

Fair Housing for Tenants with Disabilities

**Reasonable Accommodations;
Understanding the Law**

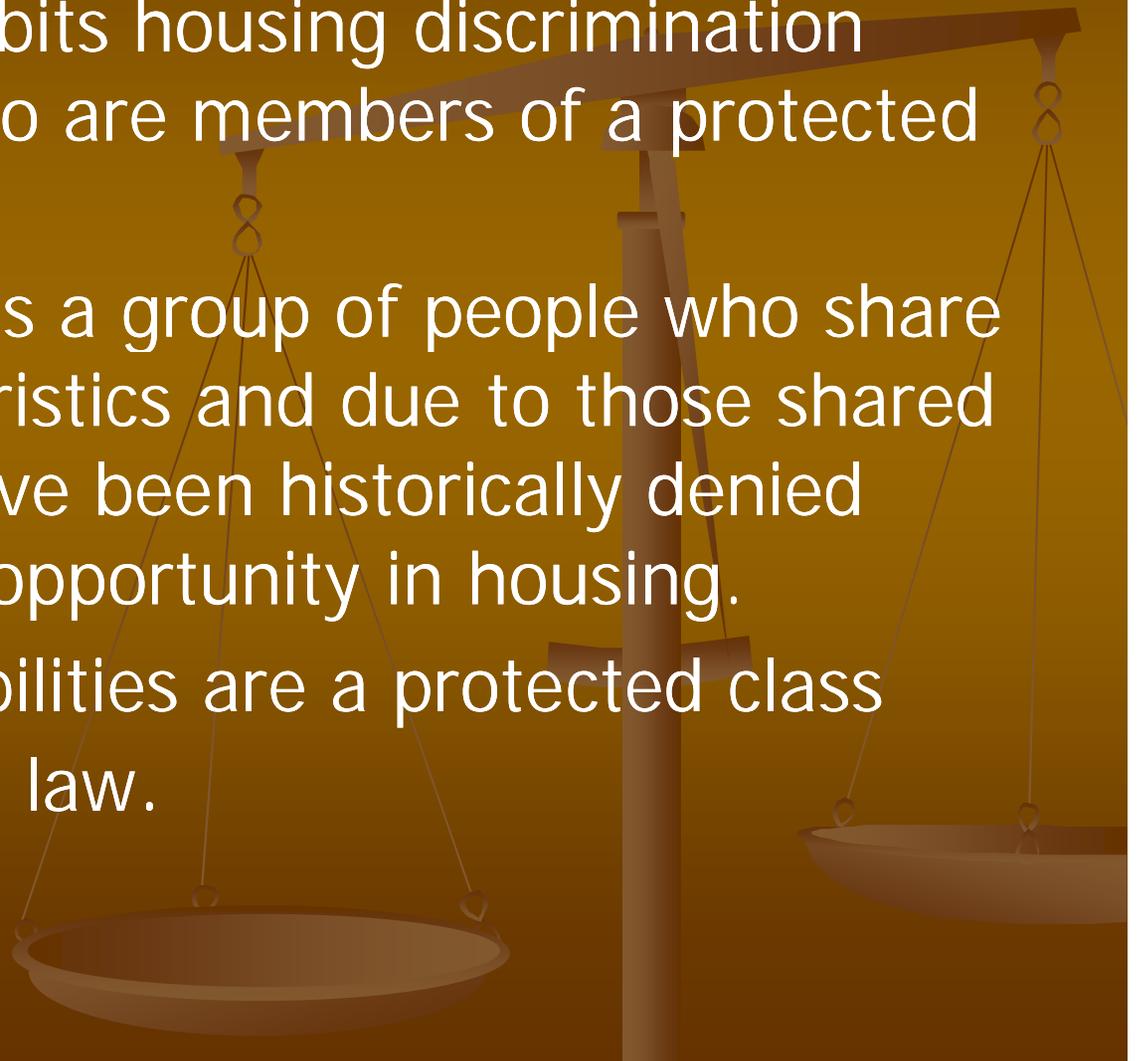
Parking for Persons with Disabilities

Iowa Civil Rights Commission



General principle of fair housing

- Fair housing prohibits housing discrimination against people who are members of a protected class.
- A protected class is a group of people who share common characteristics and due to those shared characteristics, have been historically denied equal access and opportunity in housing.
- Persons with disabilities are a protected class under fair housing law.



Which federal and state laws apply to housing & disability?



Federal & state laws that apply to housing & disability

- Fair Housing Amendments Act 1988
- Title II of the Americans with Disabilities Act (as amended in 2009)
- Section 504 of the Rehabilitation Act
- Iowa Civil Rights Act



What types of “housing” are covered by these different laws?

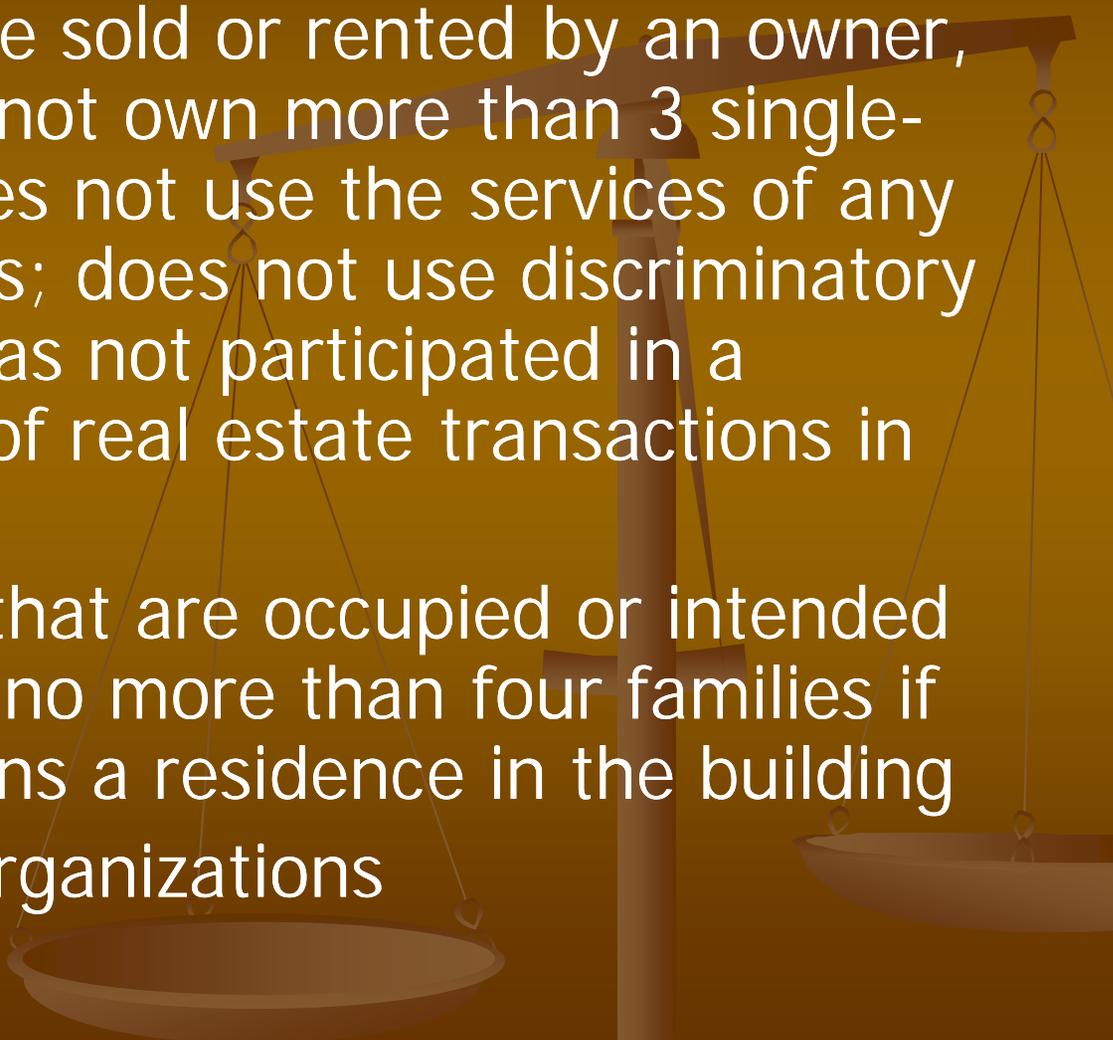


“Housing” under state & federal Fair Housing Acts

- All dwellings designed or used as a residence; and
- Any land or vacant property sold or leased as residential property
- Examples:
 - Multi-family housing
 - Group homes
 - Shelters
 - Temporary housing for seasonal farm workers
 - Shelters
 - Assisted living
 - Long-term transient lodging

