



**When do the two intersect?**

- Advertising
- Admissions/Transfers
- Operations

Breadth. Depth. Results.

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**The Essence of the Legal Issue with respect to Admissions and Transfers**

- In Independent Living, Assisted Living, Nursing?
- In CCRCs?
  - ▶ Home or Health Care Provider?
    - Type A, Type B, Type C;
    - Residence with services or life care;



Breadth. Depth. Results.

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### Why Does it Matter?



•If you provide units in Dwellings containing living quarters occupied by four or more families, the Federal Fair Housing Act applies to you.



•“Dwelling” is any building or portion thereof occupied as a residence by one or more families.

Breadth. Depth. Results.

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### The Fair Housing Act of 1968

- The Fair Housing Act prohibits discrimination in the sale, rental, financing based on five protected classes (race, color, religion, gender, national origin).
- In 1988, the Act was amended and added handicap/disabled to the protected classes.
- "Handicap" is defined as: an impairment limiting one's major life activities, a record of an impairment, or being regarded as having an impairment.

Breadth. Depth. Results.

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### What is Illegal Housing Discrimination Under the Fair Housing Act?

- Restricting choices;
- Denying access;
- Discouraging applicants;
- Steering applicants;
- Refusing to make reasonable accommodations or modifications;
- Communicating preferences.

Breadth. Depth. Results.

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### Overview

- **What are the protected classes?**
  - ▶ Race
  - ▶ Color
  - ▶ Sex
  - ▶ National origin
  - ▶ Religion
  - ▶ Family status
  - ▶ Disabled

Breadth. Depth. Results.

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**American with Disabilities Act of 1990**

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**Overview**

- **Who may be liable?**
  - ▶ CCRCs
  - ▶ Retirement housing or senior living
  - ▶ Assisted living
  - ▶ Nursing facilities
  - ▶ Group homes

Breadth. Depth. Results.

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**Advertising and Marketing**

- **Advertising and Marketing**
  - ▶ Includes:
    - Print material;
    - TV, radio, Internet, other electronic media;
    - Videos;
    - Billboards and other off property signs;
    - Pictures of facility depicting residents' lifestyles, etc...
    - Brochures, pamphlets, annual reports; and
    - Statements made by marketing personnel

Breadth. Depth. Results.

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**A lifestyle you've worked a lifetime to achieve.**

Austin landmark for over 25 years, \_\_\_\_\_ is the only "life care" community that covers your every health need — independent living in your private apartments, assisted living, and healthcare in our on-site nursing center.

\_\_\_\_\_ offers a dozen different floorplans tailored to fit the needs of singles or married couples. Located in central Austin, there are numerous indoor and outdoor activities to choose from each day.

Many residents are attracted by a lease purchase plan that allows up to 90 percent of the entrance fee to be returned to them or their estate. And the 10% occupancy fee covers all monthly fees so medical expenses are predictable.

\_\_\_\_\_ prides itself on the ability to offer complete care for our residents. The first-rate "life care" plan is the lifestyle reward you've worked a lifetime to achieve.

Next to Congregation \_\_\_\_\_

**Retirement with Distinction**

Austin, TX • (512) \_\_\_\_\_

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**Don't give up independence just because you need a little assistance!**

We all need a little help now and then, especially as we get older. Now you can have your independence and get the help you need with daily living activities — simply choose assisted living at \_\_\_\_\_! We offer:

- A small home-like residence giving individual attention and care
- Assistance with bathing, grooming, and medication needs
- An emergency alert system in every room, providing 24-hour access to medically trained staff
- All services included in the sensible, affordable monthly rates
- A daily selected menu offering three home-cooked meals

Come by soon to visit us and see for yourself why choosing \_\_\_\_\_ gives you the best of what you need.

The Assisted Living Residence of \_\_\_\_\_ Care Center  
\_\_\_\_\_, Texas \_\_\_\_\_

**(512) \_\_\_\_\_**

24 Hour Skilled Nursing Care Available Next Door at \_\_\_\_\_ Care Center

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\_\_\_\_\_ : Providing quality care in a Christian environment

We believe growing older should be rewarded with respect, caring and compassion. The goal of our courteous, professional staff is to provide our residents with a complete continuum of care that promotes quality of life. We are prepared to meet each resident's changing health care needs with individualized programs including independent living, personal care, nursing care and an innovative program for persons with Alzheimer's disease. At \_\_\_\_\_, we are dedicated to meeting the special needs of senior adults and their families throughout the seasons of life.

