

# HOUSING DISCRIMINATION AND PEOPLE WITH DISABILITIES

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&

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We are real attorneys, but not your attorneys

This presentation does not constitute legal advice or a legal opinion on any matter discussed. This presentation is for educational purposes only.

# It's all connected

Stable housing, free from discrimination, impacts many other aspects of a PSC participant's life



# FAIR HOUSING: A QUICK PRIMER

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- Background
- Legal protections
  - Relief

# Fair Housing Act & Illinois Human Rights Act

- Federal law
- Prohibits discrimination because of:
  - Race
  - Color
  - Religion
  - National Origin
  - Sex
  - Familial Status
  - Disability

- State law
- Similar to federal law but adds:
  - Age
  - Ancestry
  - Marital Status
  - Military Status (including discharge status)
  - Order of Protection Status
  - Pregnancy
  - Sexual orientation
  - Arrest Record

# A brief history

- Jim Crow laws legalized discrimination after the Civil War
- Civil Rights Act of 1964 ended Jim Crow but did not cover housing
- Feb 1968: Kerner Commission Report
  - “Our nation is moving toward two societies, one black, one white, – separate and unequal.”
- April 4: Dr. Martin Luther King was assassinated
- Civil unrest in the country
  - King Riots still happening
  - Vietnam War ongoing
- April 11: LBJ signed the Fair Housing Act (Civil Rights Act of 1968) into law

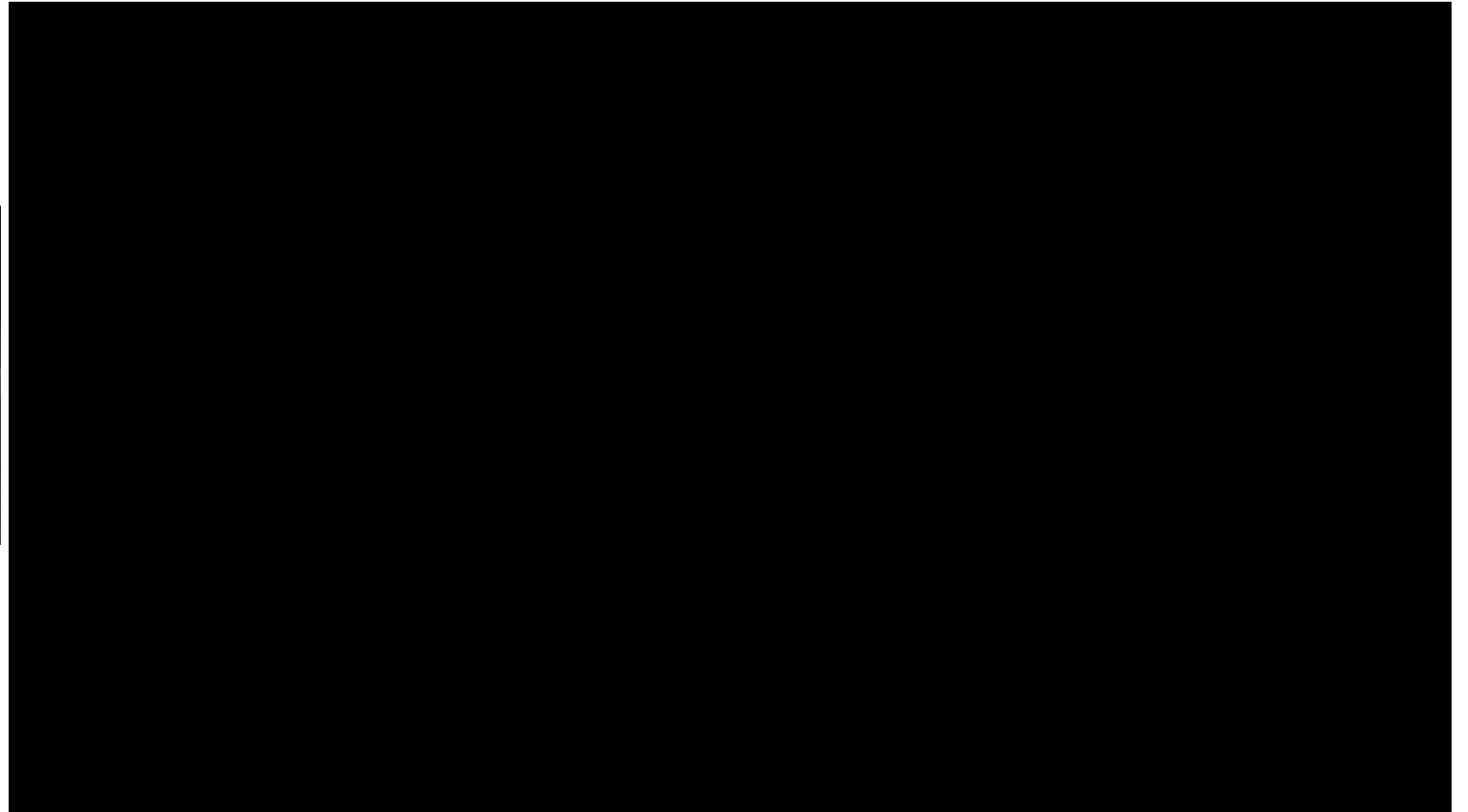


# A bit more history

- For 20 years, there was a lack of enforcement by HUD
- Fair Housing Amendments Act of 1988
  - More enforcement power
  - two additional protected classes
    - familial status
    - disability
  - additional protections for people with disabilities
  - physical accessibility guidelines



# A Deeper Dive: Seven Days documentary



[https://www.youtube.com/watch?v=oEKo5rBBzpl&ab\\_channel=NationalFairHousingAlliance](https://www.youtube.com/watch?v=oEKo5rBBzpl&ab_channel=NationalFairHousingAlliance)



# Who could get in fair housing hot water?

- Landlords
- Sellers
- Real Estate Agents
- Banks and Lending Institutions
- Public Housing Authorities
- Insurance Companies Selling Home Insurance
- Employees of Housing Provider
- Even Neighbors!



