



GAHRA

FAIR HOUSING UPDATE

SEPTEMBER 21, 2021

LESLIE TUCKER

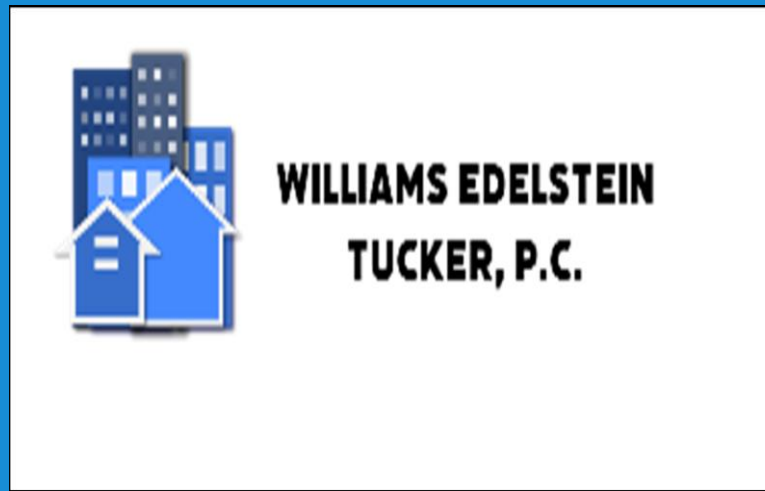
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INTRODUCTION

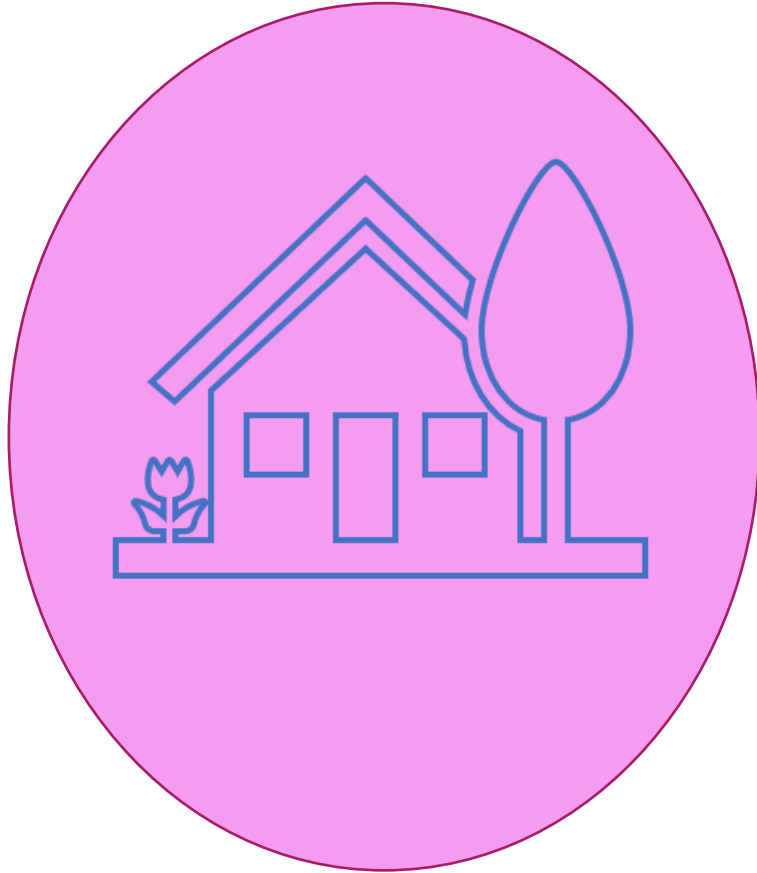
LAW FIRM



FHI



BEFORE WE BEGIN . . .



- This is not legal advice
- Always follow your policies
- Today's goal: raise awareness of the Fair Housing and Section 504 requirements to avoid violations
- Feel free to ask questions throughout the program

AGENDA

- **The Basics**
- **Latest Fair Housing Information**
 - **COVID - Housing Issues**
 - **Live-in Aides**
 - **Sexual Orientation and Gender Identity Protections**
 - **AFFH**
 - **Criminal Screening**
- **Reminder of Continuing Requirements**
 - **Reasonable Accommodations**
 - **Accessible Housing**
 - **VAWA**

FAIR HOUSING BASICS

Fair Housing Principles

1. All housing in this country should be offered in a fair and consistent manner so that all persons without regard to their protected category, are provided the same opportunity to obtain and enjoy the home of their choice; and
2. After a resident moves into a community, they should be treated fairly by receiving the same services and amenities as all other residents.



