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# **Community Association Legal Webinar – 2025**

## **October 27 Session - Topics:**

**Fair Housing Act: Reasonable  
Accommodations & Modifications**

**Case Law Update**

**Q&A**



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# **Introductions & Welcome**

**Allen Warren**

# **Legal Disclaimer**

This information is not intended to be legal advice. Legal advice must be tailored to the specific facts and circumstances of each case and each association's governing documents.

Every effort has been made to ensure this information is up-to-date. However, it is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the individualized advice of your legal counsel.



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# **Fair Housing Act: Reasonable Accommodations & Reasonable Modifications**

**Presented by Olga Tseliak**

# Applicable Laws

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- ✓ Fair Housing Act, 42 U.S.C. §§ 3601 through 3619
- ✓ Virginia Fair Housing Act, Va. Code §36-96.1 through 36-96.23
- ✓ The DC Human Rights Act of 1977 (DCHRA)(D.C. Code §§ 2-1401.01 through 2-1404.04)

# Protected Classes: Federal Fair Housing Act

**Color**

**Race**

**Religion**

**Sex**

**Handicap/ Disability**

**National Origin**

**Familial Status**

# Disability/Handicap Definition

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- ✓ Any physical or mental impairment that substantially limits one or more major life activities
- ✓ Having a record of such an impairment
- ✓ Being regarded as having such an impairment

# Disability-Related Requests

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## **Reasonable accommodation**

is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common area/element spaces

## **Reasonable modification**

is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises

# Reasonable Accommodations: Examples

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- ✓ Change of policy – waive carpet requirement
- ✓ Allow parking in a specific, closer space
- ✓ Sign language interpreter at meeting
- ✓ Exceptions in Restrictive Covenants/Design Standards – e.g., privacy fences
- ✓ Waive “No Pet” policy

# Reasonable Modifications: Examples

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- ✓ Installing ramps or curb cuts
- ✓ Installing lifts into pools
- ✓ Installing door openers
- ✓ Lowering elevator buttons

# Process for Handling Requests

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## OWNER/RESIDENT

- (1) Owner/resident must first ask for the accommodation or modification.
- (2) Owner/resident must have time to provide requested verification.
- (3) Owner/resident provides verification.
- (4) DMV Handicapped placard = sufficient verification

## ASSOCIATION

- (1) Association may ask for verification *if not obvious or already known*.
- (2) Verification is not a complete medical history; and it may come from one of several sources.
- (3) Association must promptly respond.

# Process for Handling Requests

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## ✓ Nexus Requirement

- There must be a link (nexus) between the verified disability and the accommodation.

## ✓ Reasonableness

- would not impose an undue financial or administrative burden on the Association
- would not fundamentally alter the nature of the Association's operations.

# Key Takeaway

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## **REASONABLE ACCOMMODATION and MODIFICATION INQUIRIES ARE . . .**

- **HIGHLY FACT-SPECIFIC**
- **REQUIRING CASE-BY-CASE  
DETERMINATION!!!**

# Who Pays?

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- ✓ The requester of a **reasonable modification** can be held responsible for the cost , but approval of a **reasonable accommodation** cannot be conditioned on the requester paying the cost associated therewith



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# **Case Law Update**

**Presented by Dan Blom**

# BUYER BEWARE

*Tshiteya v. Greenhouse Board of Directors*  
(2024 Virginia Court of Appeals)

- Issue:
  - Whether Association was obligated to disclosure *future* assessment increases

# Tshiteya v. Greenhouse

(cont.)

- **Resale Disclosure Act** – only requires disclosure of assessments *currently imposed*
  - No statutory duty to disclose future assessment increases
- **Caveat emptor (buyer beware)** – Buyer is responsible for exercising due diligence
  - Buyer is on notice that assessments could be increased pursuant to the governing documents and relevant law

# WORDS STILL MATTER

*5800 HVB, LLC v. Harbour View Commerce Association, Inc.* (2024 Virginia Court of Appeals)

- Issues:
  - Whether Architectural Review Board had authority to deny use for gas station
  - Whether permissible use under zoning ordinance invalidated restrictions in Declaration

# 5800 HVB, LLC v. Harbour View

(cont.)

- **ARB Authority** – Declaration gave clear authority to the ARB to review, control and regulate use of land within the Association
- **Zoning Ordinance** – Permissible use under city's zoning ordinance did not invalidate further restrictions in the Declaration
  - In this case, the Declaration specifically provided that if there was a conflict between local zoning laws and the Declaration, then the “more restrictive requirement shall prevail”

# DEVELOPER AMENDMENTS

*UOA of 2337 Champlain St. Condo v. 2337 Champlain Street, LLC*  
(2024 DC Court of Appeals)

- Issue:
  - Validity of amendments to governing documents to benefit neighboring condominium association

# 2337 Champlain Street Condo

(cont.)

- **Authority to Amend** – Court affirmed Declarant’s authority to amend the governing documents prior to the sale of any unit
- **Standing** – Association lacked standing to sue Declarant as Association did not purchase anything from the Declarant

# HEAD IN SAND

*KS Condo, LLC v. Fairfax Village Condominium VII*  
(2023 DC Court of Appeals)

- Issue:
  - Whether expert witness testimony necessary to determine whether Association acted with reasonable speed and diligence to address wall's condition

# KS Condo, LLC v. Fairfax Village

(cont.)

- **Duty of Care & Causation** – Expert witness testimony not necessary in this case
  - Association had been put on notice multiple times that wall was at risk of imminent and catastrophic collapse
  - **Pay attention and address known problems** – particularly when there is an imminent threat requiring immediate action

# EMOTIONAL SUPPORT CHICKENS

*Labor Commission v. FSC Community*

*Management* (2024 Utah Court of Appeals)

- Issue:
  - Whether delay in decision was “constructive denial” of request for reasonable accommodation

# Labor Comm'n v. FCS Comm. Mgt.

(cont.)

- **Constructive Denial? – NO**
  - Association engaged in interactive process
  - Association temporarily paused enforcement
  - Association acted timely

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**ANY QUESTIONS?**

**. . . Time for breakout sessions**