# Exceptions

<b>Single Family House Exemption</b>	<b>Rooming House &amp; Small Apartment Exemption</b>	<b>Religious Organizations &amp; Private Clubs</b>
<ul style="list-style-type: none"><li>• for owners of 3 or fewer single family houses selling or renting without using an agent</li><li>• IHRA still applies to most rentals (exemption only for sales)</li></ul>	<ul style="list-style-type: none"><li>• living quarters occupied by no more than 4 independent families, and</li><li>• owner lives there too</li></ul>	<ul style="list-style-type: none"><li>• private club providing lodgings can give preference to its members</li><li>• for religious group sales or rentals of non-commercial dwellings</li></ul>

# Fair Housing Protections: focus on a few

## Overt/Intentional Acts

- **Discriminatory statements/advertising**
- Sexual harassment
- Hostile environment
- Retaliation
- **Interference, Threats, Coercion**
- Steering
- **Refusing a reasonable accommodation/modification**

## Covert/Different Treatment

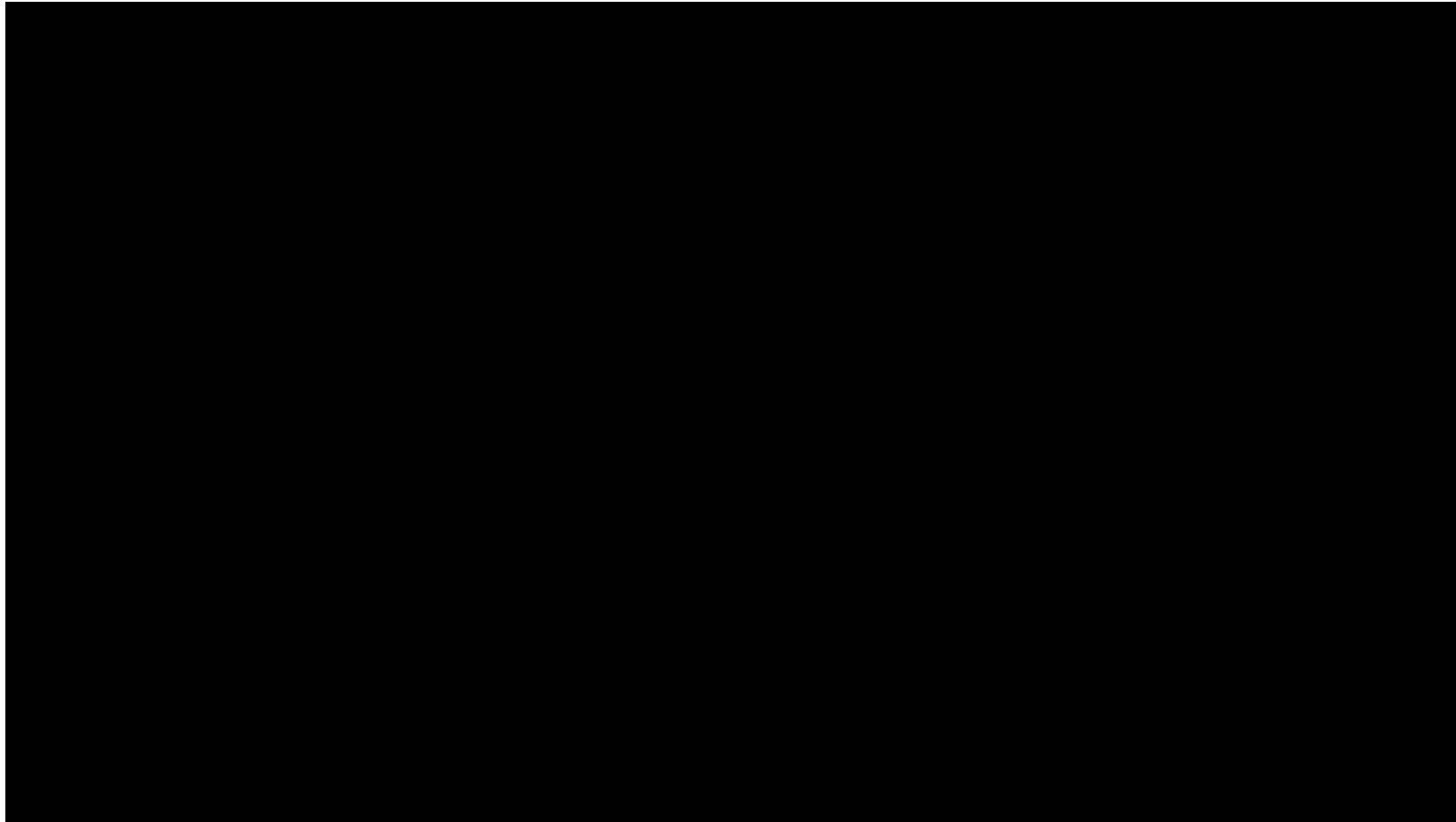
- **Lying about availability**
- **Refusing to sell or rent**
- **Terms and conditions**