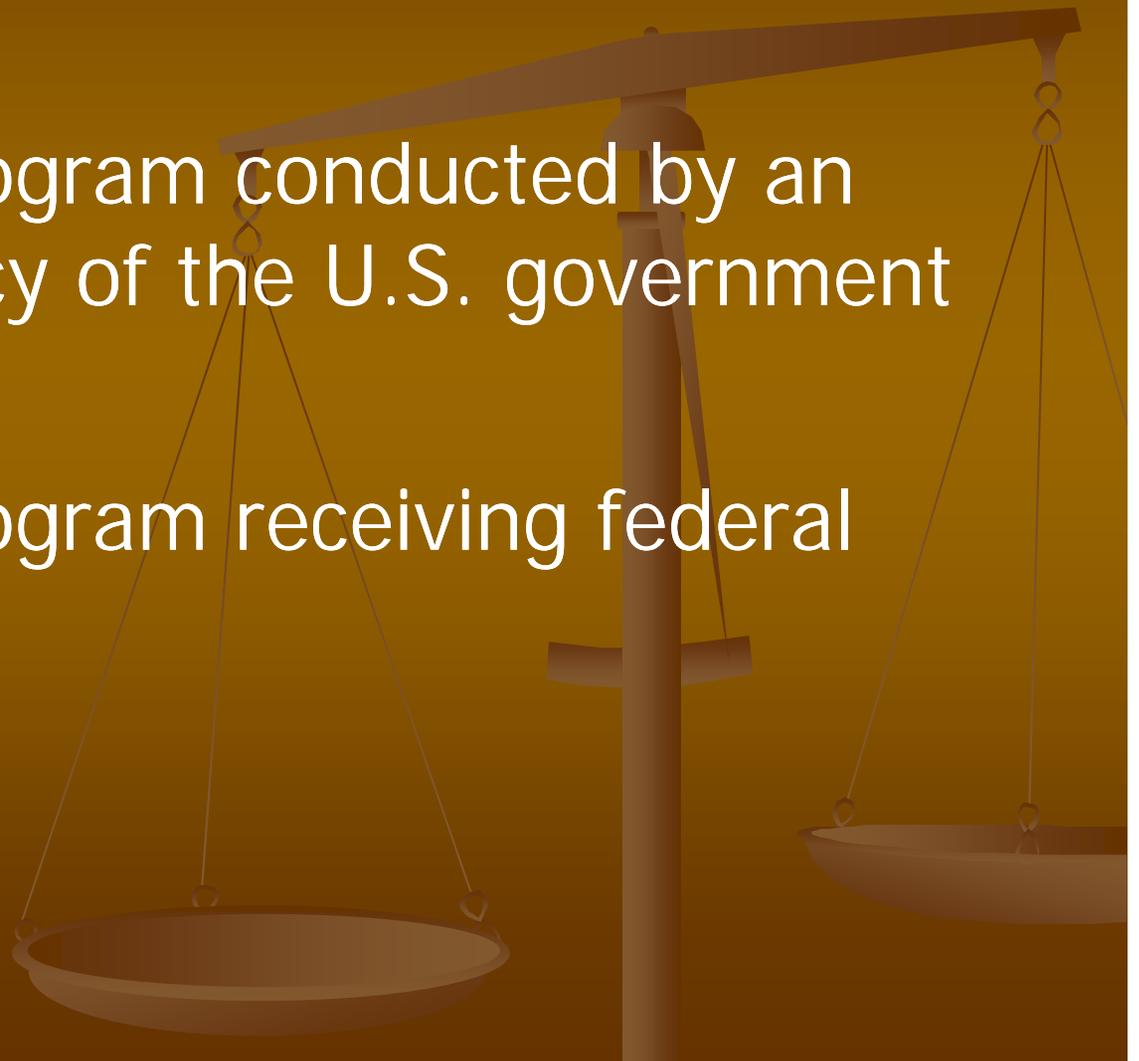


Except . . .

- Single-family house sold or rented by an owner, if the owner does not own more than 3 single-family houses; does not use the services of any real estate services; does not use discriminatory advertising; and has not participated in a specified number of real estate transactions in the past year.
 - Units in buildings that are occupied or intended to be occupied by no more than four families if the owner maintains a residence in the building
 - Certain religious organizations
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“Housing” under Section 504 of the Rehab Act

- Any housing program conducted by an executive agency of the U.S. government
- Any housing program receiving federal funding



Who is protected by these laws?



Who is protected?

- Persons who:
 - Have a physical or mental impairment substantially limiting one or more major life activities;
 - Have a history of such an impairment; or
 - Are regarded as having such an impairment

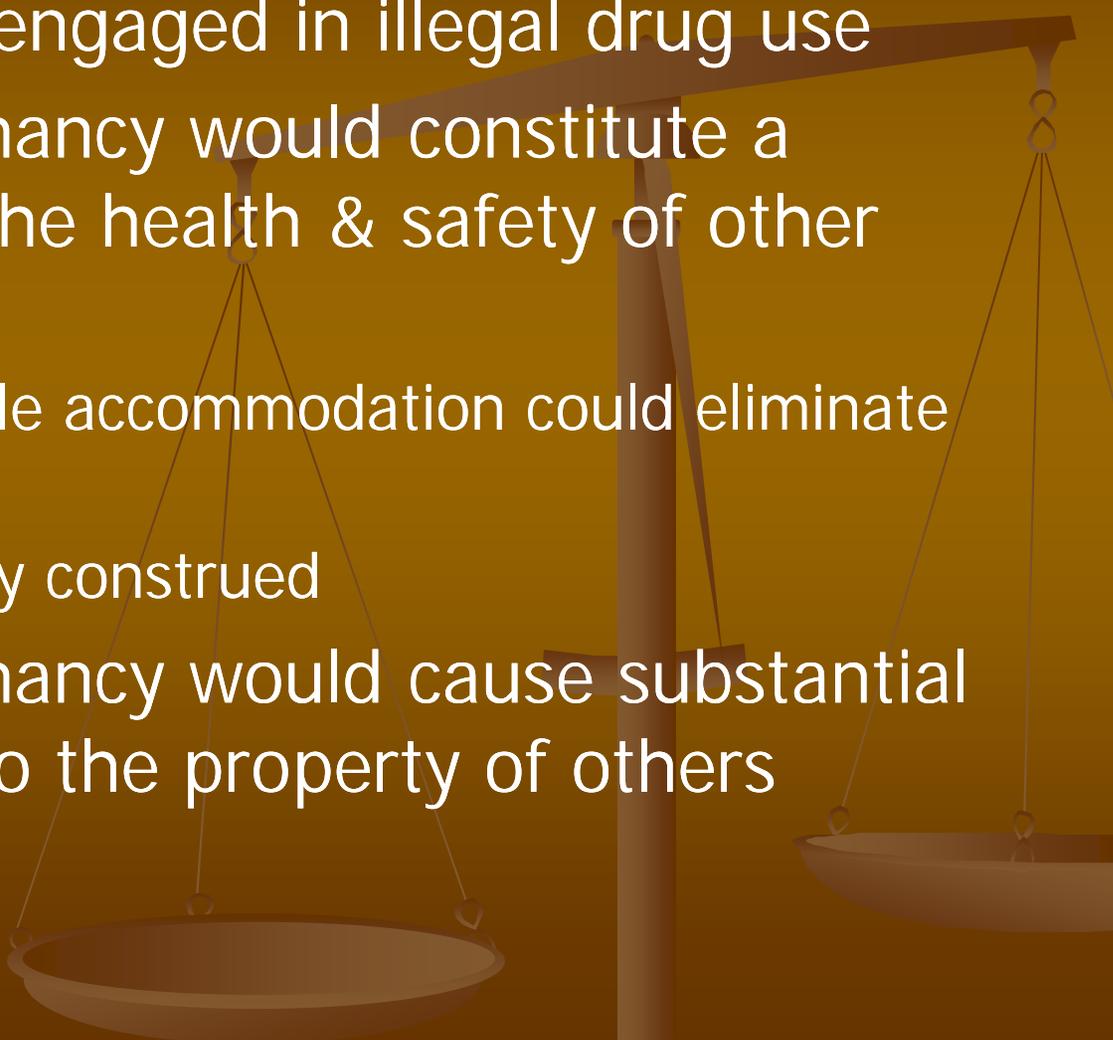
Note: This definition of disability is different from the Social Security definition.