FAIR HOUSING CONSIDERATIONS IN THE AGE OF COVID-19

COMMON QUESTIONS

1. Is having COVID-19 a disability?
2. Do I have to provide reasonable accommodations to someone with COVID?
3. Can I warn other residents if a resident has tested positive?
4. Can I require that residents be tested or vaccinated?
5. Should I warn residents if a staff person has tested positive?
6. Can an employer require employees to be vaccinated?
7. Can I insist on unit inspections if resident is afraid of COVID?

CAN MY PROPERTY ADOPT AND ENFORCE SAFETY PROTOCOLS?

Close common areas or limit office visits

Require masks

Insist on social distancing

Limit visitors

Require residents to permit inspections

Only if you have added provision to your House Rules



ENFORCEMENT OF SAFETY PROTOCOLS

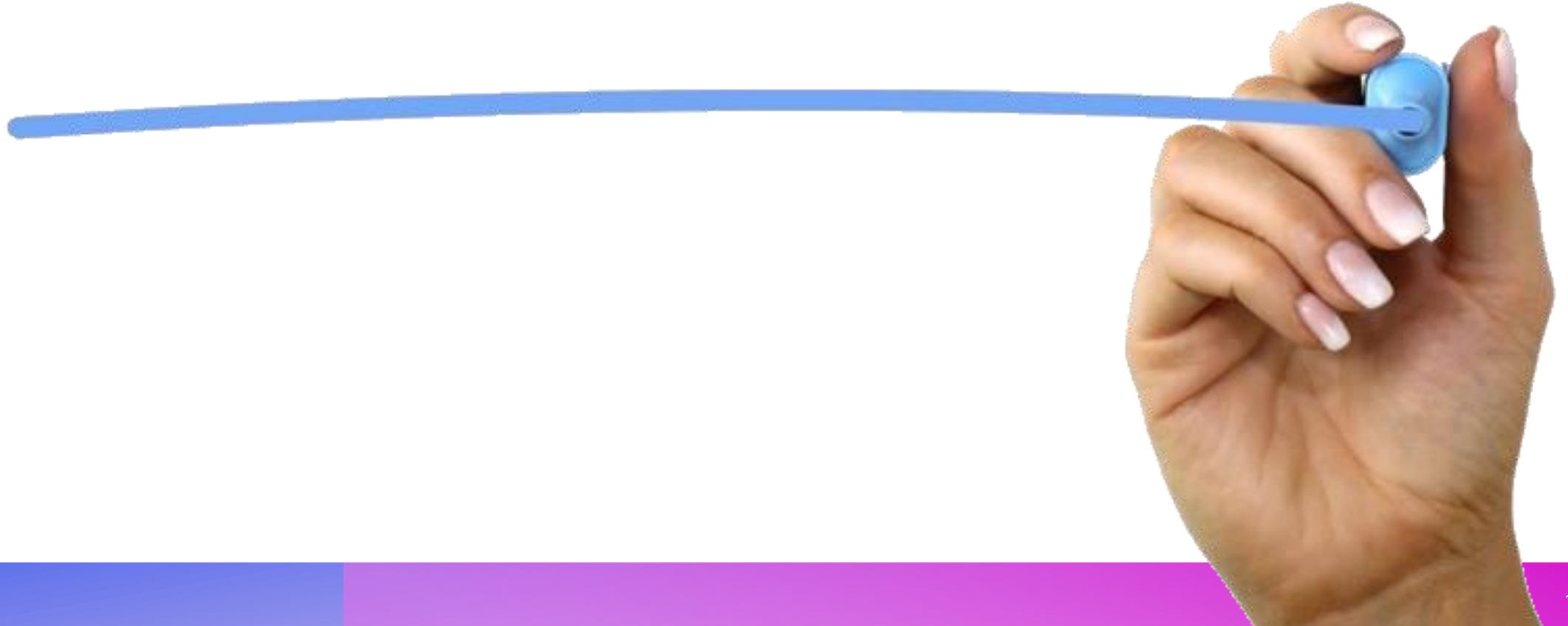


- Lease violation - House Rules
- Need for written instructions and repeated explanations and warnings
- Rules need to be consistent with public health authorities or CDC
- Local courts may be hesitant to terminate, so your case needs to be very strong and documented
- Consult your attorney

MODEL HOUSE RULE PROVISION

If the CDC and/or local health officials declare a Health Emergency, after making a good faith effort to consider the advice of health and safety experts, management will take immediate action to develop and implement safety protocols in an effort to protect the health and safety of residents and staff. Examples of these rules are limiting entry into the building of all but essential persons, closing common areas to residents, requiring residents to avoid congregating in the common areas of the property, closing the office to residents and visitors, requiring residents to wear masks or other protective gear when outside their apartments, and delaying maintenance activities. During any health emergency, residents will be expected to continue to pay their monthly rent unless they have requested and been approved for a payment agreement. Refusal to follow management's safety protocols or to pay rent will be viewed as a lease violation and will be treated accordingly.