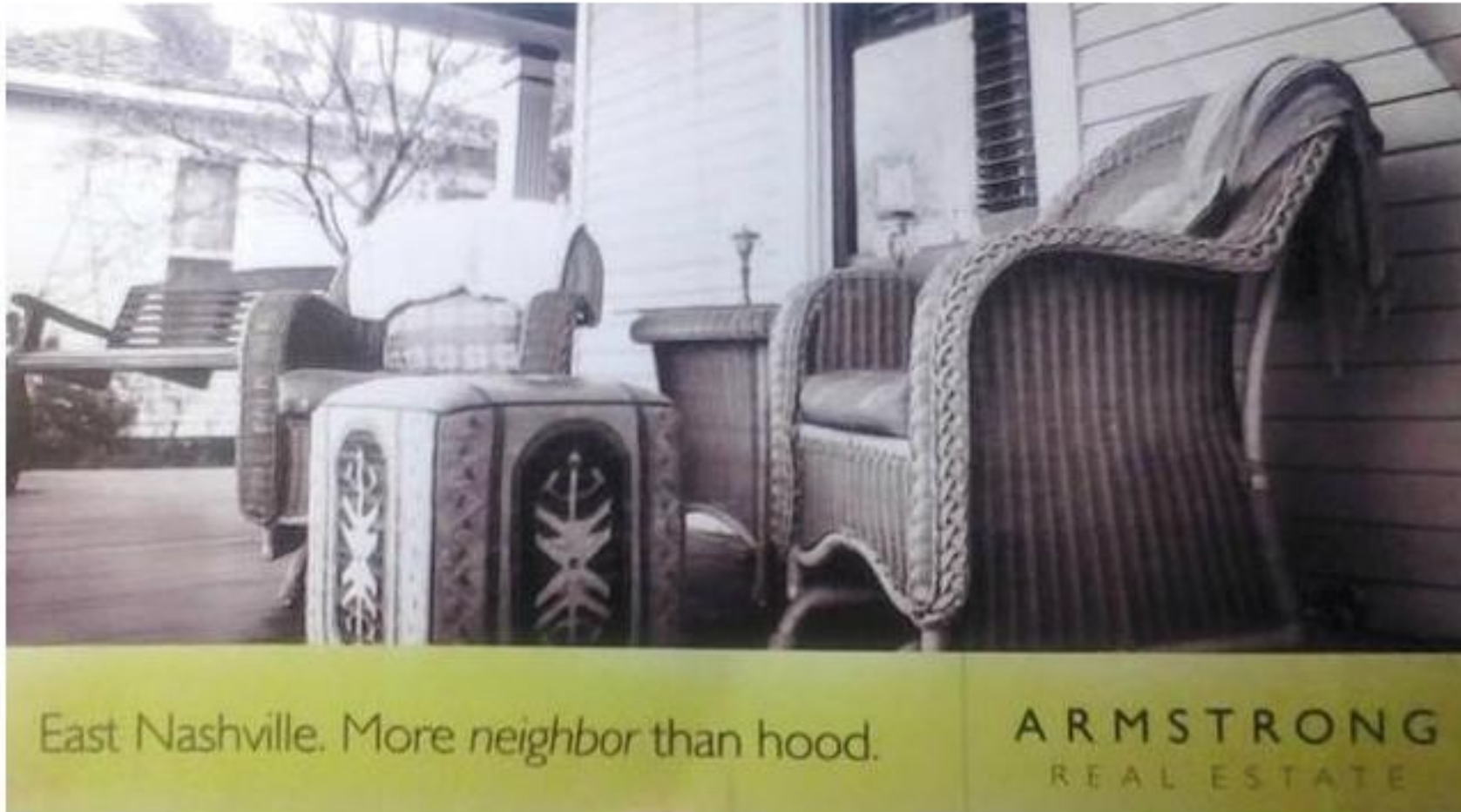
# Discriminatory Statements

- Any ad or statement that indicates a preference, limitation, or discrimination based on a protected category
- Includes applications, flyers, brochures, deeds, signs, banners, posters, billboards or documents
- The statement must be made in the context of a real estate transaction
- **ALSO APPLIES TO VERBAL STATEMENTS**
  - no exemptions for small housing providers

# Harassment / Interference



What do you think about this advertisement?



# False statements about availability



# Refusal to sell, rent, or negotiate





# Discriminatory Terms & Conditions



\$850 per month



\$1,000 per month

What do you think?

Do you see any fair housing violations?

Dolores became a primary caregiver for her brother, Greg, after her mom died. She sees a perfect home for her and her brother. As she met the landlord, Dolores mentioned that Greg has autism and cognitive disabilities.

The landlord told Dolores that before he would consider renting to her and Greg, she would need to

- get a \$1 million insurance policy
- provide a note from Greg's doctor that he is not a danger to himself or the property
- accept personal responsibility for any damages Greg might cause

# Special Note: Inquiries about Disabilities

## Cannot:

- Ask if applicant has a disability, unless the housing is available only to people with disabilities
- Use an application form that asks about disabilities
- Require applicants to sign medical release forms
- Ask about nature or severity of disability

## Can:

- Ask if person is addicted to, abuses, or has been convicted for drugs
- Ask the same questions of everybody

# Another quiz

Jesse, black, calls a landlord about an ad he saw online. The two arrange a time to meet at the property to see the unit. When Jesse arrives, he sees a car in the driveway but does not see the landlord and decides to call her. She answers the phone and says that she rented out the apartment an hour earlier. She apologizes profusely for not calling. Jesse goes home.

However, a week later, he notices that the ad is still up on-line. Jesse asks a co-worker, white, to call the landlord. She tells the co-worker that the apartment is still available and they set up a time to see it. When the co-worker arrives at the property, a car is in the driveway. He parks and the landlord comes out the front door to greet him.

What fair housing violations could be involved, if any?

# Your best guess?



Misrepresenting  
Availability



Discriminatory  
Advertising



Refusal to Rent or  
Negotiate



No problem – Jesse  
never applied.

# Remedies & Relief

- The housing!
- Policy changes
- Money for damages, pain, suffering and humiliation
- An order requiring housing provider to do something or to stop doing it
- Complainant's attorneys fees and costs
- A civil penalty to the government up to \$55,000 to vindicate public interest
- Punitive damages in order to deter future conduct

# FOCUS ON CRIMINAL RECORDS ISSUES

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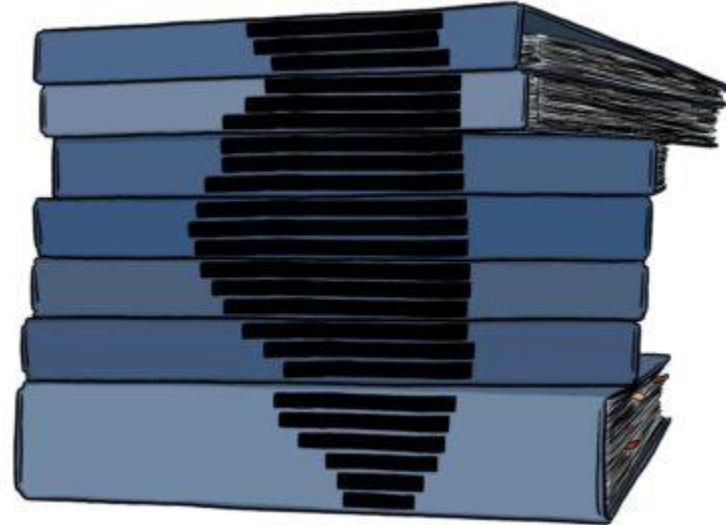
- Illinois protections
  - Survey says...
- Guidance from above

# New Law on the Books

As of January 1, landlords may not consider arrest records in real estate transactions.