For a free brochure or to set up a personal tour, please call our marketing coordinator at (512) \_\_\_\_\_

\_\_\_\_\_

Austin, TX

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### Advertising and Marketing

- **Text**
  - ▶ No reference to national origin
  - ▶ Include "All faiths welcome"
  - ▶ Include non-discrimination policy
  - ▶ Do not use terms like "independent" or "active" lifestyle, or "near churches"
  - ▶ Do not describe location of facility in terms of certain landmarks that indicate discrimination or a preference
- **Photos and Images**
  - ▶ Diverse resident and employee community (race, ethnicity, gender)
  - ▶ Community-wide diversity, not actual diversity
  - ▶ Measure entire campaign
  - ▶ Images of disabled residents

Breadth. Depth. **Results.**

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### Advertising and Marketing

- Logo and Anti-Discrimination Poster
  - ▶ Fair Housing Logo and policy
  - ▶ Correct size
  - ▶ Anti-Discrimination Poster in conspicuous place and in foreign language
- Direct advertising program to diverse population by using foreign languages and various community papers or radio stations;
- Document all community outreach.

Breadth. Depth. **Results.**

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### Advertising and Marketing



Breadth. Depth. **Results.**

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### What is Illegal Housing Discrimination Under the Fair Housing Act?

- **Restricting choices:**
- **Denying access:**
- **Discouraging applicants:**
- **Steering applicants:**
- Refusing to make reasonable accommodations or modifications;
- Communicating preferences.

Breadth. Depth. Results.

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### Recent Case Law – Admissions and Transfers

- ▶ *Herriot v. Channing House* (N.D. CA; filed Oct. 10, 2006);
- ▶ *LaFlamme v. New Horizons, Inc.* (Dist. Of Connecticut, 2005);
- ▶ *Bell v. Bishop Gadsden* (Consent Order) (S. Carolina; filed July 8, 2005)
- ▶ *U.S. v Pacific Life Insurance et al.* (Consent Order) (S.D. Tex., Dec. 2004).
- ▶ *U.S. v. Resurrection Retirement Communities*, (Consent Order) (N.D. Ill., 2002).

Breadth. Depth. Results.

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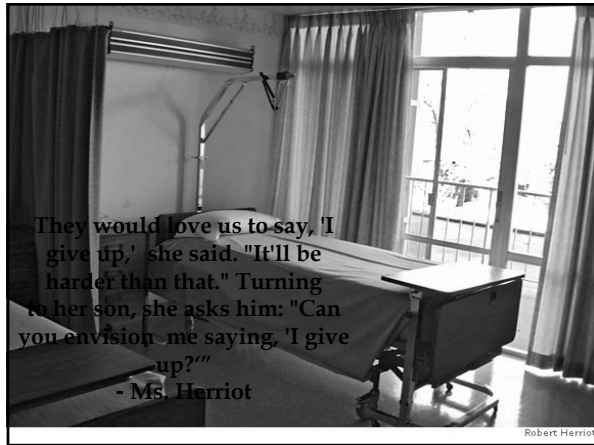
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**Admissions Process –  
Policies and Agreements**

- **Discrimination: Prohibited Inquiry**
  - ▶ Making inquiry to determine whether an applicant has a disability or into the nature or severity of disability is prohibited, except when:
    - Applicant qualified for unit especially designated to accommodate people with a particular disability; and
    - Inquiry is made of all applicants.
  - ▶ Questions can be asked regarding an applicant's ability to meet the requirements of tenancy alone or with the assistance of an aide.
  - ▶ Focus on the ability of the applicant to meet the tenancy requirements and not on his or her condition.

Breadth. Depth. Results.

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**Admissions Process Do's and Don'ts**

- **Admission Agreements**
  1. Do not make independent living a condition of tenancy;
  2. Do not preclude applicant from hiring an aide; and
  3. Affirm the non-discrimination policy.

Breadth. Depth. Results.

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**Admission Do's and Don'ts**

4. Do include a positive statement - "we do not discriminate . . ."
5. Do not use "red flag" terms such as "ability to live independently."
6. Do describe facility and its activities rather than residents.
7. Do describe services you DO NOT provide.

Breadth. Depth. Results.

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**Admission Do's and Don'ts (continued)**

8. Don't use adjectives other than "seniors" in describing types of residents.
9. Don't assume everyone on your staff is ready to properly communicate with applicants for admission. Train staff.
10. Don't let untrained residents answer the phones. Monitor resident (and all) receptionists.

Breadth. Depth. Results.

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**Admission Do's and Don'ts** (continued)

11. Do build a tolerant community and establish a grievance process.
12. Do not discharge without knowing the law and the risks.
13. Do remember that you are not obligated to make a reasonable accommodation that represents a fundamental alteration in policies or undue financial burden.