QUESTIONS



HUD OCCUPANCY HANDBOOK



Live-in Aide Definition:

A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:

- (a) Is determined to be essential to the care and well-being of the person(s)*
- (b) Is not obligated for the support of the person(s); and*
- (c) Would not be living in the unit except to provide the necessary supportive services.***

JOHNSON V. GUARDIAN MANAGEMENT, APRIL 2021

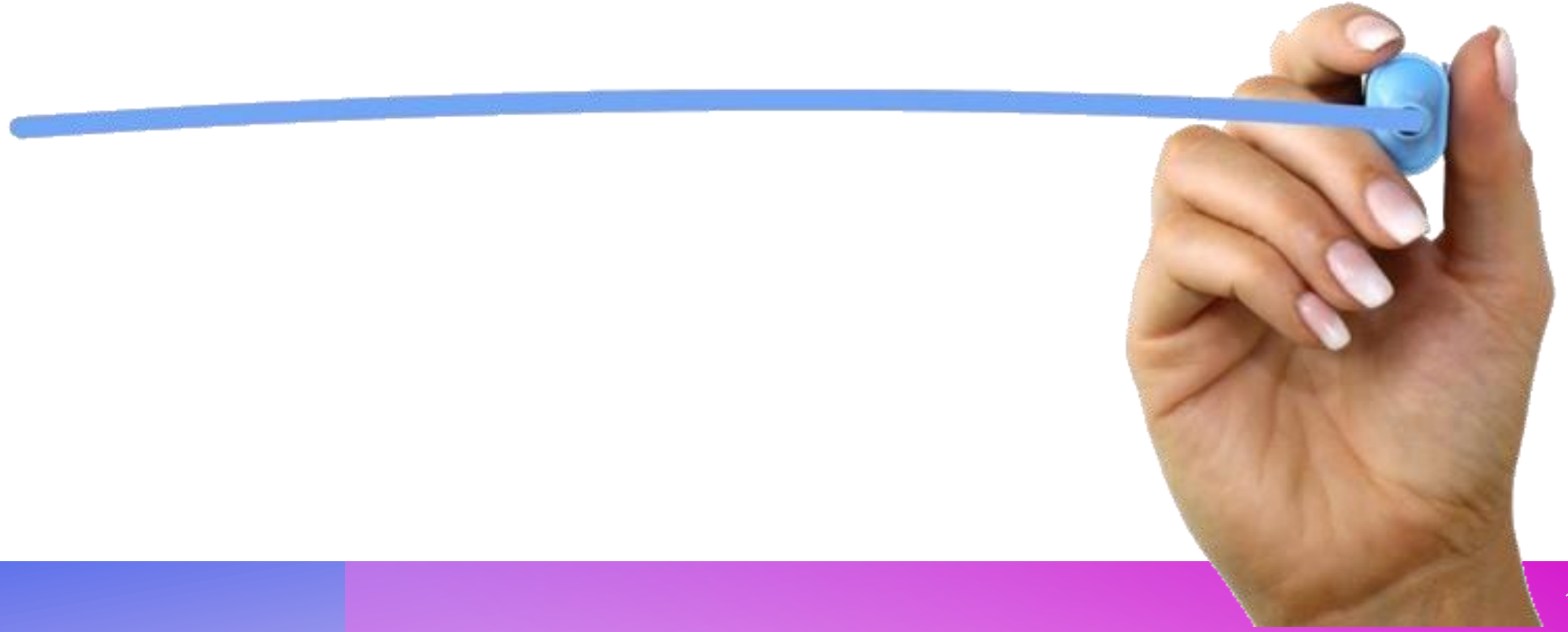
- Male resident in Section 8 property in Oregon requested a live-in aide – specifically, his wife
- His wife lived in the Philippines at that time, and they had lived apart for 2 years since getting married
- She had a steady job and did not have prior intentions of moving to the U.S.
- Court ruled that under HUD rules and these circumstances, the spouse is eligible to be the Plaintiff's live-in aide.



TAKE-AWAYS ...

- **Spouses or other family members are NOT explicitly prohibited from being a live-in aide**
- **Staff should ask questions and if necessary investigate past residency to determine whether the resident and proposed live in aide would or would not have been living together if the resident did not need to services**

QUESTIONS



SEXUAL ORIENTATION AND GENDER IDENTITY

- The Fair Housing Act does not include the protected categories of sexual orientation or gender identity
- Equal Access regulations have covered PHA's since 2013
- It is now illegal under the FHA for ANY property, federally subsidized or not, to discriminate on the basis of sexual orientation and gender identity



DURING THE PAST YEAR

The U.S. Supreme Court ruled that the protected category of “sex” includes protections from discrimination due to sexual orientation and gender identity in employment law cases

Due to the Supreme Court’s decision the Biden Administration has instructed HUD to expand the protections under the category of “sex” to include sexual orientation and gender identity in housing cases