Examples of disabilities

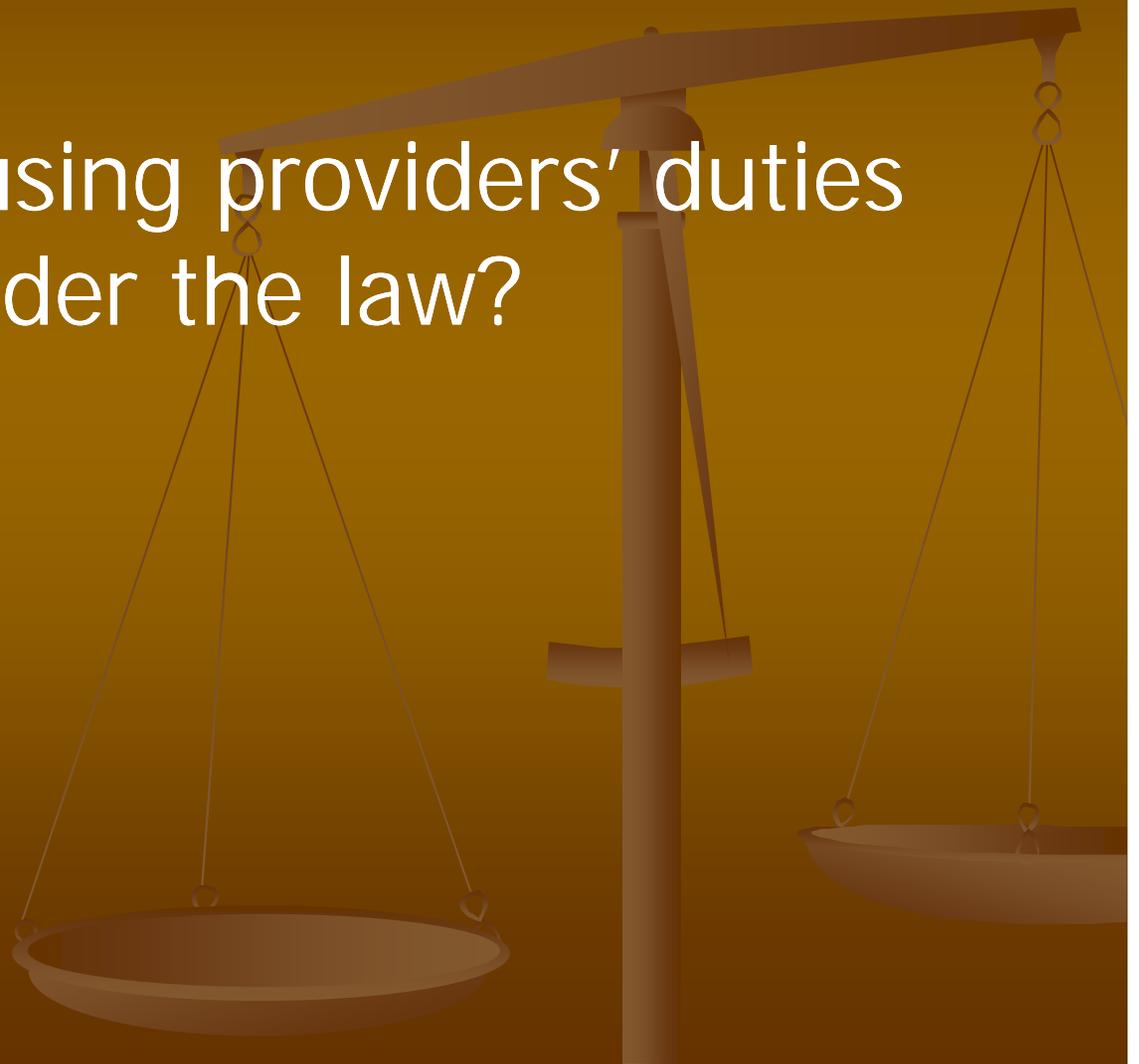
- Visual impairments
- Auditory impairments
- Mobility impairments
- AIDS, HIV
- Substance use disorder (past)
- Mental illness
- Cognitive disability
- Epilepsy
- Traumatic brain injury



Who is not protected?

- Persons *currently* engaged in illegal drug use
 - Persons whose tenancy would constitute a “direct threat” to the health & safety of other individuals
 - Unless a reasonable accommodation could eliminate the threat
 - Should be narrowly construed
 - Persons whose tenancy would cause substantial physical damage to the property of others
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What are housing providers' duties under the law?



Requirements of federal & state fair housing laws

- Cannot discriminate in renting, selling, advertising, or imposing terms and conditions of use of property
- Must provide reasonable accommodations to policies and procedures
- Must allow reasonable modifications at the tenant's expense
- Follow post-1991 Building Requirements