Breadth. Depth. Results.

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**Sample Admission Language for Critique**

1. **The Rental Agreement**  
“[I]n the event the health of resident deteriorates to the point that he/she can no longer care for his/her personal needs, then the manager shall notify the family, or party responsible for resident, who will then make appropriate housing arrangements elsewhere for resident.”

Breadth. Depth. Results.

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**Sample for Critique**

2. **Admission Agreement**  
\_\_\_\_\_ requires that you be able to reside independently and be able to meet \_\_\_\_\_ requirements for good health. You must be certified by \_\_\_\_\_ administration as being capable of living independently on the Availability Date, \_\_\_\_\_ reserves the right to admit you to the appropriate level of health care.

Breadth. Depth. Results.

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**Sample for Critique**

**3. Admission Agreement**  
To meet the requirements of tenancy, resident must be able to care for him or herself without assistance from management and with or without assistance arranged for by resident or a third party (not Owner) on behalf of resident. Owner may terminate this

Breadth. Depth. Results.

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**Sample for Critique**

Agreement upon thirty (30) days' prior written notice delivered to Resident or Resident's designated representative if Resident, due to his or her inability to care for himself or herself or arrange for care independent from management, endangers the welfare or lives of others residing at or employed by Complex. This Complex has no staff available to provide care for those

Breadth. Depth. Results.

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**Sample for Critique**

who need everyday living assistance in caring for themselves and in caring for the rental Units. Therefore, an applicant or Resident who is incapable of arranging for the care of, or caring for, himself or herself, as well as the Unit, is not eligible for occupancy. Residents have the right to hire aide assistance. All such aides must conduct themselves at

Breadth. Depth. Results.

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**Sample for Critique**

all times in accordance with the rules established by the complex to ensure the safety and well-being of all residents.

Breadth. Depth. Results.

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**nbc5i.com**

**Apartment's Landlord Hands Horse Eviction Notice**

*Owner: Guide Horse Needs To Learn Life In Apartment Setting*



POSTED: 9:30 am CDT October 28, 2005  
UPDATED: 2:41 pm CDT October 28, 2005

EULESS, Texas -- A Euless man says he won't part with his horse even though his landlord wants the animal out of his apartment.

Rusty, a miniature horse, is just 4 months old, and fast on his way to becoming a first-rate guide horse, or so says his trainer.

Chad Nutt says he's trained seven horses to be service animals for people are blind. Rusty is equipped with a harness and even wears baby shoes, so he won't slip inside restaurants or stores.

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**What is Illegal Housing Discrimination Under the Fair Housing Act?**

- Restricting choices;
- Denying access;
- Discouraging applicants;
- Steering applicants;
- **Refusing to make reasonable accommodations or modifications;**
- Communicating preferences.

Breadth. Depth. Results.

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### Reasonable Accommodation

- **Discrimination:** Landlord's refusal to permit reasonable modification to the existing premises at the expense of the disabled person or refusal to make reasonable accommodations in rules, policies, practices or services.
- **What is a reasonable accommodation?**
  - Change to rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to enjoy dwelling.

Breadth. Depth. Results.

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### Reasonable Accommodation Analysis

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graph TD; Q1[Is the person making the request-or on whose behalf the request is being made-disabled?]; Q1 -- No --> A1[Not a reasonable Accommodation]; Q1 -- Yes --> Q2[Is the request financially unduly burdensome?]; Q2 -- Yes --> A1; Q2 -- No --> Q3[Is the request administratively unduly burdensome?]; Q3 -- Yes --> A1; Q3 -- NO --> Q4[Does the reasonable accommodation cause a fundamental alteration in the nature of the program?]; Q4 -- Yes --> A1; Q4 -- NO --> A2[It is a reasonable Accommodation];
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Breadth. Depth. Results.

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### Reasonable Accommodation

- Key areas:
  - ▶ Electric Scooters and other mobility aides;
  - ▶ Assigned Parking;
  - ▶ Private Duty Aides; and
  - ▶ Animals (Service and Comfort).

Breadth. Depth. Results.

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### Reasonable Accommodation

•Electric Scooters

- ▶ General rule is usually that residents cannot use electric transportation devices in the facility and the reasonable accommodation is to allow a disabled person to use such a device so long as it does not create an undue financial or administrative burden for the facility and does not cause a fundamental alteration.



Breadth. Depth. Results.