HUD regulations will follow

PROTECTIONS AGAINST GENDER IDENTITY DISCRIMINATION

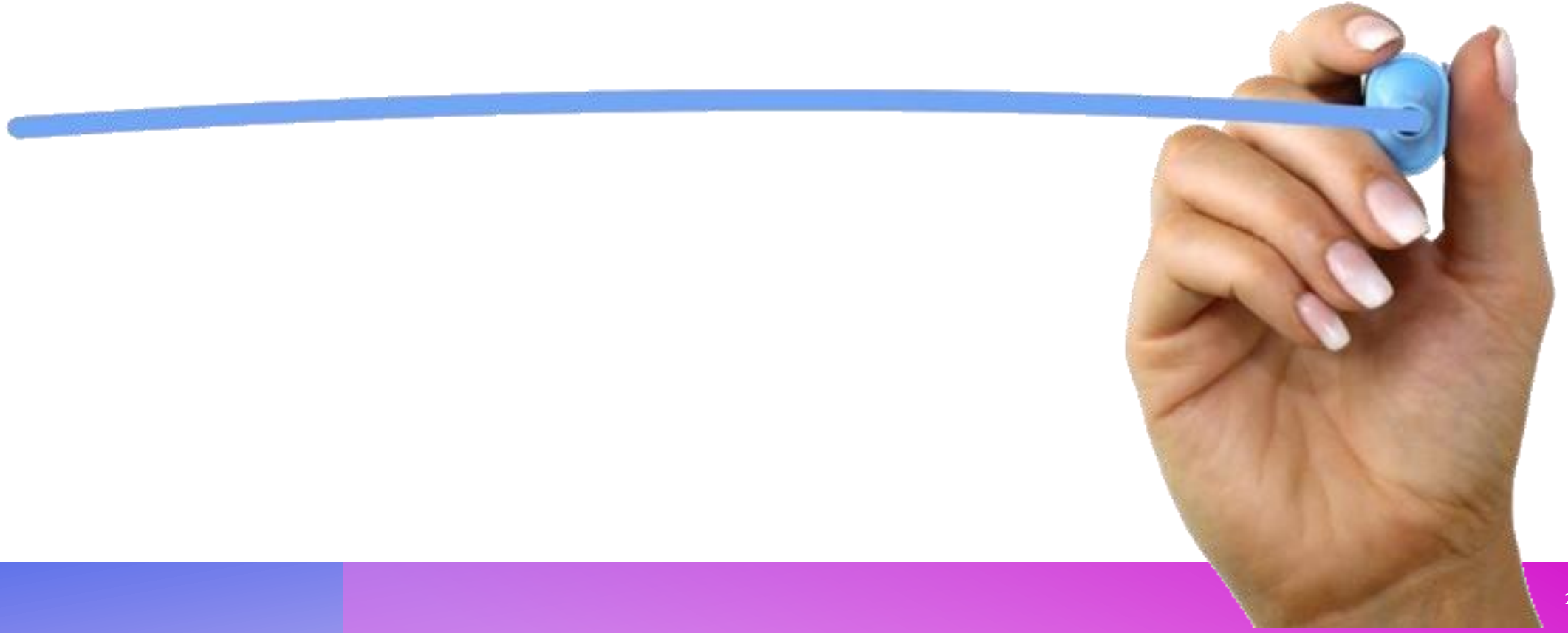
- If an applicant identifies as a gender inconsistent with the applicant's assigned or presumed gender, such identification should not be assumed to be a misrepresentation for an adverse action
- Use of a name by an applicant, even when the name given is not the applicant's legal name, shall not be grounds for adverse action, when the name given is consistent with the applicant's gender identity or expression
- Where use of a person's legal name is required by law or for a reasonable business purpose, the applicant may be required to disclose it
- An applicant is not required to disclose a change of gender or name (unless specifically required for a reasonable business purpose)

TAKE-AWAYS . . .

- Individuals have the right to determine how they express or not express their gender
- Housing providers should respect an applicant's or resident's choice of name, titles and pronouns
- Respectfully address any identification issues when necessary such as need for legal name on HUD related documents
- HUD regulations should give more info



QUESTIONS



AFFIRMATIVELY FURTHERING FAIR HOUSING

Background of AFFH requirements:

Part One: Data Delivery - HUD will provide each grantee with the data necessary to be able to assess fair housing issues in its community.

Part Two: Local Analysis - Using the HUD data and available local measures and input, each jurisdiction or PHA will analyze its fair housing issues and provide a complete assessment of fair housing (AFH) to HUD, including fair housing goals.

Part Three: Review & Response - HUD will review each AFH within 60 days of submission and either accept the AFH based on a completeness review standard, or explain why the AFH is incomplete and what the participant must do to have it accepted.