- Arrests not leading to convictions
- Juvenile record
- Expunged, sealed, or impounded records

775 ILCS 5/1-103(B-5); 5/3-102





# A criminal background ≠ A bad tenant

11 of 15 criminal offense categories had no significant effect on housing outcomes.

- Marijuana possession
- Alcohol-related offenses (other than DUI)
- Serious traffic offenses (other than DUI)
- Minor public order offenses
- DUI/DWI or reckless driving
- Other minor violence-related offenses
- Minor drug-related offenses
- Disorderly conduct
- Prostitution
- Domestic violence



Wilder Research, "Success in Housing: How Much Does Criminal Background Matter?" available at [https://www.wilder.org/sites/default/files/imports/AEON\\_HousingSuccess\\_CriminalBackground\\_Report\\_1-19.pdf](https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf)

# What do you think?

- Sand Castle Towers excludes a person with a record of criminal conviction from living or renting at the property.
- The management refuses to rent to the Fortune Society.
- Fortune Society is a non-profit organization that helps formerly incarcerated individuals find housing
  - provides temporary and permanent housing for hundreds of formerly incarcerated individuals each year
  - runs “scattered-site” programs that place clients in private rental housing throughout the City
  - 95% of their clients are African-American and Latino men

Is this policy problematic under the Fair Housing Act?



# Good news for housing seekers



U.S. Department of Housing and Urban Development (HUD) enforces the Fair Housing Act

HUD guidance (April 4, 2016): *Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*

[https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

# The HUD Guidance

- Criminal records bans have disproportionate impact on minorities.
- Screening or background check policies can have a disparate impact (discriminatory effect)
- A housing provider can consider criminal history (but not arrest records)
- Beware of overbroad bans (Ex. “No arrests” or “no convictions”)
- Tailored screening policies are OK if:
  - Serves a legitimate interest
  - Takes into account: type of crime and length of time since conviction
- **Big Exception:** bans on convictions involving manufacture/distribution of drugs are acceptable

# What would you need to know about Sand Castle Towers?

- Are all people with a criminal background denied?
- How many people in the area have a background?
  - Are they in a protected group under the FHA?
- Who is applying at the building? How many people?
- Why does the building have this policy?
  - What is their story?
  - Is it legitimate?
  - Have they tried other policies?
  - Do other buildings have different policies?
- Are there other alternative policies that might suit the same interests but admit more people?





# How Disparate Impact Works



# The Steps

- **Step 1.** A policy causes greater harm to the protected class than to others (Plaintiff).
- **Step 2.** Housing provider (Defendant) must prove that its policy is necessary to achieve a valid interest.
- **Step 3.** Plaintiff must prove that there is an alternative policy with a less discriminatory effect.

# Sand Castle Towers

## Impact

- **National**

- Based on national incarceration data:
  - 1 in 3 African-American men will go to prison at some point in their lifetime
  - For Latino men, 1 in 6.
  - For white men, 1 in 17.
- Average 650,000 inmates are released from confinement each year in the U.S.

- **Local**

- In New York, 25,000+ inmates were released from prison (2010)
- 2/3 of NY's re-entry population moves to NYC

New York	General Population	Re-Entry Population
African-American	15.9%	> 50%
Latino	17.6%	> 25%

“This means that otherwise qualified African-American men are three times as likely as white men to be disqualified by Defendants’ blanket ban, and that Latino men are nearly four and one-half times as likely to be disqualified.”



# Sand Castle Towers

## **Business Justification**

- The building did not really offer one
- Presumably, the justification would relate to the safety of other tenants

## **Less-Discriminatory Alternative**

- Case-by case review of applicants

The case settled for \$1,187,500.

The owners sold the building during the litigation.

# FOCUS ON PEOPLE WITH DISABILITIES

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- Know your audience
- Common Reasonable Accommodation: ESAs
  - Learn the process

# Disability-Related Etiquette

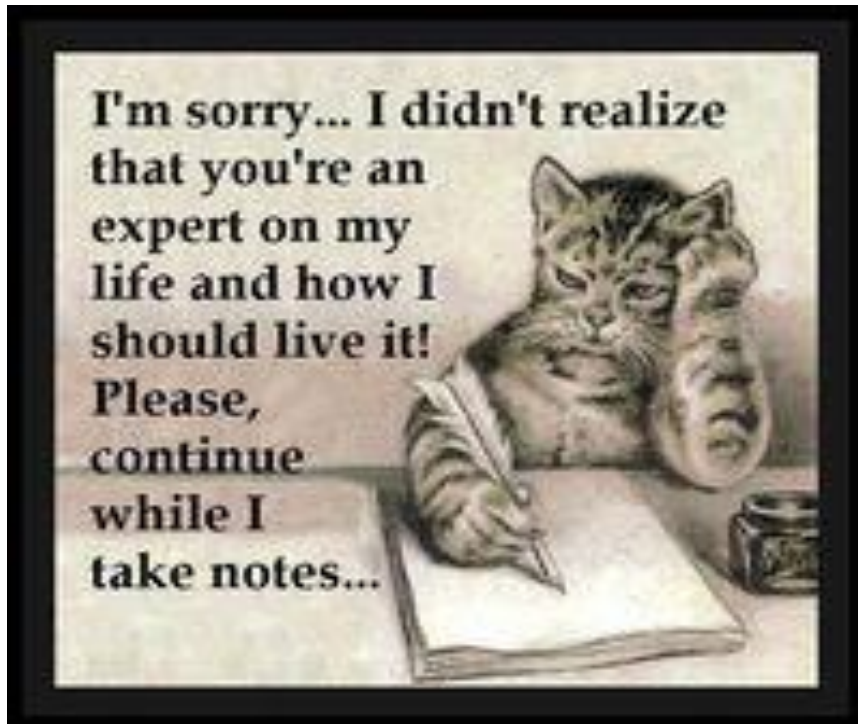
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# Proper Language