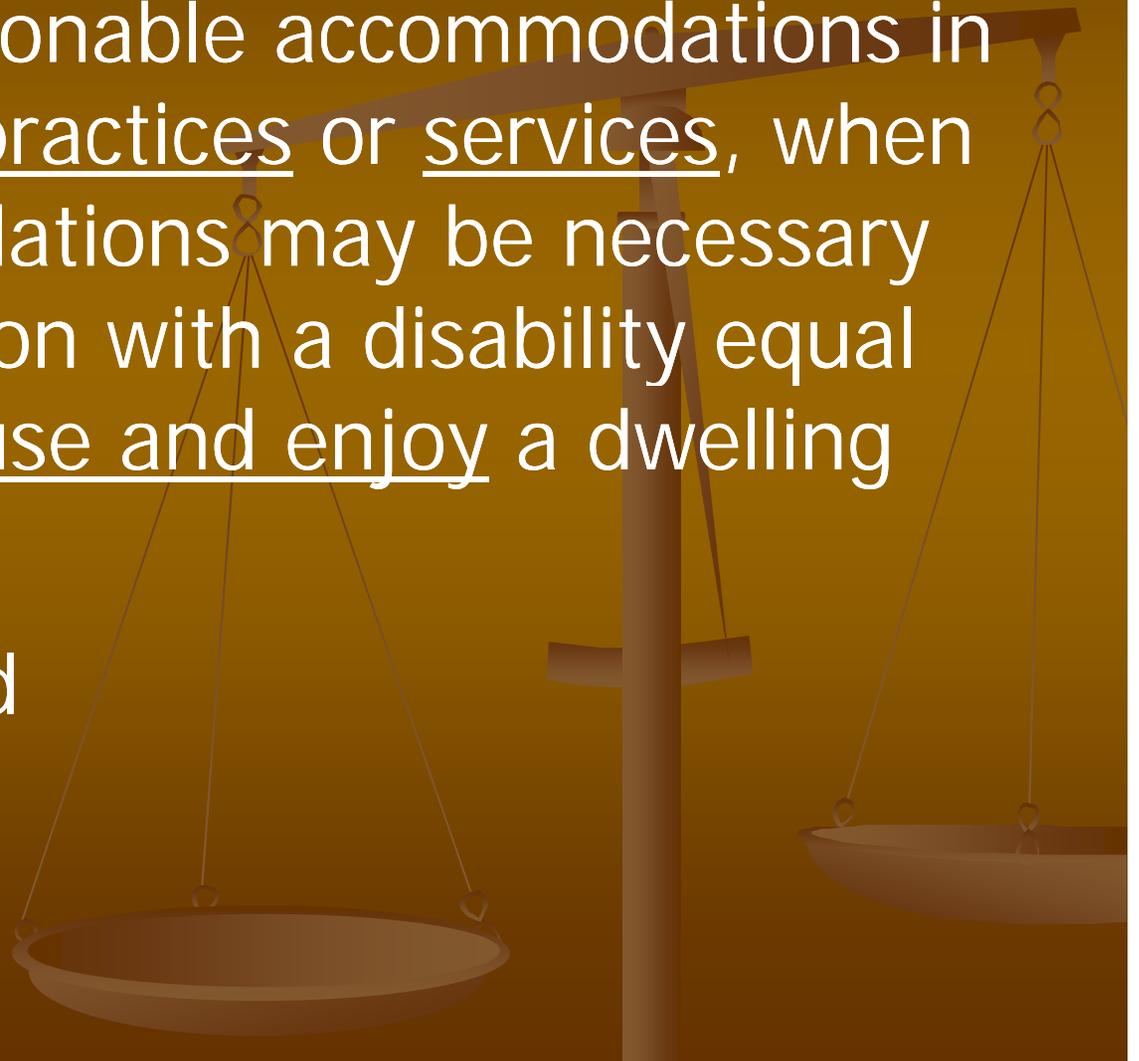


Reasonable Accommodations

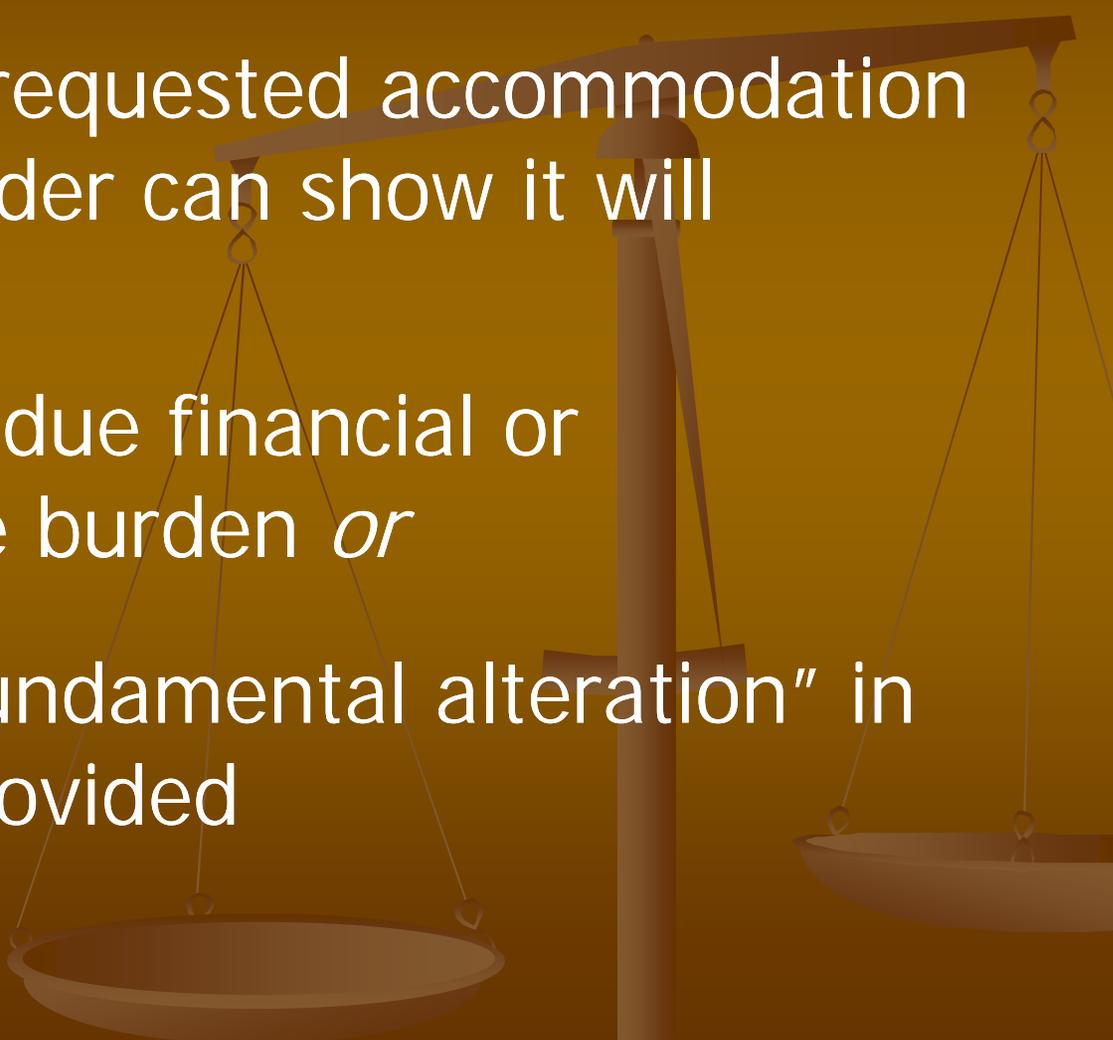


Landlord's duty

- Must make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling
- When requested



When must a landlord provide an accommodation?

- Must provide a requested accommodation unless the provider can show it will
 - Impose an undue financial or administrative burden *or*
 - Result in a “fundamental alteration” in the service provided
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When can an accommodation be requested?

- The need for an accommodation may arise at any time:
 - When applying for housing
 - During the tenancy
 - To avoid an eviction



Examples of Reasonable Accommodations

- Allowing an exemption to a “No Pets” policy for a tenant with a service animal
 - Accommodating behaviors directly related to a person’s mental disability, where those behaviors can be relieved by treatment and medication
 - Providing an assigned parking spot near the unit of a person with a mobility disability
 - Assigning a mailbox to an accessible location
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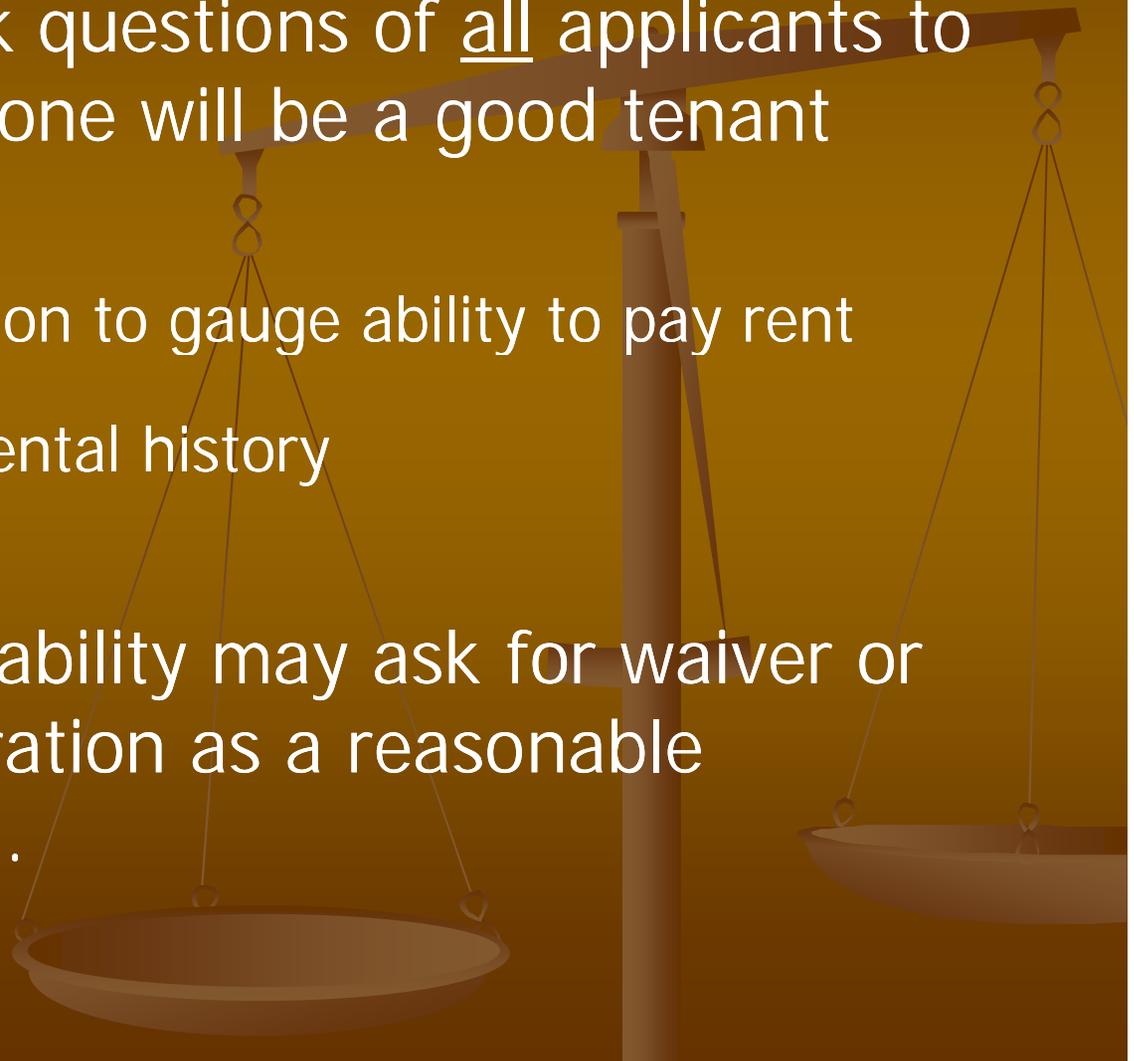
Permissible questions

- Generally landlords may not ask questions about an applicant's disability, unless the applicant is:
 - 1) requesting an accommodation/modification;
 - 2) applying for a housing program designated for persons with disabilities;
 - 3) applying for a preference or priority for persons with disabilities; or
 - 4) trying to qualify for an allowance that reduces rent b/c she has a disability

Permissible questions (cont'd)

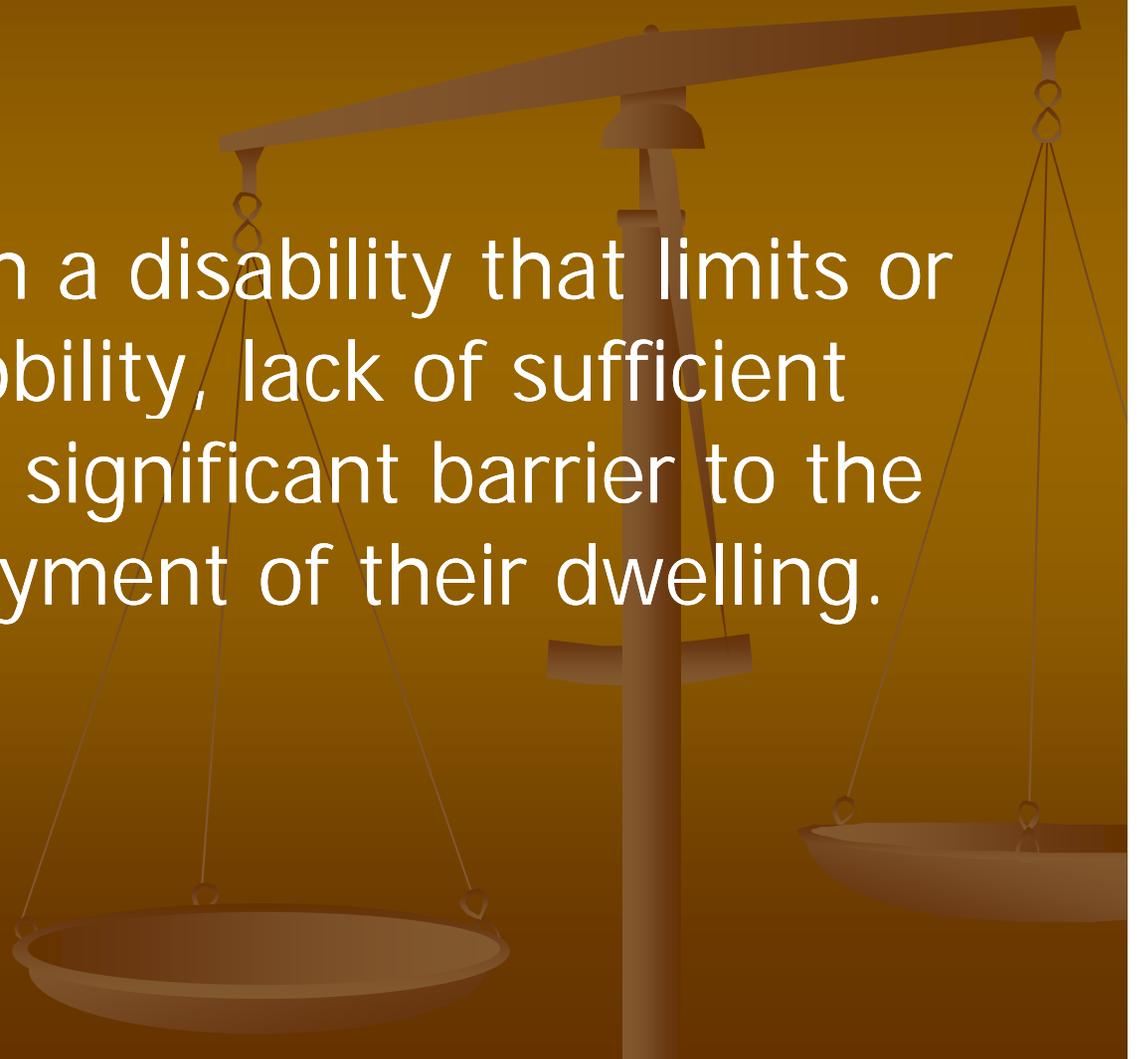
- Landlords may ask questions of all applicants to determine if someone will be a good tenant
 - Financial information to gauge ability to pay rent
 - References/past rental history