Part Four: Incorporation into Planning and Subsequent Action - The goals identified in the AFH will be used to inform the strategies and actions of the Consolidated Plan, the Annual Action Plan, the PHA Plan, and the Capital Fund Plan.

CRIMINAL HISTORY SCREENING

- Disparate Impact concerns
- Limit crimes considered
- Limit look-back periods
- HUD's only screening requirement prohibits applicants or residents who are on a lifetime sex offender registration
- Individual assessments – HUD will likely institute
- Appeals should include case by case review of all relevant facts



DISABILITY RIGHTS UNDER FHA AND SECTION 504

1. Discrimination
2. Reasonable Accommodation and Modifications
3. Accessibility



DEFINITION OF DISABILITY UNDER FHA, 504, ADA

- Physical or mental impairment that substantially limits one or more major life activities
- Being regarded as
- Having a record as
- This is NOT the definition of disability for eligibility purposes under the housing programs





REASONABLE ACCOMMODATION REQUESTS

- **Request by a disabled applicant or resident that you make an exception to your usual rule or process because it is necessary for him/her to fully use and enjoy your property**

EXAMPLES

- ASSIGN A PARKING SPACE
- ASSISTANCE ANIMAL
- LIVE IN AIDE
- EXTRA BEDROOM
- ADJUST USE OF CHEMICALS
- ALTER OCCUPANCY POLICY
- ALTER RENT DUE DATE

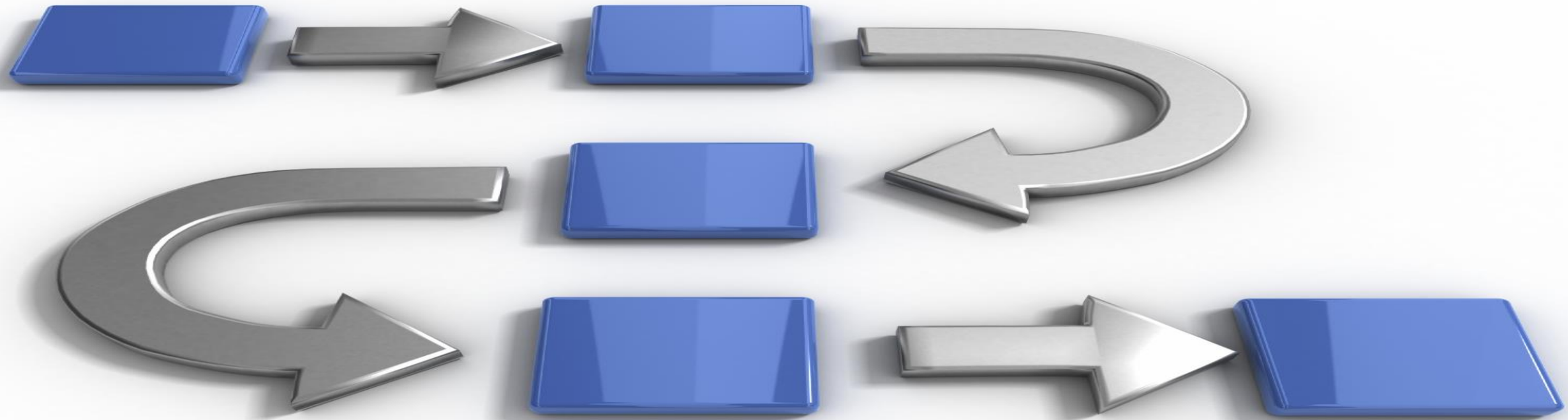
REQUEST

**FHA REQUIRES YOU TO PROCESS AND
CONSIDER EACH REQUEST**

Step 1

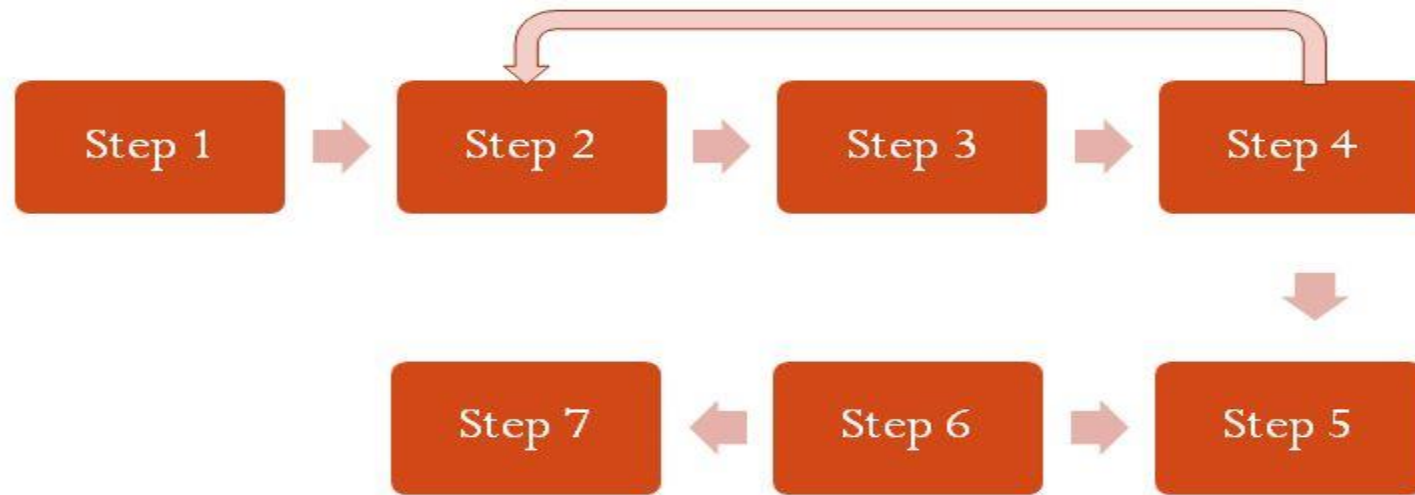
- Resident makes a request
- Do not ignore, discourage, ridicule request