- Using proper language shows respect for the client, and helps build rapport
  - Not a matter of political correctness
- Person-first language
  - “person with quadriplegia” vs. quadriplegic
- Avoid euphemisms for people with disabilities – disfavored by most people with disabilities
  - E.g. special needs, differently-abled
- Avoid outdated or offensive terminology
  - E.g. handicapped, use mental health disability vs. “crazy,” wheelchair-bound

# Tip – Be Respectful, Don't Presume, and Don't be a Goody Two Shoes



# Other tips

- Ask before assisting someone – and if told “no”, take no as the answer
- Don’t touch someone’s wheelchair, assistive device, or service animal without permission
- If speaking to a person who needs an interpreter, speak directly to the person, not to the interpreter (Don’t say, “tell him X” just speak directly to the person)
- Remember – Attorneys and advocates have an obligation to provide reasonable accommodations for clients with disabilities.

# Emotional Support Animals

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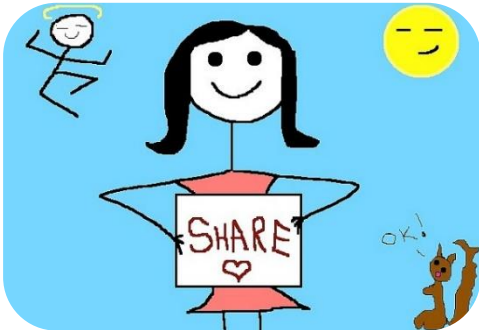


# QUIZ!!!!!!

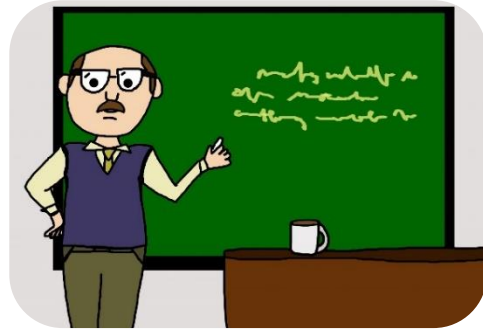
- Peter shares custody of a dog with his ex-wife. Peter lives alone in an apartment building that has a “no pets” policy. The building told Peter he cannot keep the dog. Peter tells management that he has Obsessive Compulsive and Generalized Anxiety Disorder. He claims he needs the dog because it provides emotional support that diffuses his anxiety and obsessive thinking, especially at night. Peter is a teacher at a suburban high school. He is also a part-time actor who has appeared in plays throughout Chicagoland. He states that he does not take his dog to work or when he is acting. Peter wants to keep the dog.
- Can Peter keep the dog?



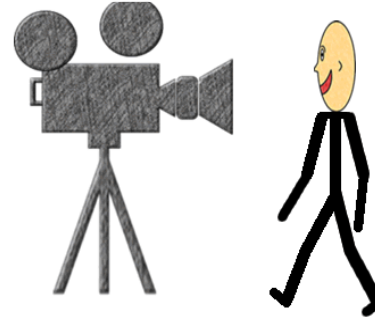
# Hmmm?