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### Recent Case Law

- **Disability Discrimination**
  - *U.S. v. Rathbone Retirement Community*, (S.D. Indiana, Complaint November 2008);
  - *Hyatt v. Northern California Presbyterian Services and Management* (Complaint July 2008);
  - *U.S. v. Covenant Retirement Community* (Consent Order) (C.D. CA., 2007);
  - *U.S. v. Twining Services Corporation* (Consent Order) (E.D. Penn; 2005);
  - *Bell v. Bishop Gadsden* (Consent Order) (S. Carolina 2005);
  - *U.S. v. Royalwood Cooperative Apts., Inc. et. Al.* (E.D. Mich., Feb. 2005);
  - *U.S. v. Savannah Pines* (Consent Order) (Neb.; 2003);
  - *Grassi v. County Manor Apts.* (HUD ALJ 2001);
  - *U.S. v. Hillhaven* (D. Utah 1997);
  - *Weinstein v. Cherry Oaks Retirement Community* (Colorado Ct. App. 1996);
  - *Morgan v. Retirement Unlimited* (Va. Cir. Ct. 1995).

Breadth. Depth. Results.

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### Case Law

- **Morgan v. Retirement Unlimited**
  - A retirement community resident who was injured while being transferred from a wheelchair to a dining room chair was awarded \$500,000 after a jury trial.
- **Weinstein v. Cherry Oaks Retirement Community**
  - Requiring a resident to transfer from a wheelchair to a dining room chair was found to violate the state's fair housing law. Although management argued that fire safety concerns justified the policy, the court focused on evidence that showed the "real motivation" was to maintain a "disability-free" atmosphere.

Breadth. Depth. Results.

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**Case Law**

▶ **U.S.v. Hillhaven**

- Restrictions on the use of motorized carts around the dining room and other common areas of an independent living residence during congested periods were upheld, where management had a concern for the safety of other residents, many of whom were themselves mobility-impaired, and where reasonable accommodations were made to help cart-users maintain access to the community's facilities.

▶ **Grassi v. County Manor Apts.**

- A retirement community cannot require that motorized scooter users maintain liability insurance. While the community had a legitimate interest in promoting safety, insurance was not related to that concern.

Breadth. Depth. Results.

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**Case Law**

▶ **U.S. v. Savannah Pines**

- Prohibited the use of scooters in facility, required security deposit for scooter users.

▶ **U.S. v. Covenant Retirement Community**

- Mobility aide policy requires only disabled can use them and that if they endanger the health and safety of others or cause substantial physical damage to other property they will be restricted until they can use them safely.

▶ **U.S. v. Twining Services Corporation**

- Allegations include that no wheelchairs were allowed in dining room or community center. Scooter registration and yearly evaluation was required.

Breadth. Depth. Results.

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**Case Law**

• **Bell v. Bishop Gadsden**

- ▶ New Motorized Scooter Policy – ensure the right to use them pursuant to traffic rules for safety.

• **U.S. v. Rathbone Retirement Community**

- ▶ The DOJ alleges that facility had a policy prohibiting motorized wheelchairs and scooters in apartments and in the dining area during meals was discriminatory.

• **Hyatt v. Northern California Presbyterian Services and Management**

- ▶ Facility, a CCRC, in San Francisco area allegedly prohibited the resident from using her walker in the dining room buffet.

Breadth. Depth. Results.

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### Scooter Guidelines

|   |   |
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| <p><b>•Should:</b></p> <ul style="list-style-type: none"> <li>▶ Have a policy for scooter usage that includes traffic rules;</li> <li>▶ Policy should be a part of a larger reasonable accommodation policy;</li> <li>▶ Limit usage of scooter for the right reasons (i.e. protect the health and safety of others, imposes an undue financial or administrative burden);</li> <li>▶ Be aware of liabilities that exist in policies (i.e. transferring);</li> <li>▶ Offer periodic optional training;</li> <li>▶ Require user to pay for damage to Facility or other's property.</li> </ul> | <p><b>•Should not:</b></p> <ul style="list-style-type: none"> <li>▶ Require scooter user maintain liability insurance;</li> <li>▶ Limit usage of scooters for the wrong reasons (i.e. maintain a disability-free atmosphere);</li> <li>▶ Require testing;</li> <li>▶ Require scooter user pay a deposit;</li> <li>▶ Refuse legitimate scooter user right to reasonable accommodation;</li> <li>▶ Enforce policy unequally.</li> </ul> |
|---|---|