STEP 2

- **Staff asks resident to fill out a request form**
- **If resident refuses staff should fill it out with exactly what resident is requesting**



STEP 3 - VERIFICATION

Is resident's disability or need observable?

- If yes, don't verify and move forward with request
- If not, verify

If no visual contact or when in doubt -- verify

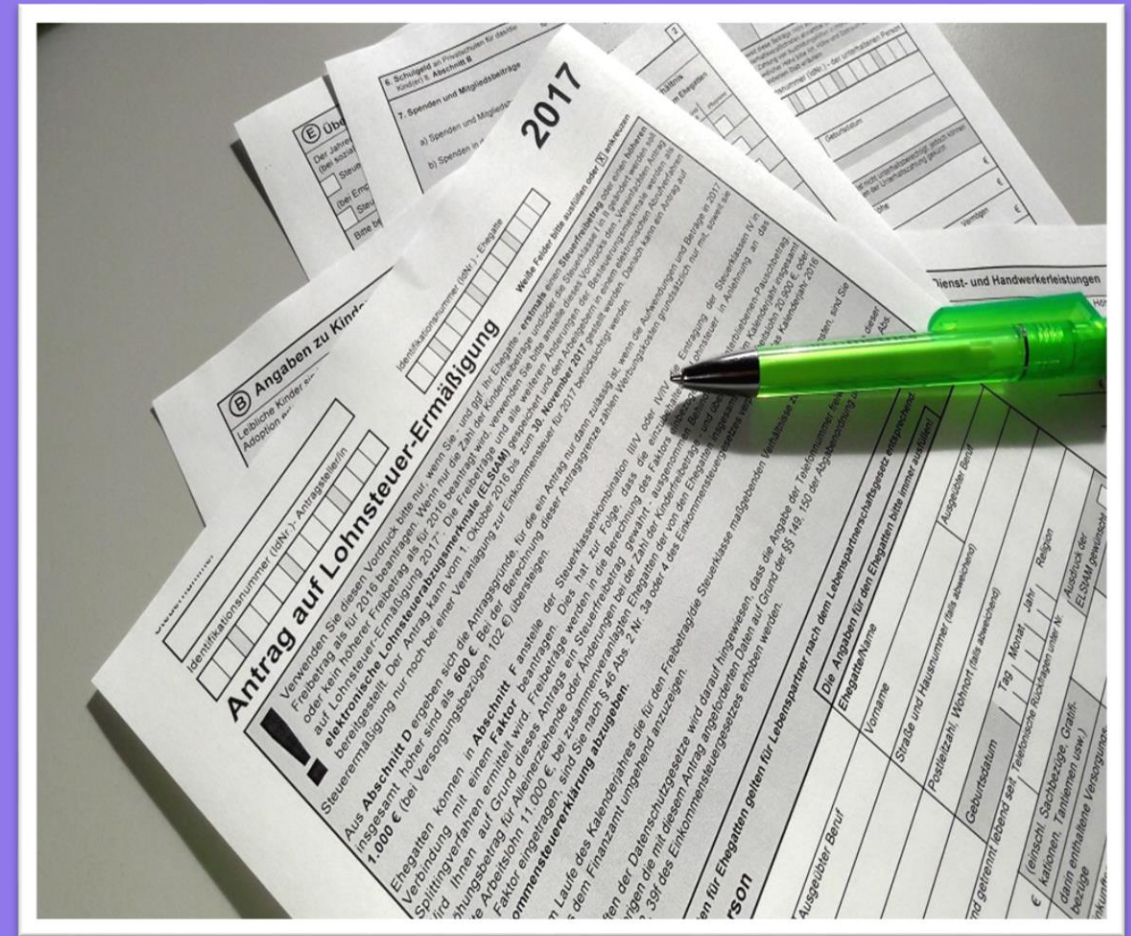
RELIABLE VERIFIER

- Third party professional with personal knowledge that:
 - The resident meets the definition of disability; AND
 - The requested accommodation is directly connected to the resident's disability
- Only needed if the disability and/or need for the requested accommodation is not observable.
- Follow up at least once if verification form is not returned
- **PHA, not the verifier, makes the ultimate decision on the request**



