability to manage his financial affairs. Miguel uses a third party representative payee. He requests that he be able to pay rent through the payee rather than pay directly from his checking account, and that any nonpayment notices be sent to his representative payee as well as himself. This accommodation is necessary because without it Miguel might not be able to pay rent in a regular and timely manner which is necessary for him to fulfill his obligation as a tenant. The Owner should consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12068, and engaging in the interactive process under section 12066 as needed. Because the cost is likely minimal in light of the overall budget of most apartment complexes, the accommodation does not constitute an undue burden as defined in section 12068(b). Since processing rent payments is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12068(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(3) Abigail, an individual with a disability, receives only SSI (Supplemental Security Income), a government benefit based on her inability to work because of her disability. She requests that she be permitted to add a co-signer on her rental lease in order to meet the minimum income qualifications. If the combined income of Abigail and the co-signer constitutes sufficient income to meet the reasonable minimum income qualifications in light of Abigail's and the co-signer's other financial obligations, and if Abigail would not otherwise be able to rent this apartment, this accommodation may necessary. The Owner should consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12068, and engaging in the interactive process under section 12066 as needed. Because the cost is likely minimal in light of the overall budget of most apartment complexes, the accommodation does not constitute an undue burden as defined in section 12068(b). Since making changes to application and screening criteria is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration,

as defined in section 12066(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(4) Tuan has quadriplegia and uses a power wheelchair, which can make it difficult for him to travel. He must make arrangements with a paratransit agency and it cannot always accommodate his requests without significant advance notice. He requests a reasonable accommodation for additional time to come into the mortgage lender's office to sign a loan modification application, even though the mortgage company's normal Practice is to give little advance notice of the meeting. This accommodation may be necessary because without it Tuan may be unable to sign the loan modification application and so receive the loan. The mortgage company should consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12068, and engaging in the interactive process under section 12066 as needed. Because the cost is likely minimal in light of the overall budget, the accommodation does not constitute an undue burden as defined in section 12068(b). Since processing loan modification applications is part of the essential operations of the mortgage company, the accommodation is not a fundamental alteration, as defined in section 12066(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(5) Michiko requests an exception to her property's no-pets policy as a reasonable accommodation so that her friend Yoshi, who has a non-apparent disability, is able to visit with his emotional support animal. Yoshi, as a person with a disability, is entitled to reasonable accommodations. Michiko may request such an accommodation on behalf of Yoshi. As the disability is non-apparent, the Owner may request information establishing the disability and the disability-related need for the animal. Discrimination is prohibited against individuals associated with an individual with a disability. Denying Michiko the right to have visitors of her choice, like other tenants, because her visitor has a disability would constitute discrimination against Michiko because of her association with an individual with a disability. Because without this accommodation Michiko will not be able to receive Yoshi as a visitor at her apartment which is a standard benefit of being a leaseholder this accommodation may be necessary to provide Michiko an equal opportunity to use and enjoy a Dwelling, and is therefore a necessary accommodation. The Owner should consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12068 and engaging in the interactive process under section 12066 as needed. Because the cost to process the request is likely minimal in light of the overall budget, the cost of providing an accommodation does not constitute an undue burden as defined in section 12068(b). Further, since determining the appropriateness of assistance animals is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12068(c). Therefore, in the absence of additional relevant facts or unless the animal poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others, or unless Yoshi fails to provide the necessary information, the accommodation should be granted (Note if Yoshi has a service animal, rather than a support animal, the animal would be

permitted pursuant to subsection 12070(b) without the need to request an accommodation.)

(6) Marita wants to install a ramp to enable her son, who uses a wheelchair, to enter and leave her house without assistance. Given the small lot, the ramp will extend slightly beyond the permitted set-back requirements on Marita's lot but will still be within Marita's property line and will not cross a public right of way. Marita requests a reasonable accommodation from the city to modify the city's policy or ordinance regarding set-back requirements on her property. Because without the ramp Marita's son would not be able to use the house like any other dweller (coming and going without assistance), this accommodation is necessary to afford him an equal opportunity to use and enjoy a Dwelling. The city should consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12068, and engaging in the interactive process under section 12066 as needed. Because the cost of processing and permitting her request is likely minimal in light of the city's overall budget, the accommodation does not constitute an undue burden as defined in section 12068(b). Since reviewing Building alterations is part of the essential operations of the city, the accommodation is not a fundamental alteration, as defined in section 12068(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted. The city should not charge Marita a fee for processing her request, whether or not it is granted, under section 12069(a)(1). (Note that reasonable accommodations may also be available to Marita if the ramp did extend beyond her property line into a public right of way, but a further interactive process might be warranted on those specific facts).

(7) Teresa lives in a second floor apartment in a medium-sized apartment Building with a single elevator that was working when she moved in. Last month her leg was amputated and she now uses a wheelchair. The elevator in the Building is broken. Teresa cannot leave her home without assistance on the stairs. She requests that the Owner expedite repairs to the elevator and offer her the first available ground floor unit. Her request is necessary because there is a nexus between Teresa's disability and her request; without the requested accommodations she will not be able to access her unit using the common area. The Owner should consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12068 and engaging in the interactive process under section 12066 as needed. Because the cost is likely not burdensome in light of the overall budget of the medium sized apartment building, and would be required by law as part of the Owner's obligation to maintain the apartment, the accommodation does not constitute an undue burden as defined in section 12068(b). Since making repairs is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12068(c). See, section 12068(b)(6). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted. Depending on the time it takes to repair the elevator, or particular difficulties for Teresa, additional accommodation requests may be made that would need to be considered.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12070. Assistance Animals.

(a) Assistance Animals include Guide Dogs, Signal Dogs, Service Dogs, Service Animals, and Support Animals as defined in section 12057.