Shared  
Custody



High School  
Teacher



Actor

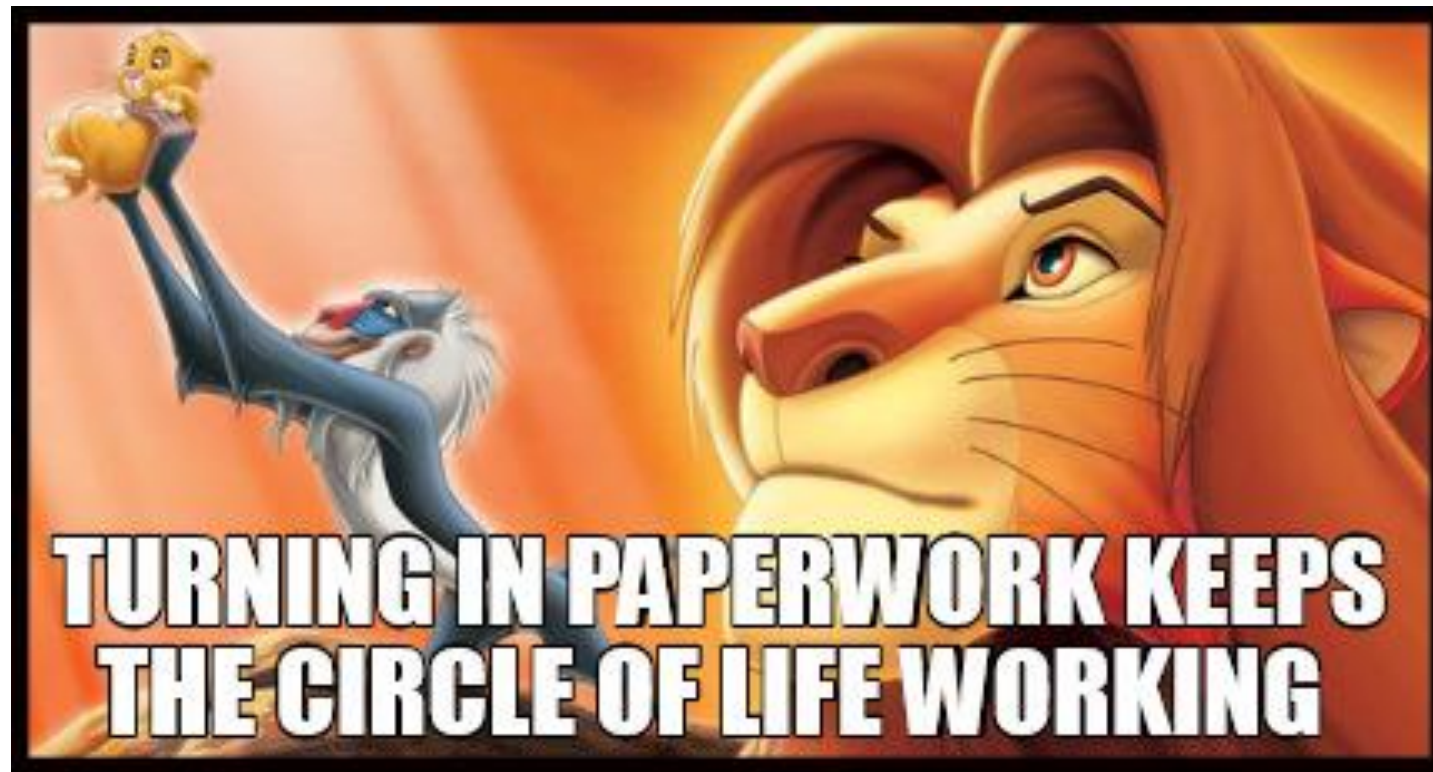


Needs Dog at  
Night

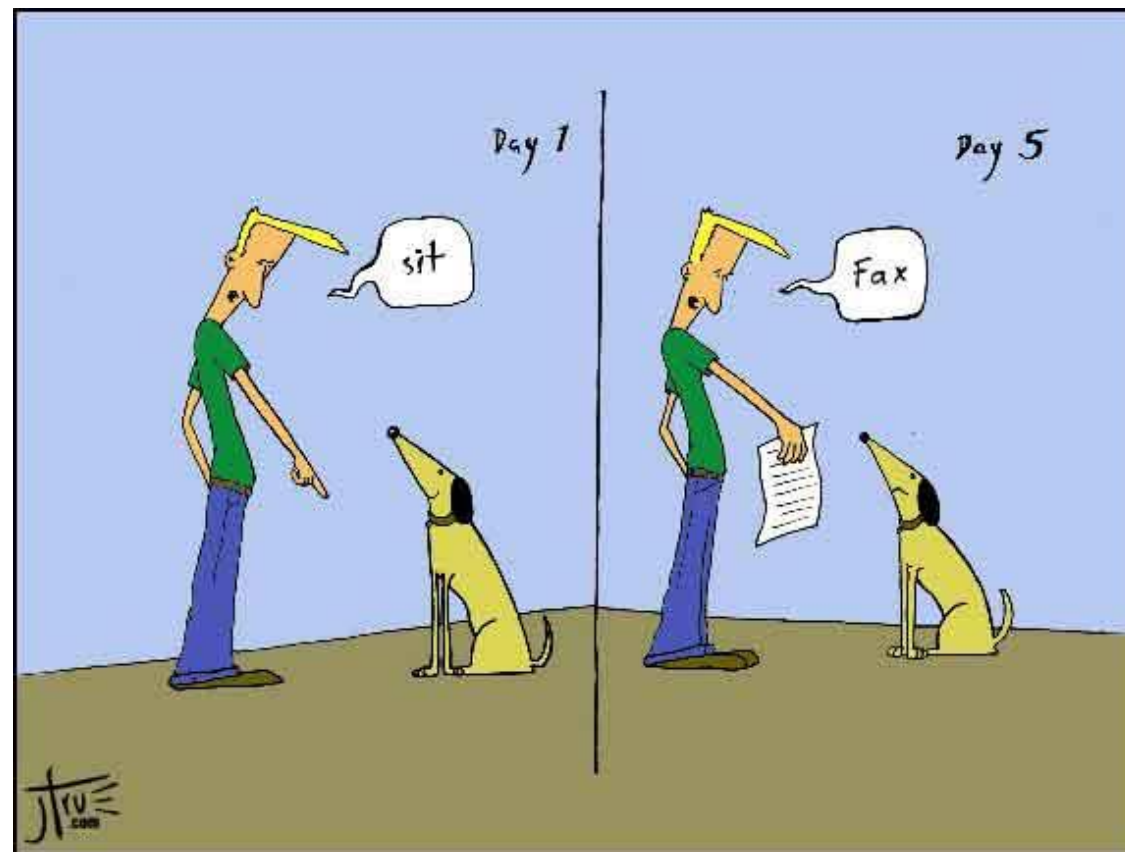
# Peter's Word vs. Documentation



# Certain Form Required?



# Harvard School for Dogs?



# Timing Concerns?





Pet fees? Additional deposit? Increased rent? Special liability insurance?



Any restrictions on the dog?



# Size or Breed Limits?





# What if the dog is a guide dog?



What if the dog is an a\*\*hole?



# What about other animals?



## Even More Quiz!!!!

Keisha has a physical disability. She has lived in her apartment building for several years. Until recently, Keisha relied on a cane or walker to move about. However, her condition has worsened over time and she now uses a wheelchair. As such, she has great difficulty getting through the front entrance because it has a step.

# What, if anything, can Keisha do?



- Lived in the unit several years.
- Used to use a cane to get around, now uses a wheelchair
- Unable to get in unit because it has a step.