PURPOSE OF REQUEST AND VERIFICATION FORMS

- Ask questions relevant to whether the resident meets definition of disability
- If you have documents in the file that confirms disability, remove question for form and ask remaining questions about connection
- Forms should provide and request information
- Examples



If Request Will Be Denied

- Document interactive meeting
- Notify the resident in writing of the decision
- Explain reasons why the request is not being granted
 - Request not reasonable
 - Not reliably verified
 - Results in fundamental alteration to program or an undue administrative and financial burden



LIVE IN AIDES

Two questions for PHA to determine:

1) Does resident actually need a full time aide?

- Use of appropriate forms asking resident and verifier about what services are needed and for how many hours a day

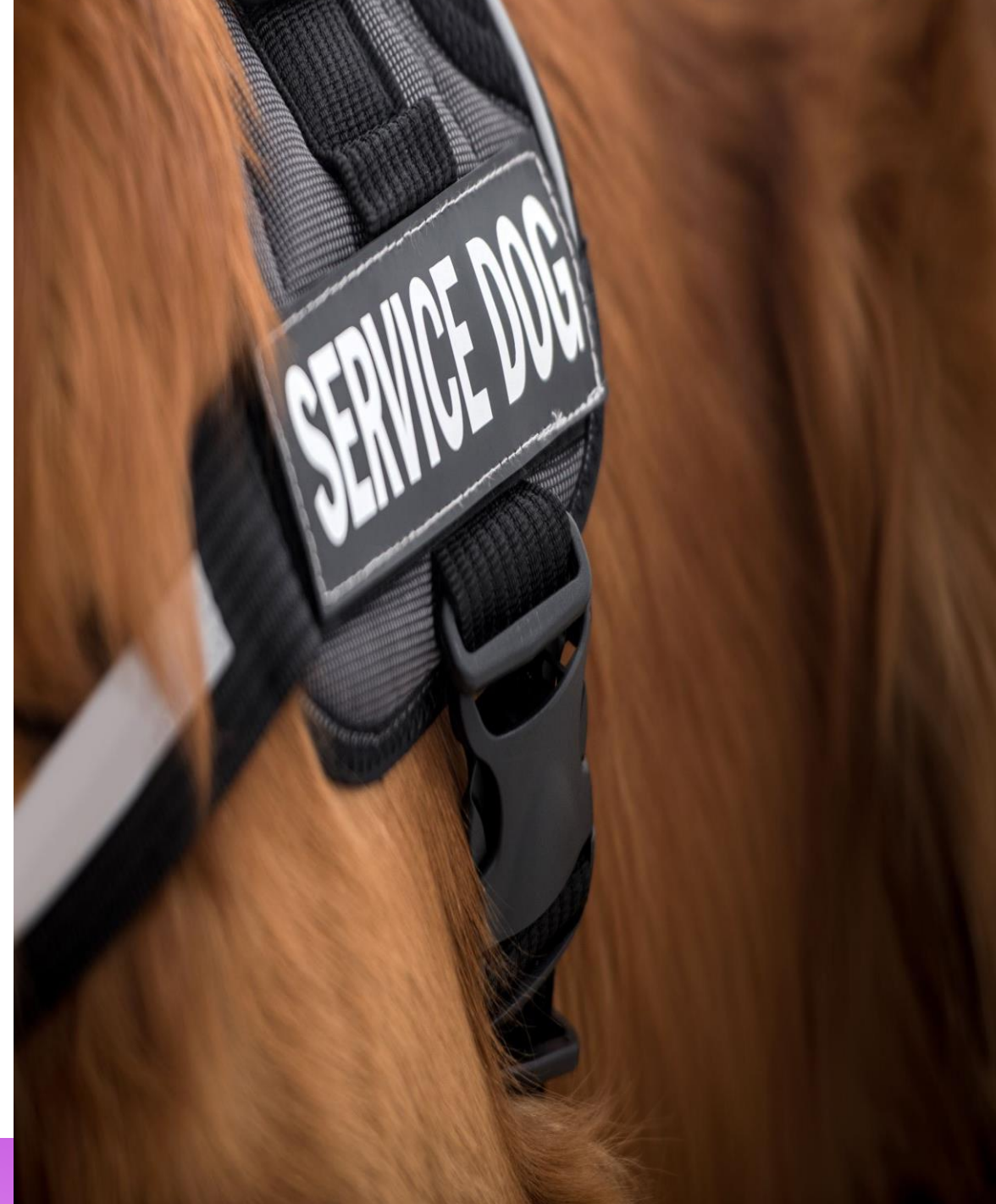
2) If resident needs a LIA, is the aide acceptable?