Tenant with a disability may ask for waiver or special consideration as a reasonable accommodation.



Parking for Persons with Disabilities

- For a person with a disability that limits or restricts their mobility, lack of sufficient parking can be a significant barrier to the full use and enjoyment of their dwelling.

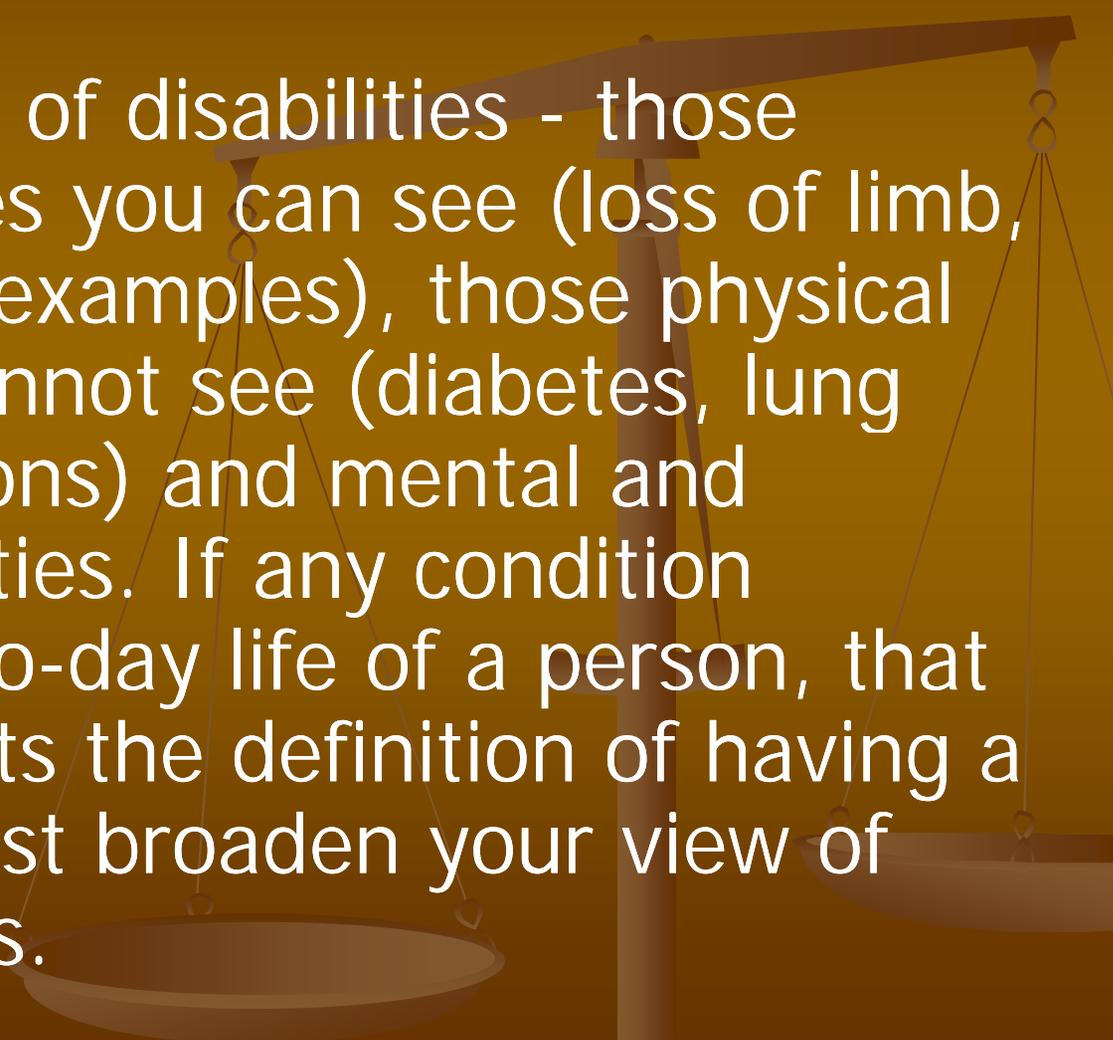


Parking for Persons with Disabilities

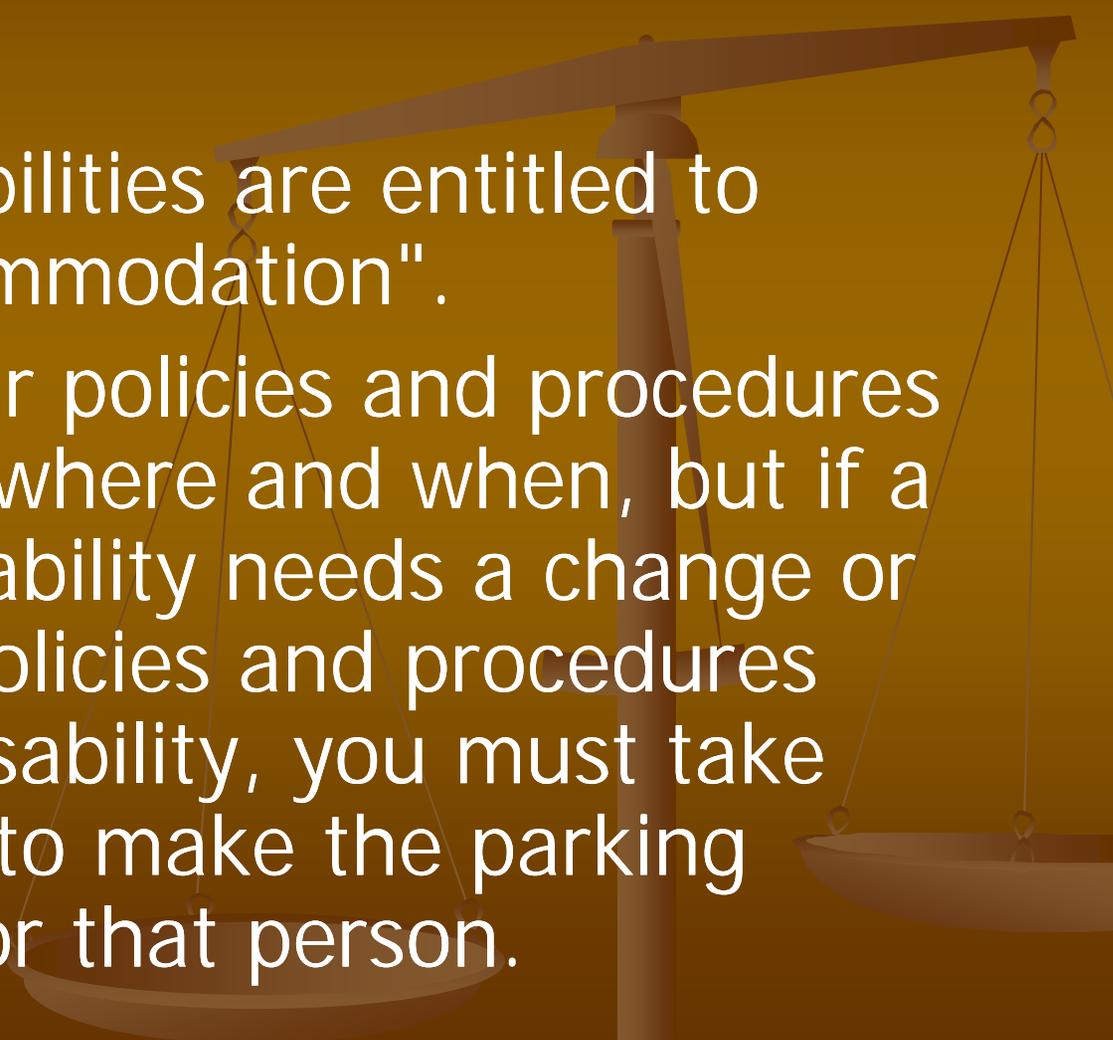
- People with disabilities are one of the federally protected classes under the Fair Housing Act (FHA) as amended in 1988.