Breadth. Depth. **Results.**

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### Parking

- U.S. v. Housing Authority of the City of San Buenaventura (C.D. Cal.)
  - ▶ Housing authority denied disabled tenant's request for one of two accessible parking spaces be assigned her rather than to a tenant who did not own a car and a tenant who moved in after she did. After the denial, she fell while exiting her car and needed emergency medical assistance.
- U.S. v. Hurley (E.D. Tenn.)
  - ▶ Apartment owners and managers deny tenant's request for an accessible parking space close to his apartment. He files a complaint with HUD and he is retaliated against

Breadth. Depth. **Results.**

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### Parking

- According to the DOJ website, there have been approximately 4 cases dealing with parking brought by the DOJ since 2004.
  - ▶ Facts usually involve a disabled resident requesting a reasonable accommodation to the complex's first-come-first-serve parking policy. The request is denied. A complaint is filed. The complex and DOJ enter into a consent decree in which a fine is paid and parking is provided.
- Issues to consider include:
  - ▶ Many tenants who need an accessible parking space do not need an extra-wide space with an access aisle. Rather, they just need something near their entrance.
  - ▶ Post signs indicating the space is reserved and enforced. Provide the reserved space in addition to any other general parking available.
  - ▶ Guest parking is subject to the ADA, which requires a certain percentage of spaces meet access requirements.
  - ▶ If there is a rental office on property, be sure to locate an accessible guest space next to the office.

Breadth. Depth. **Results.**

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**Private Duty Aides**

- Requirement of resident's ability to live Independently;
- Issues to consider regarding Private Duty Aides:
  - ▶ Hiring criteria:
    - Reputable agency, trained, screened/criminal background check, insured;
  - ▶ Solicitation;
  - ▶ Sign-In/Sign-Out;
  - ▶ Service entrance;
  - ▶ Employee parking;
  - ▶ Rights

**Breadth. Depth. Results.**

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**Service Animals and Comfort Animals**

- Service animal defined in the ADA as any guide dog or signal dog or other animal trained to do work or perform tasks for the benefit of an individual with a disability.
- Comfort animal is an animal that provides love, reassurance, social interaction and other emotional benefits for a tenant. It does not have to be trained because its purpose is to be there, not to do a task.
- Applicability of pet policy:
  - ▶ Size limitations, deposits, etc...
- Special certification or tags not required;
- Resident required to care for animal;
- Cannot pose a threat to the health or safety of others.

**Breadth. Depth. Results.**

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**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**


**MAR 15 2005  
CLERK'S OFFICE  
DETROIT**

UNITED STATES OF AMERICA,  
Plaintiff,  
and  
JOYCE GRAD,  
Intervening Plaintiff,  
v.  
ROYALWOOD COOPERATIVE APARTMENTS,  
INC., SCHWABER BROTHERS & COMPANY,  
INC., and RICHARD A. CAE,  
Defendants.

**JUDGMENT**

This matter, having been tried to a jury, and the jury having returned a verdict in Plaintiff's favor,

IT IS ORDERED AND ADJUDGED that judgment be and is hereby granted in favor of Plaintiff and against Defendants in the amount of \$14,209.60 in compensatory damages and \$300,000 in punitive damages. Costs, interests and attorney fees to be awarded in accordance with law.

Approved by:   
Anna Duggs Taylor  
United States District Court

David J. ... Clerk of Court

**MAR 15 2005**

**Breadth. Depth. Results.**

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**Reasonable Accommodation**

- **Reasonable accommodation is not required when:**
  - ▶ The tenant presents a direct threat to the health or safety of other individuals or poses a risk of substantial physical damage to others' property.
  - ▶ If the accommodation causes an undue administrative or financial burden on the facility then it is not reasonable. Provider not required to provide a modification or accommodation if it would fundamentally alter the nature of the facility and/or the program.
  - ▶ If the request is not made by or on behalf of a disabled person.

Breadth. Depth. Results.

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**Reasonable Accommodation**

- Must a housing provider adopt a formal procedure for processing requests for a reasonable accommodation?
- What if a housing provider fails to act promptly on a reasonable accommodation request?
- What inquires, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Breadth. Depth. Results.

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**Reasonable Accommodation**

- What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?
- If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

Breadth. Depth. Results.

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**Reasonable Accommodation**

- May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?
- When and how should an individual request an accommodation?

Breadth. Depth. **Results.**

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**Reasonable Accommodation**

- What is facility's policy?
- Is the person requesting the accommodation disabled or requesting the accommodation on behalf of a disabled person?
- Is the request reasonable?
  - ▶ Does it endanger the health and safety of others?
  - ▶ Does it create an undue financial or administrative burden?

Breadth. Depth. **Results.**

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Breadth. Depth. **Results.**

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**Comments or Questions?**

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(713)-238-1882*

Breadth. Depth. **Results.**

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