(b) Persons, including tenants, occupants, invitees, Owners, and others, are permitted to have Service Animals in all Dwellings (including Common Use and Public Use Areas), Residential Real Estate, and other Buildings involved in Residential Real Estate transactions, subject to the restrictions set forth in subsection (d) below. The only permissible questions that can be asked of an individual to determine if the animal is a Service Animal are: 1) “Are you a person with a disability?” and 2) “What is the disability-related task the animal has been trained to perform?” It is not permitted to ask the person with the disability to demonstrate the task.

(c) Persons with disabilities who have a Support Animal may request a reasonable accommodation related to the individual’s need for the Support Animal in Dwellings (including Common Use and Public Use Areas) and Residential Real Estate, and other Buildings involved in Residential Real Estate transactions.

(1) The standards, procedures, and defenses in section 12065 for evaluating a request for a reasonable accommodation apply to a request to have a Support Animal as a reasonable accommodation.

(2) A Support Animal certification from an online service that does not include an individualized assessment from a medical professional is presumptively considered not to be information from a reliable third party under section 12067. An individualized assessment means an assessment based on information that demonstrates that the individual has a disability, describes the needed accommodation (including the species of animal), and describes the relationship between the individual’s disability and how the requested accommodation would enable the individual with a disability equal opportunity to use and enjoy a Dwelling or Housing Opportunity. A Person provided with such a certification must provide an opportunity to the individual requesting the accommodation to provide additional information that meets the requirements of section 12067 before denying a request for reasonable accommodation.

(d) Provisions applicable to all Assistance Animals include:

(1) A person with an Assistance Animal may also be covered by other legal obligations relating to Assistance Animals, such as the American with Disabilities Act, section 504 of the Rehabilitation Act, Civil Code section 51, and Government Code 11135, which include additional requirements or prohibitions relating to Assistance Animals, and may further restrict the nature and type of inquiry that may be made concerning assistance animals;

(2) A person with an Assistance Animal shall not be required to pay any pet fee, additional rent, or other additional fee, including additional security deposit or liability insurance, in connection with the Assistance Animal;

(3) A person with an Assistance Animal may be required to cover the costs of repairs for damage the animal causes to the Premises, excluding ordinary wear and tear;

(4) A person may have more than one Assistance Animal. Each animal must be individually determined to meet the requirements in this Article. In subsequent requests, the Person considering the request may consider whether the cumulative impact of multiple animals in the same Dwelling Unit, constitutes an undue burden or fundamental alteration;

(5) No breed, size, and weight limitations may be applied to an Assistance Animal (other than specific restrictions relating to miniature horses as service animals under the Americans with Disabilities Act);

(6) Reasonable conditions may be imposed on the use of an Assistance Animal to ensure it is under the control of the individual with a disability or a person who may be assisting the individual with a disability, such as restrictions on waste disposal and animal behavior that may constitute a nuisance, so long as the conditions do not interfere with the normal performance of the animal's duties. For example, a leash requirement may interfere with the ability of a guide dog, signal dog, or service dog to assist an individual, in which case the animal may be under voice control or otherwise responsive. Similarly, a "no noise" requirement may interfere with a dog's job of barking to alert a blind person to a danger or someone at the door, but incessant barking all night long or when the person is not at home may violate reasonable restrictions relating to nuisance. Any such conditions may not be more restrictive than those imposed upon other animals on the property;

(7) Animal vests, identification cards, or certificates are not in and of themselves documentation of either disability or the need for a reasonable accommodation, other than as set forth in subsection (c)(2) above;

(8) If an individual with a disability is denied permission to have an Assistance Animal, the person is still entitled to all the rights and privileges that otherwise would have been accorded the person, so long as the person no longer has the Assistance Animal; and

(9) An Assistance Animal need not be allowed if the animal constitutes a direct threat to the health or safety of others or would cause substantial physical damage to the property of others under the following provisions:

(A) In addition to the reasons set out in section 12068 for denial of a request for a reasonable accommodation for a Support Animal, an Assistance Animal may be denied if:



(i) The specific assistance animal in question poses a direct threat to the health or safety of others (i.e. a significant risk of substantial harm) that cannot be sufficiently mitigated or eliminated by another reasonable accommodation; or

(ii) The specific Assistance Animal in question would cause substantial physical damage to the property of others that cannot be sufficiently mitigated or eliminated by another reasonable accommodation;

(B) A determination that an Assistance Animal poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence that is sufficiently recent as to be credible, about the specific animal's actual conduct, not on mere speculation or fear about the types of harm or damage an animal may cause or on evidence about harm or damage that other animals have caused.

(C) The assessment of whether the Assistance Animal poses a direct threat to the health or safety of others or substantial physical damage to the property of others must consider:

(i) the nature, duration, and severity of the risk of a direct threat to the health or safety of others or substantial physical damage to the property of others;

(ii) the probability that a direct threat to the health or safety of others or substantial physical damage to the property of others will actually occur; and

(iii) whether there are any reasonable accommodations that will eliminate the direct threat to the health or safety of others or substantial physical damage to the property of others. The reasonable accommodation provisions in Section 12065 through Section 12069 must be used to determine whether there is another or additional reasonable accommodation that would sufficiently mitigate or eliminate the problems creating the direct threat.

(D) Relevant evidence in determining whether an Assistance Animal imposes a direct threat includes whether there is evidence that the animal in question is currently engaging in dangerous conduct or has a recent history of overt dangerous acts, as described under Food & Agric. Code section 31601 et seq. A dog that has been finally determined by a court of law to be a "potentially dangerous dog" or "vicious dog" pursuant to Food & Agric. Code section 31601 et seq. shall presumptively be considered to pose a direct threat to the health or safety of others.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, and 12955, Government Code; Section 54.1 and 54.2, Civil Code, *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.