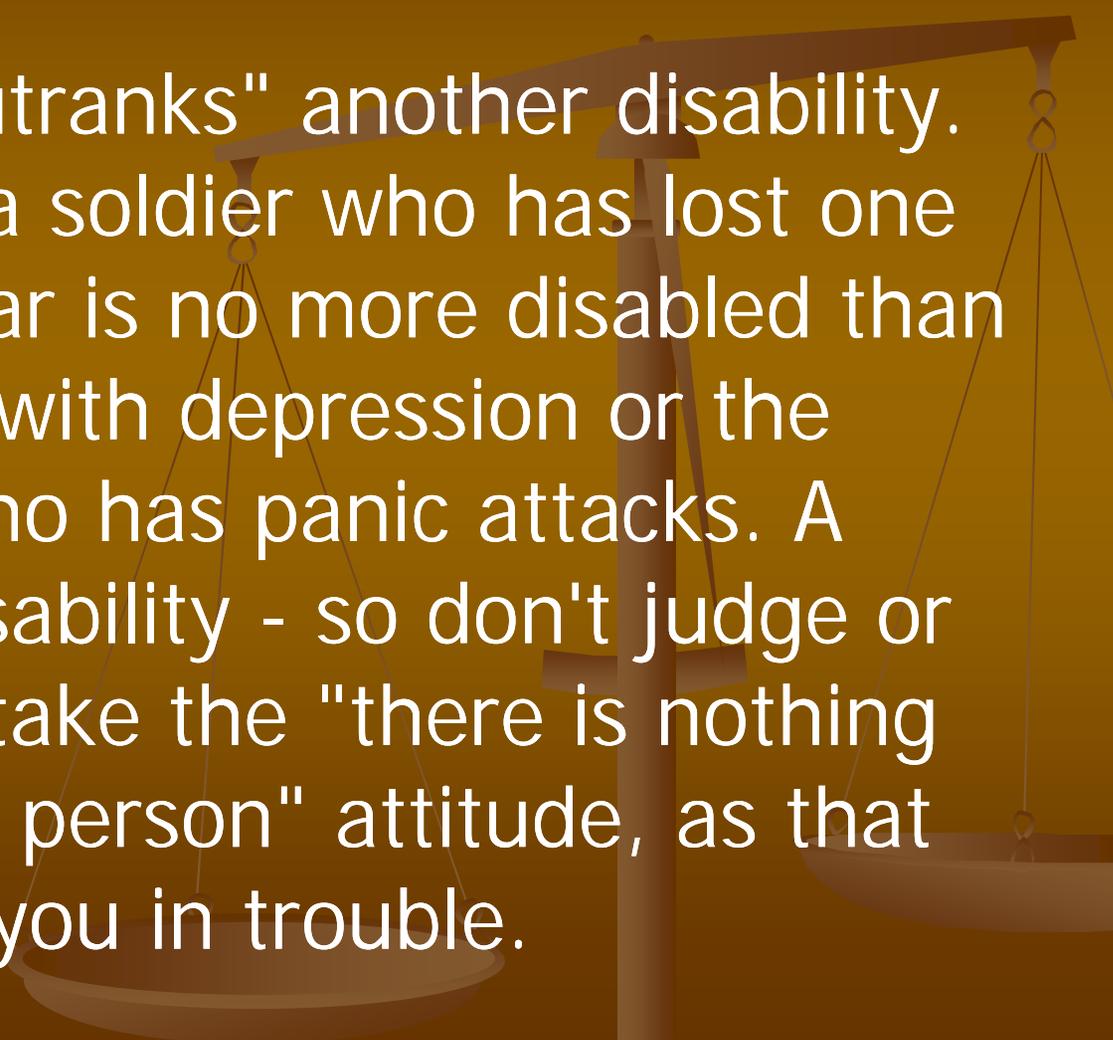
Parking for Persons with Disabilities

- There are 3 types of disabilities - those physical disabilities you can see (loss of limb, cerebral palsy as examples), those physical disabilities you cannot see (diabetes, lung and heart conditions) and mental and emotional disabilities. If any condition impacts the day-to-day life of a person, that person likely meets the definition of having a disability. You must broaden your view of what a disability is.
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Parking for Persons with Disabilities

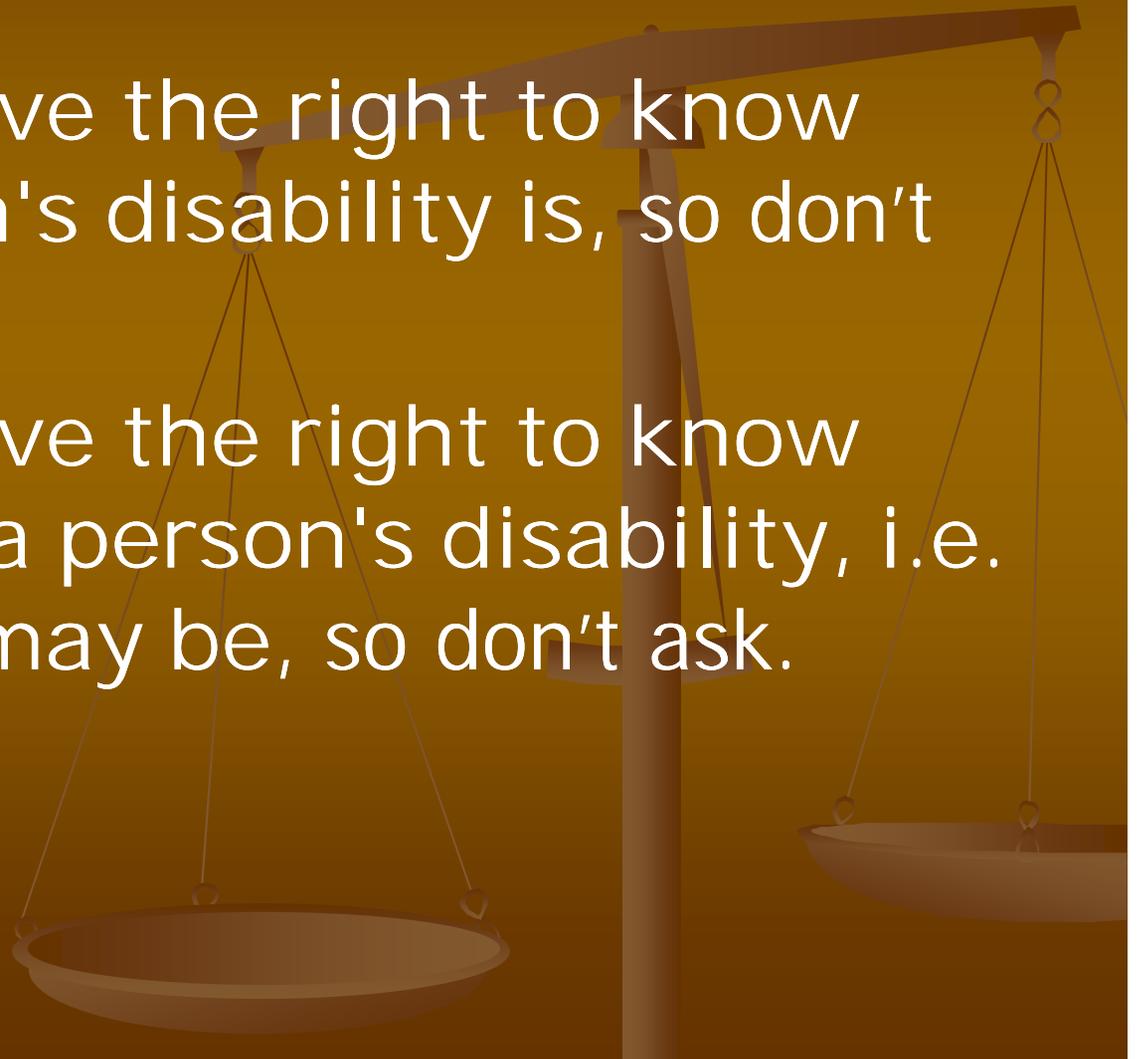
- People with disabilities are entitled to "reasonable accommodation".
 - You can have your policies and procedures about who parks where and when, but if a person with a disability needs a change or waiver of those policies and procedures because of the disability, you must take reasonable steps to make the parking scenario usable for that person.
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Parking for Persons with Disabilities

- No disability "outranks" another disability. Under the FHA a soldier who has lost one of her legs in war is no more disabled than the young man with depression or the older woman who has panic attacks. A disability is a disability - so don't judge or "stack rank" or take the "there is nothing wrong with that person" attitude, as that could likely get you in trouble.
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Parking for Persons with Disabilities

- You do not have the right to know what a person's disability is, so don't ask.
- You do not have the right to know the extent of a person's disability, i.e. how "bad" it may be, so don't ask.