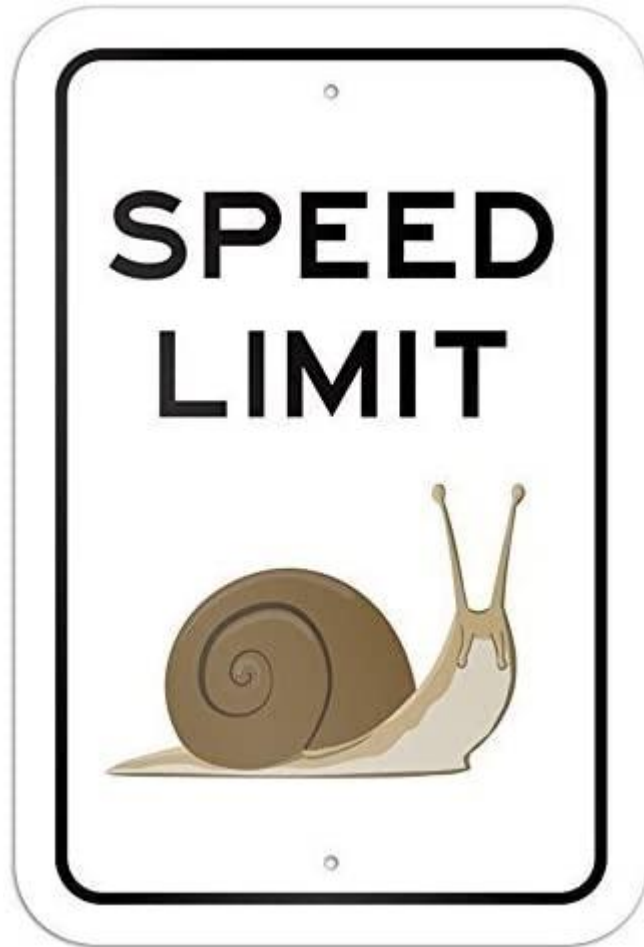
Who should pay for the modification?



Must Keisha submit any documents to management regarding the modification?



What happens if management moves slowly in approving the modification?





Who is responsible for maintaining the modification?



Can the building require that Keisha purchase liability insurance regarding the modification?



Can the building require that Keisha remove the modification at her cost if/when she moves out?





Would any answers change if Keisha was about to move into the building for the first time or had recently moved into the building?



# Even MORE Quiz!

Danielle has a psychiatric disability. Because of her disability, Danielle, at times, is easily agitated and reacts aggressively to events perceived as negative.

Management is aware of Danielle's psychiatric disability. She has been living in her condominium unit for seven years. Every couple months, Danielle storms into the management office to complain about the cleanliness of the building, security, cable service, needed building improvements, and/or certain neighbors. She demands immediately to see the property manager, and yells objections if the property manager is not available. She repeats this scenario every few hours until the property manager is available. When she meets with the property manager, she threatens to sue her if the problem is not fixed right away and complains bitterly about how she is treated by management.

Also, three or four times per year, other residents complain that Danielle has yelled at them. The condominium board is thinking about fining and/or otherwise trying to remove Danielle from the building.

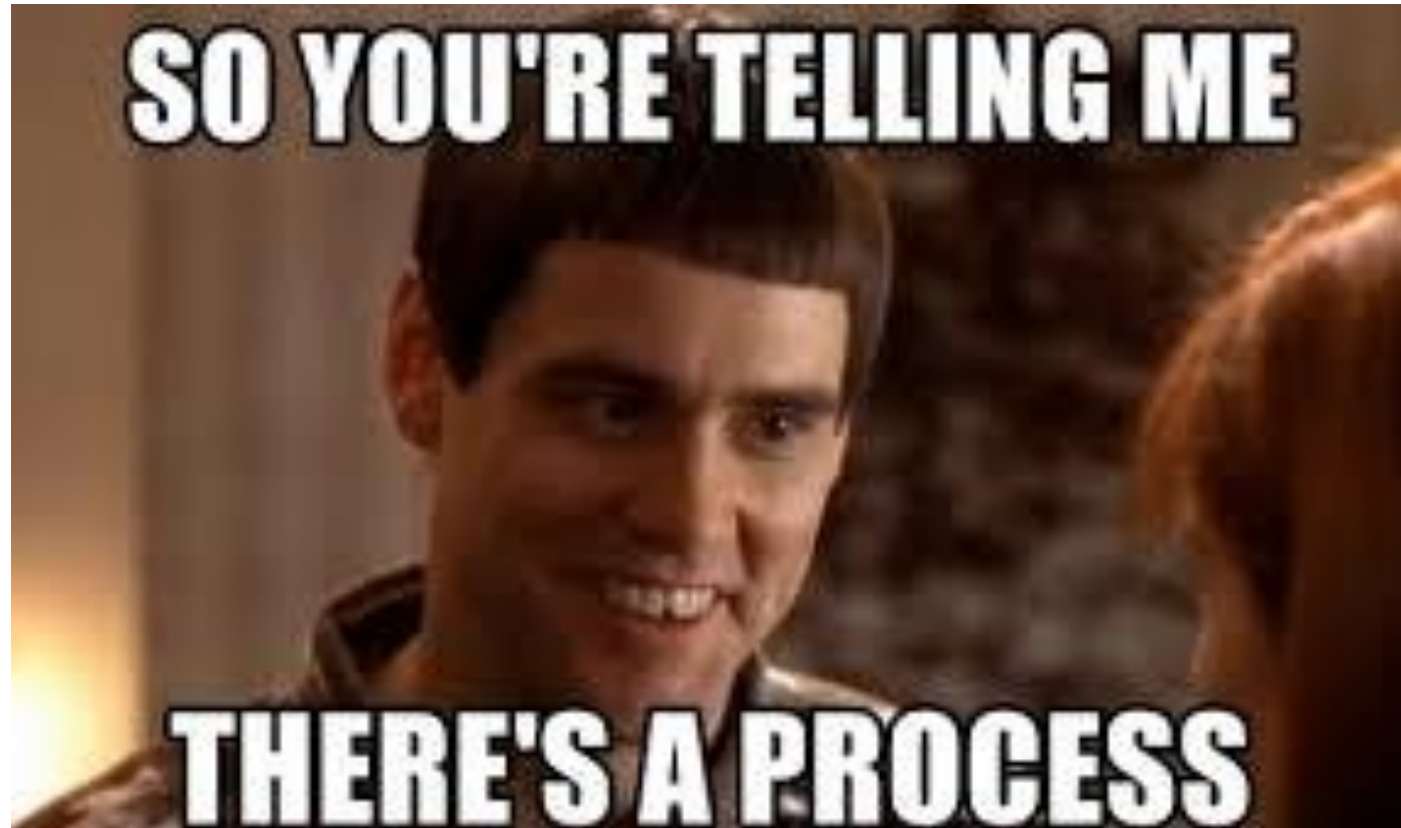
# What can/should management do?



