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### Reasonable accommodations for the disabled: Your legal responsibilities as an owner or manager

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by Tamara Cross, Esq. Under both federal and state laws, owners of manufactured home communities and their agents are prohibited from discriminating against disabled individuals in the renting of homesites spaces or community-owned manufactured homes. Discrimination against disabled individuals includes not only the refusal of an owner or manager to rent to a disabled person, but also the failure to make reasonable accommodations to allow disabled individuals an equal opportunity to fully use and enjoy the premises.

**WHAT IS A REASONABLE ACCOMMODATION?** There are two types of "reasonable accommodations" that affect rentals of manufactured home communities: (1) Reasonable modifications of community policies, procedures and practices, and (2) Reasonable modifications of the premises. Modifying community policies, procedures and practices If an existing rule or policy of the community limits or restricts a disabled individual from equally and fully enjoying the premises, the community may have a responsibility to modify the rule or policy in an effort to "reasonably accommodate" the disabled individual. What constitutes a reasonable accommodation is difficult to define, just as it is difficult to apply a bright-line definition to what constitutes a reasonable rule or regulation under the Mobilehome Residency Law. Examples of what courts have determined to be a reasonable accommodation, and the factors on which the courts base these decisions, is the best source for determining what constitutes a reasonable accommodation. Please note that what constitutes a reasonable accommodation will be based on the specific facts of each situation. There are, however, a few bright-line modifications of community policies that have been established by law. Use of guide, signal, or service dog California Civil Code Section 54.1, otherwise known as the Unruh Act, prohibits discrimination against disabled individuals who require guide, signal or service dogs. If the applicant or resident is blind or visually impaired and needs a guide dog, is deaf or hearing impaired and needs a signal dog, or has any other disability that requires the use of a service dog, the pet policies of the community must be modified to allow the individual to keep the dog on the premises. The community is prohibited from charging a pet fee or additional deposit for the guide, signal, or service dog. The community may, however, create reasonable pet rules for this dog and the disabled individual will be liable for any property damage caused by the dog. Income of spouse Another required modification to a community's policies under the Unruh Act is that the aggregate income of both a disabled individual and his or her spouse shall be considered when determining the financial ability to qualify for residency. The community cannot refuse to rent to a disabled individual on the basis the individual is financially dependent on his or her spouse if the spouse is also party to the lease agreement [Civil Code Section 54.1(b)(7)]. Please note, however, that it is not illegal discrimination to deny residency to a disabled individual if they are unmarried and cannot establish financial ability, or if with the aggregate income with a spouse does not meet the

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community's financial ability requirement. Other examples of reasonable accommodations Other reasonable accommodations are not as clear, and will be based on the individual facts of the situation. Following are some examples of reasonable modifications to community policies that have been upheld by the courts. 1. Changing parking policies to accommodate a handicap individual; 2. Waiving a first-come-first-serve parking policy to accommodate a disabled resident with multiple sclerosis; 3. Reducing or eliminating guest fees for a live-in aide for a disabled resident; and, 4. Waiving or modifying a pet policy to allow an emotionally disabled individual to keep a dog when it has been determined that the dog is therapeutic to his or her disability. Obviously not all requests or demands made by disabled applicants or residents fall under the category of reasonable. What will determine reasonableness tends to be based on the extent of the modification to the community's policies and procedures, the expense or burden of the modification to the community, as well as the necessity of the modification to the disabled individual's equal use and enjoyment of the premises. The courts have found the following situations not to be reasonable accommodations. 1. Waiver of a credit check or modifications to policies regarding establishing financial ability to pay rent (not including aggregate income of spouse requirement stated above); 2. Waiver of a guest-parking fee for a caretaker of a disabled individual when the parking of the caretaker was not shown to be necessary for the use and enjoyment of the premises by the disabled individual; and, 3. Requiring the landlord to modify policy to accept Section 8 certificate holders to accommodate a disabled individual. Modification to existing premises State and federal disability laws also require reasonable modifications to the existing premises if the modification is necessary to afford the disabled individual full and equal enjoyment of the premises. However, the disabled resident is required to pay for the expense of the modification to the inside of the premises, as well as return the premises to its original condition upon departure. An owner can require that a disabled resident sign an agreement to return the premises to its original condition once the disabled resident vacates the premises. The owner should not, however, request an additional security deposit. The courts have upheld the installation of a wheelchair ramp to the entrance of a home as a reasonable modification to the premises.

**DISCRIMINATION IN RENTING** In addition to failing to make reasonable accommodations for disabled individuals to equally use and enjoy the premises, owners and managers need to be aware that they are prohibited from discriminating against disabled individuals in all aspects of renting based on the fact that the individual is disabled. Discrimination means treating individuals unequally due to their disability, to their perceived disability or due to their association with a disabled individual. Unlawful discrimination can occur in various ways, including, but not limited to, refusing to rent to a disabled individual, imposing additional rental terms, denying certain rental privileges, charging higher rent, limiting access to the premises or common areas, or terminating the tenancy.

Who is a disabled individual under the federal and state disability laws? Under state and federal law, a disability is one that impairs a "major life activity" such as performing normal household chores, walking, hearing or seeing. The impairment can be of a physical or mental nature and includes such conditions as physical handicaps, disfigurements, disease, mental disabilities, mental retardation, emotional or mental illness, cancer, multiple sclerosis, and HIV status, just to name a few. Certain impairments, however, have been determined not to be disabilities entitled to protections under federal and state law. These impairments include sexual behavior disorders, compulsive gambling, kleptomania, pyromania and current substance abuse. Be careful, however. The California Unruh Act, which prohibits discrimination on the basis of disability, is very broad in its protection. This act also prohibits communities from discriminating against individuals for "arbitrary characteristics," which could include several disabilities or perceived disabilities not commonly categorized. Also note that discrimination can occur without the individual actually having a protected disability if that individual is perceived as having a disability and unlawfully discriminated against because of

the perceived disability. Penalties for discrimination As an owner or manager of a manufactured home community, you must be aware of these laws and your responsibilities because these laws impose fines and penalties for non-compliance. An individual who is unlawfully discriminated against in the renting arena or who is not afforded reasonable accommodations under these laws can be awarded actual damages incurred, embarrassment and emotional distress damages, statutory damages of three times the amount of actual damages, injunctive relief, and in some circumstances, even punitive (punishment) damages are available. Both owners and managers have liability for discrimination against individuals with disabilities. Owners may be held responsible for the discriminatory acts of their managers whether these acts were negligent, intentional, or directly against community policy or orders. If the act of the manager was authorized or ratified by the owner, the owner may face punitive damages. Managers also face individual liability for their discriminatory acts, even if they were following orders of the owner. Therefore, establish fair rental policies, train managers on these policies, adequately supervise managers and discipline any violation of these policies. FINAL THOUGHTS These laws recognize that a manufactured home community is a business establishment and owners have a legitimate, non-discriminatory interest in renting to individuals who will timely pay the rent and who will obey the rules of the community. Whether or not an individual has a disability should not play a role in this determination. These laws insure that owners of rental properties make business decisions based on legitimate, non-discriminatory factors only, and not on the basis of arbitrary physical or mental disabilities of which an individual cannot control. What owners and managers must and cannot do regarding disabled individuals may seem overwhelming. This article is not designed to scare owners or managers into thinking they absolutely have to rent to a disabled individual or make all requested modifications or accommodations to comply with these laws. The purpose of the disability laws is not to give more benefits to disabled individuals in the rental arena, but simply to insure that disabled individuals receive equal access and enjoyment to the rental premises.

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