Parking for Persons with Disabilities

- You do have the right to verify the existence of a disability (but not what it is or the extent - see above) if the disability is not readily apparent.



Parking for Persons with Disabilities

- If a person with a disability asks you to work with them regarding their parking, do so.



Parking for Persons with Disabilities

- Just as there are many types of disabilities, there are many different needs related to parking. Have a dialogue with the tenant and find out what they are trying to accomplish and how they think you might best be able to make that happen.
- Is the need location based? If so, which area works best for the person?
- Does the tenant need a regular sized parking space, or one that is larger for van, wheelchair or walker use?
- Does the tenant want the parking space designated as "handicapped parking"?
- Does the tenant want the parking space designated as "reserved"?
- Does the tenant also need a curb cut or ramp if one is not already in place?

Parking for Persons with Disabilities

- Keep in mind that the concept of "reasonable accommodation" expects that the landlord will cover any so-called "de minimus" expenses associated with the accommodation. For instance, with parking accommodations, the cost of the sign or some minimal parking lot striping would be small and should be paid by the landlord; installing a new ramp is likely a more significant cost and is typically the resident's financial responsibility.

Handling a Request

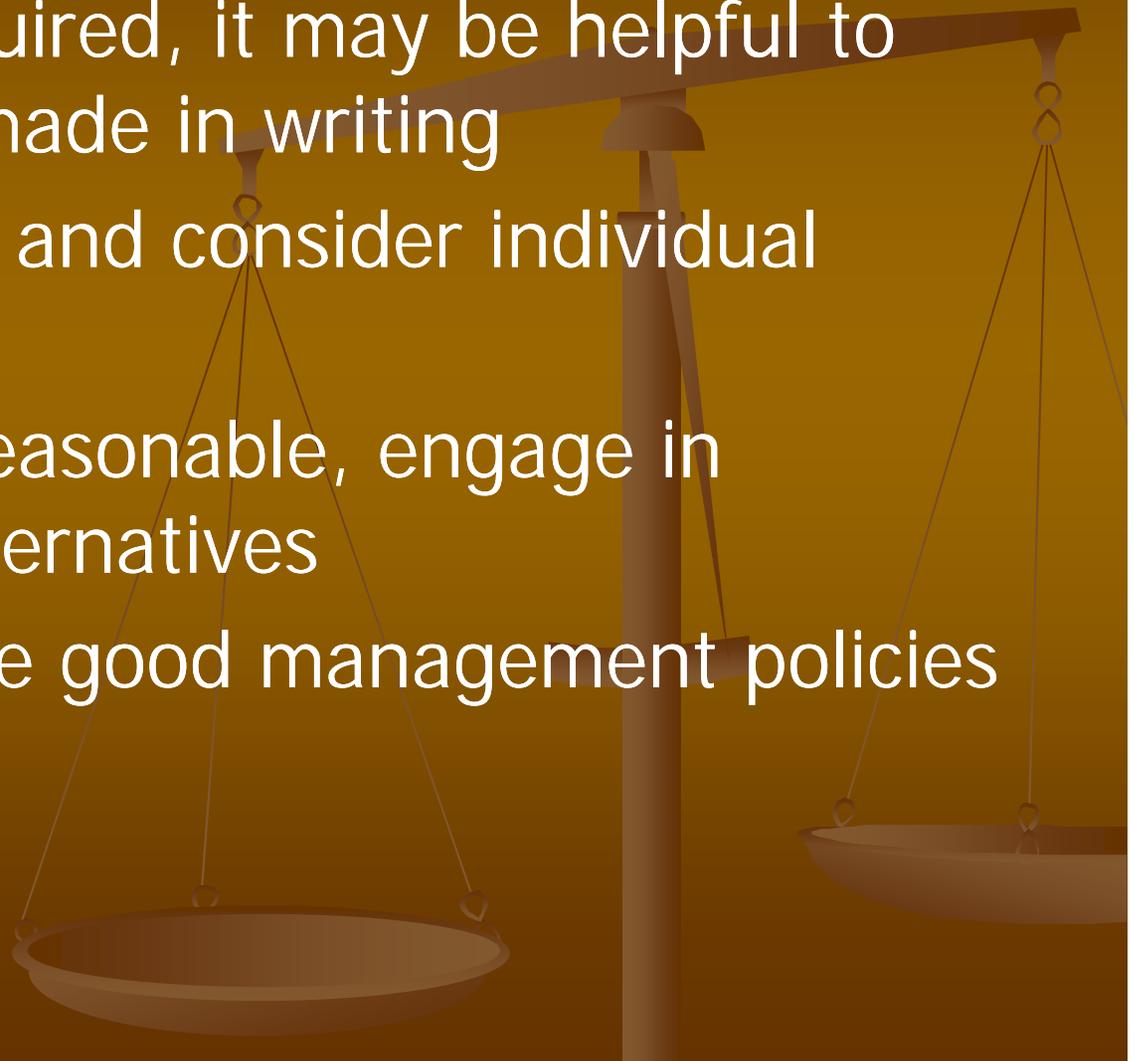


3 steps for handling a request

1. If disability not apparent, you may ask for verification of the disability;
 2. Establish that the accommodation/modification is necessary; and
 3. Determine whether the requested accommodation/modification is reasonable.
- If request comes as result of lease violation, may need to verify the accommodation is likely to prevent future lease violations

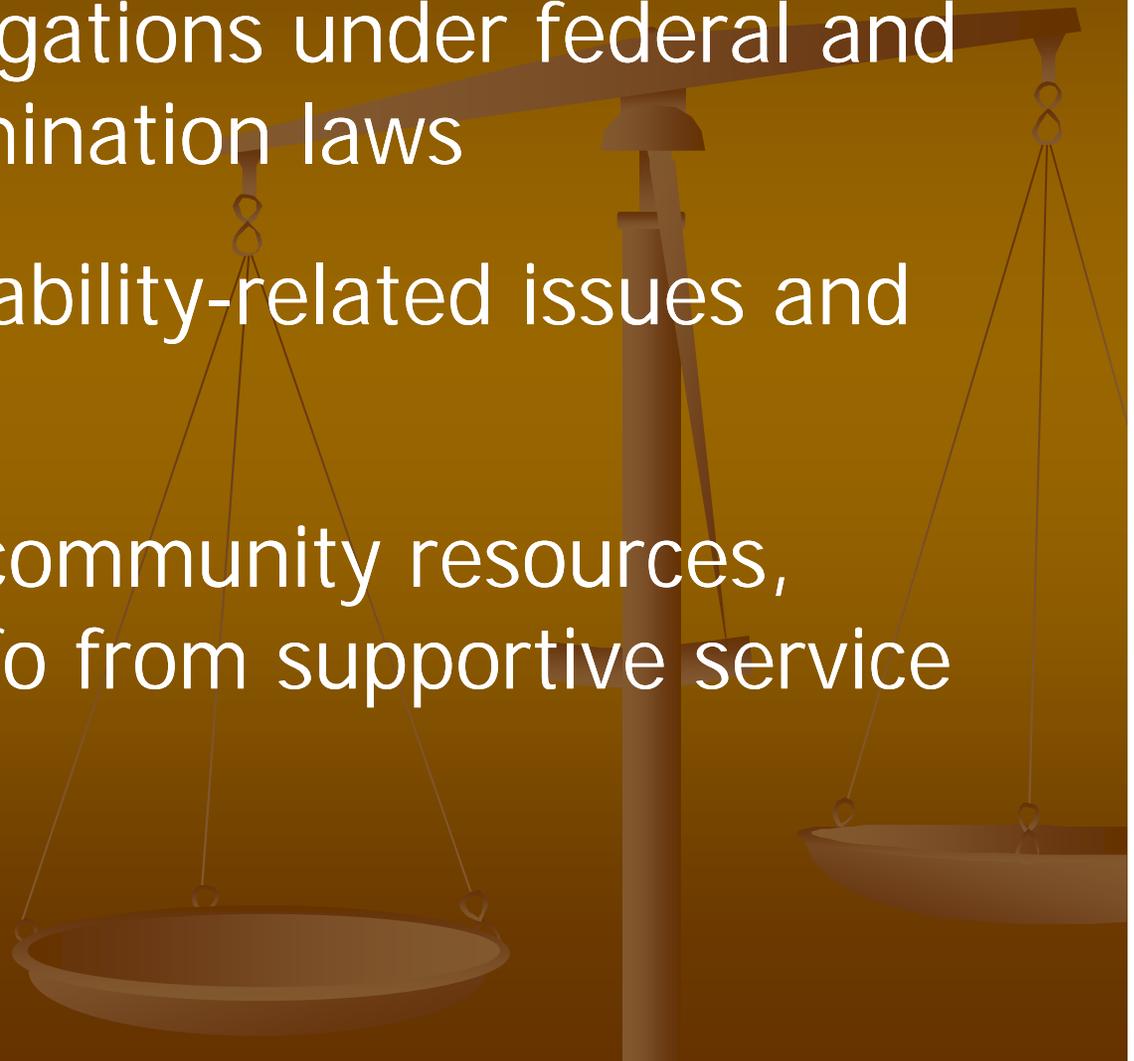
Best practices

- Though not required, it may be helpful to have requests made in writing
- Must be flexible and consider individual circumstances
- If request not reasonable, engage in discussion of alternatives
- Essential to have good management policies and procedures