- Tenant with psychiatric disability
- Reacts to events perceived as negative
- Many complaints about repairs to unit
- A few negative interactions with neighbors
- Condo thinking about fining/getting rid of tenant

# Reasonable Accommodation Process

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# Recap: In a Nutshell

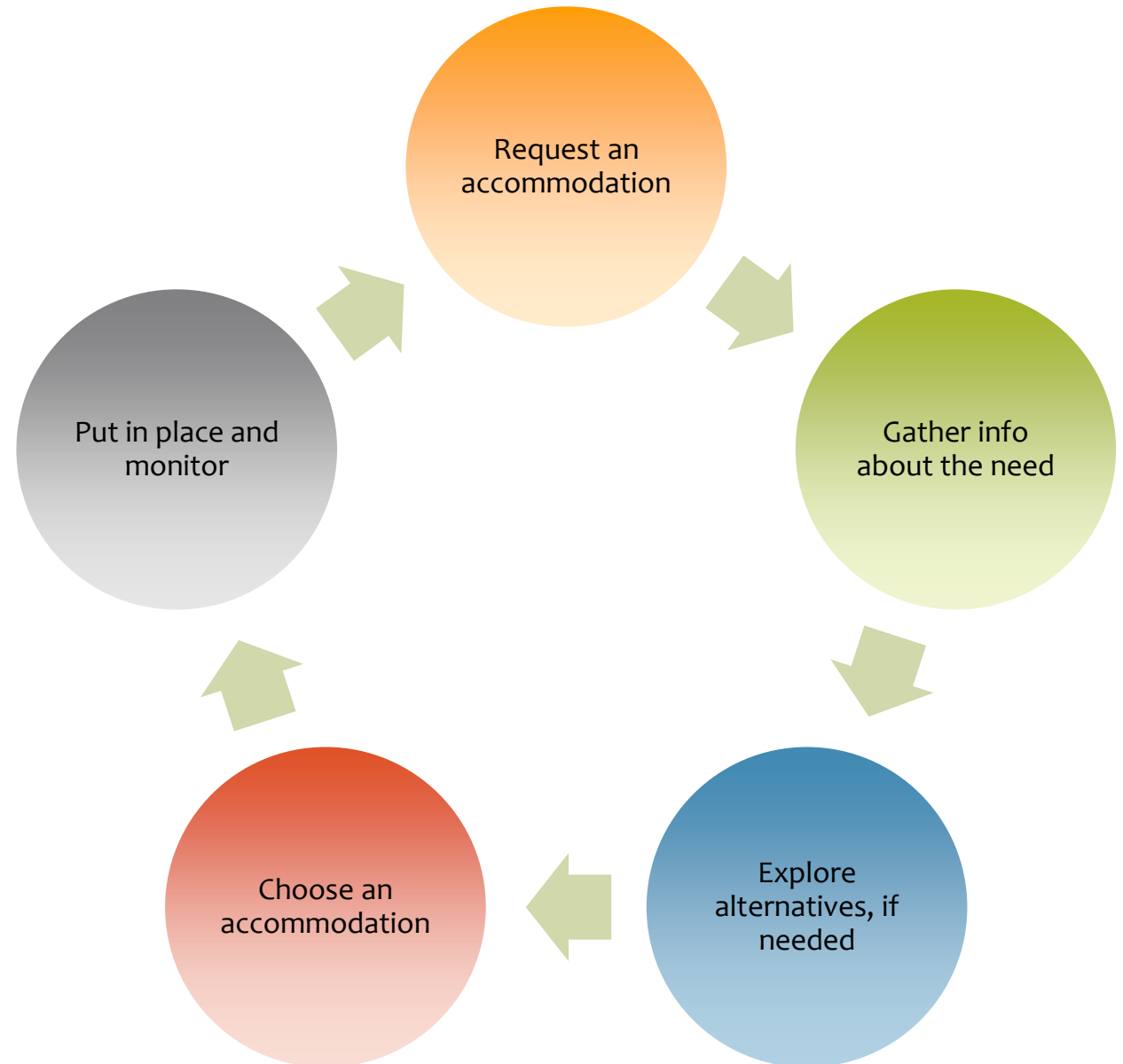
1. Housing provider knows tenant has a disability
2. An accommodation / modification is necessary to help with effects of disability
3. Tenant requests the accommodation / modification, or the need is obvious
4. Accommodation is reasonable:
  - does not impose undue burden (financial and administrative)
  - does not require HP to fundamentally alter nature of services
5. No “direct threat”



# Interactive Process

A discussion between a person with disability and his or her housing provider

- Gather more information to evaluate the request
- Discuss alternatives if the request presents a undue burden or fundamental alteration



# Direct Threat v Stereotype

## “direct threat”

- health or safety of others, or
- property of others

## Important tips:

- reasonable medical judgment required
- individual assessment required
- not based on prejudice/ stereotypes
- consider whether a reasonable accommodation can eliminate the threat

# Resources

- Access Living of Metropolitan Chicago: (312) 640-2106

<https://www.accessliving.org/our-services/legal-services>

- Prairie State Legal Services: (855) 347-7757

<http://pslegal.org/fairhousing>

- HUD – Fair Housing Equal Opportunity: (800) 765-9372

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp](https://www.hud.gov/program_offices/fair_housing_equal_opp)

- IDHR – Fair Housing Division: (312) 814-6229

<https://www2.illinois.gov/dhr/FilingCharge/Pages/Housing.aspx>