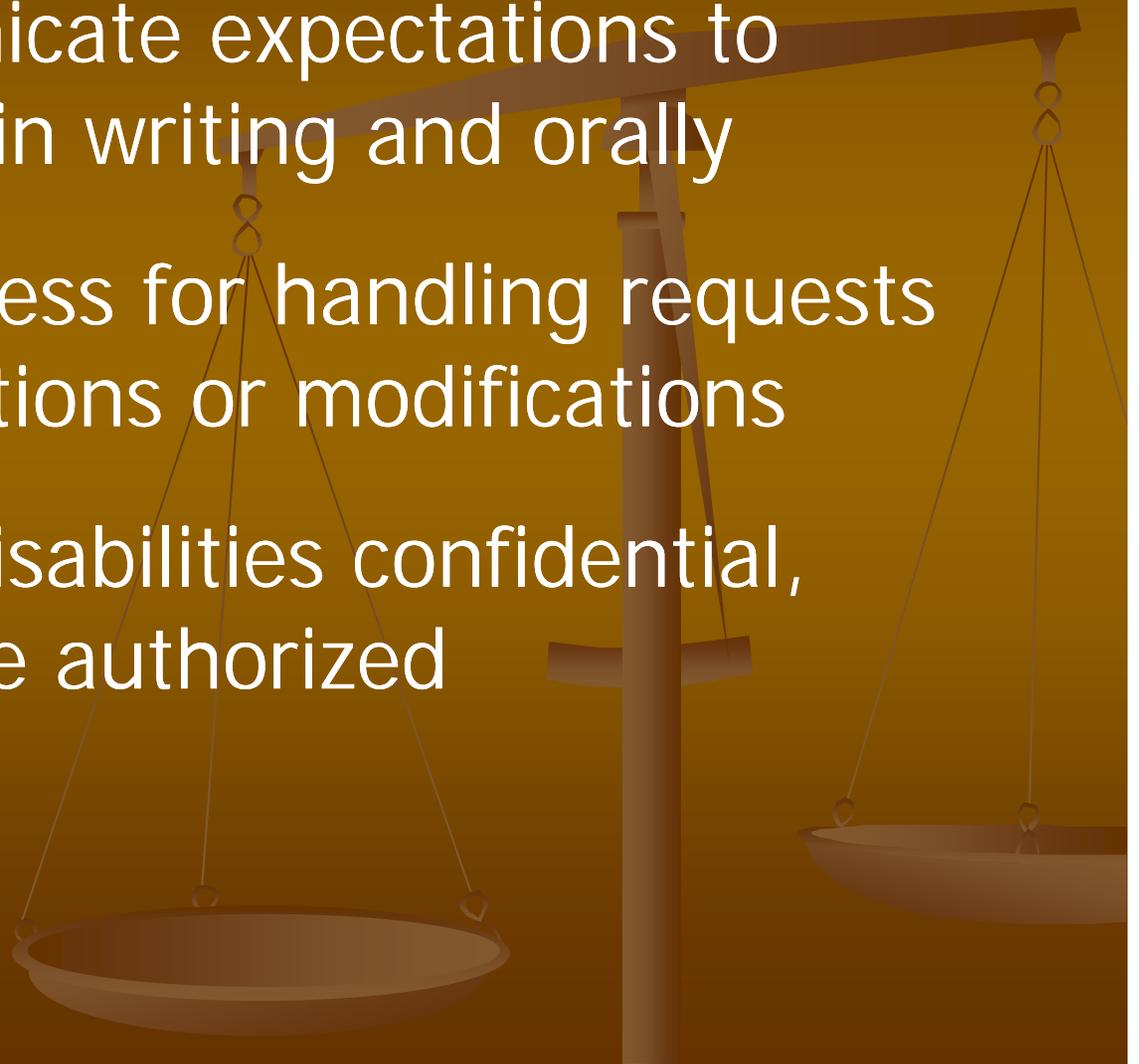
Management procedures

- Understand obligations under federal and state antidiscrimination laws
- Be aware of disability-related issues and considerations
- Display lists of community resources, contacts and info from supportive service providers

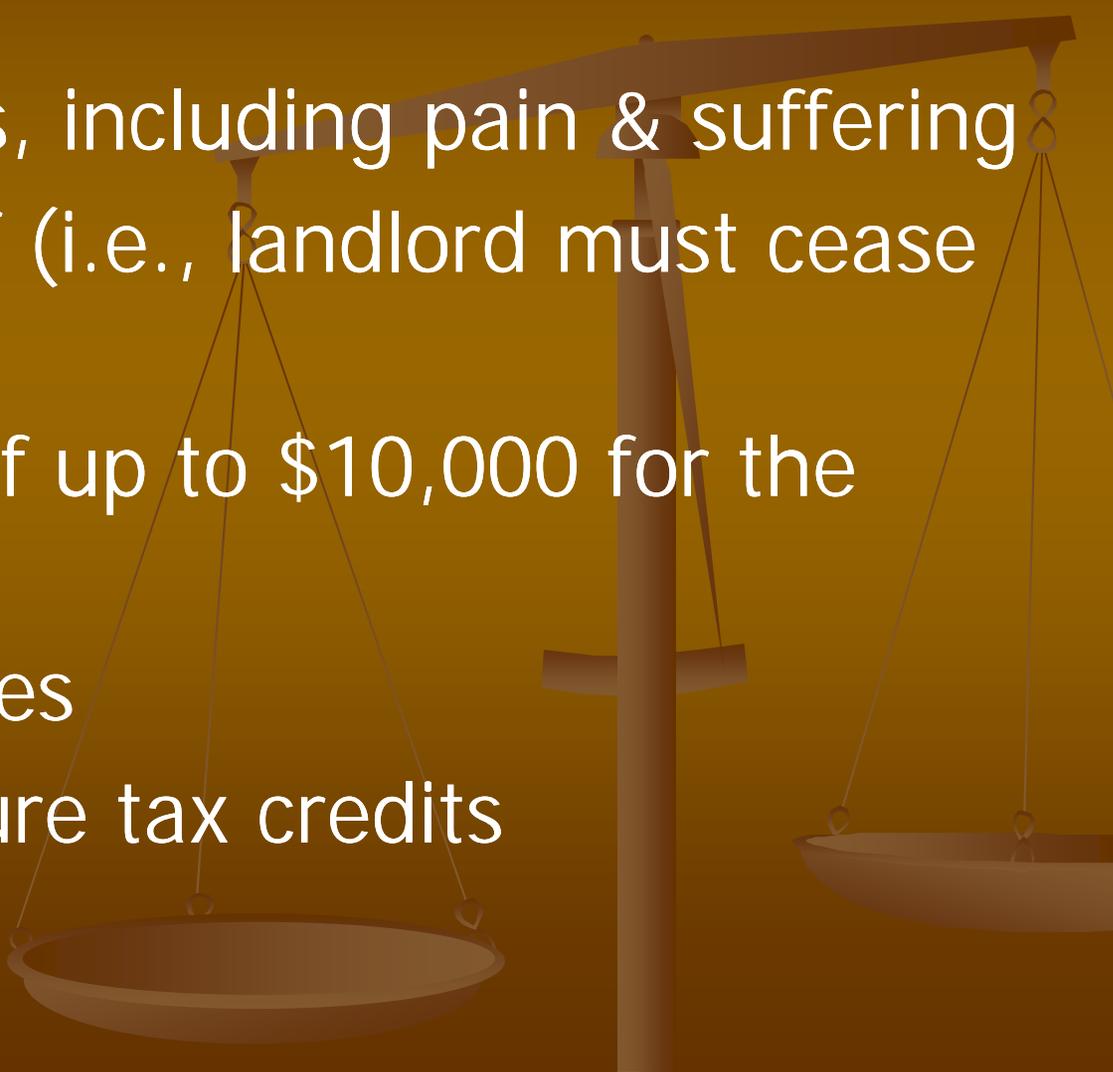


Management procedures (cont'd)

- Clearly communicate expectations to residents, both in writing and orally
- Establish a process for handling requests for accommodations or modifications
- Keep tenants' disabilities confidential, unless otherwise authorized



Consequences of violating state & federal fair housing laws

- Actual damages, including pain & suffering
 - Injunctive relief (i.e., landlord must cease discrimination)
 - Civil penalties of up to \$10,000 for the first offense
 - Punitive damages
 - IRS can recapture tax credits
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Iowa Civil Rights Commission



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