Only re-verify if need appears to have changed

Can re-verify aide's presence in unit if PHA expanded size of unit for aide

ASSISTANCE ANIMALS: THE BASICS

- Exception to pet policy
- Cannot require deposit, pet rent, liability insurance
- Breed and size restrictions do not apply
- Assistance animals include both trained service animals and untrained emotional support animals
 - No difference in processing
 - Can't require proof of training
 - Can't require animal to wear vest
- **Do not refer to assistance animals as pets**



ADDITIONAL POINTS

- Multiple animals
- Guest assistance animals
- Animals in common areas – do you have to allow them?
- Being informed of an assistance animal after-the-fact

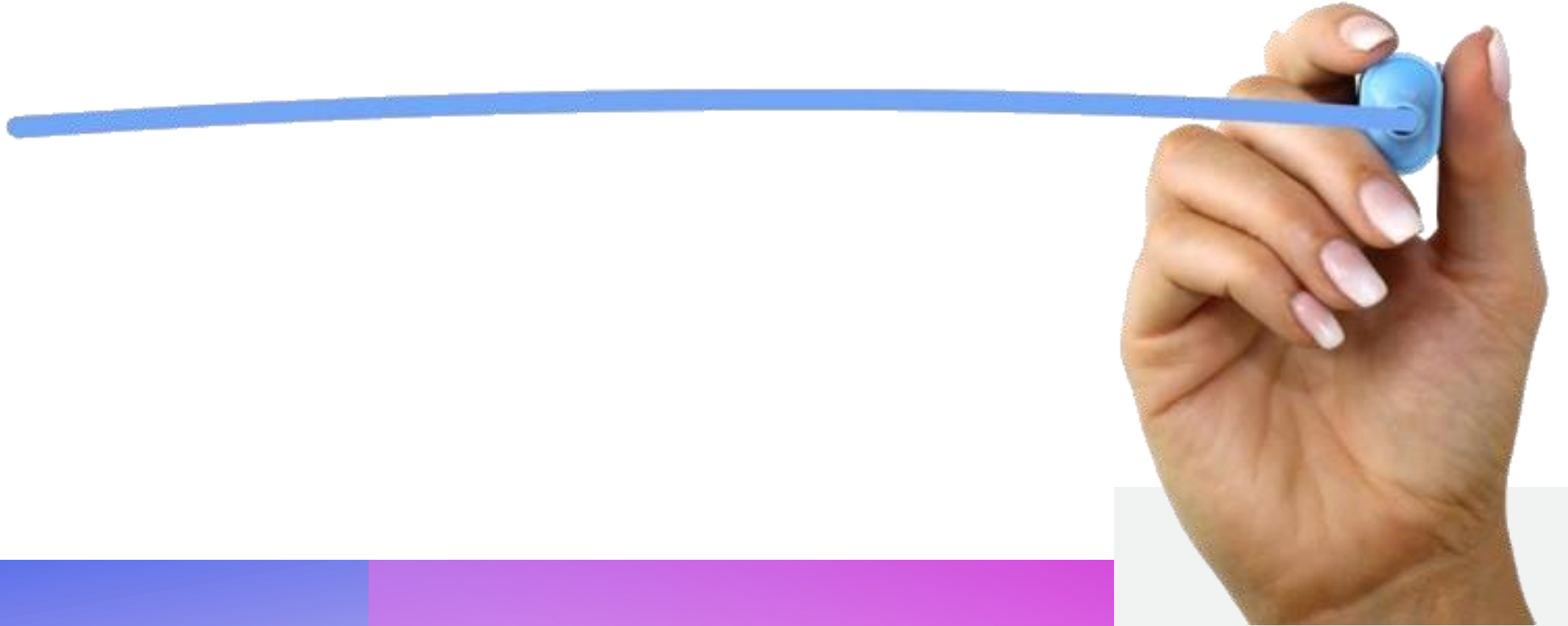


RULES AND ENFORCEMENT

- Can require resident to sign addendum concerning resident's responsibilities for care and behavior of animal (license, neuter/spay, pick up poop, leash required, etc.)
- You can (and should!) enforce your agreement



QUESTIONS



REASONABLE MODIFICATIONS

- Modification to interior of a unit OR common area
- Follows the same process as reasonable accommodations
- Property pays reasonable costs



REASONABLE MODIFICATIONS EXAMPLES

Add grab bars

Raise toilet

Add seat onto bathtub

Change handles on sinks or bathtub

Remove cabinet under sinks

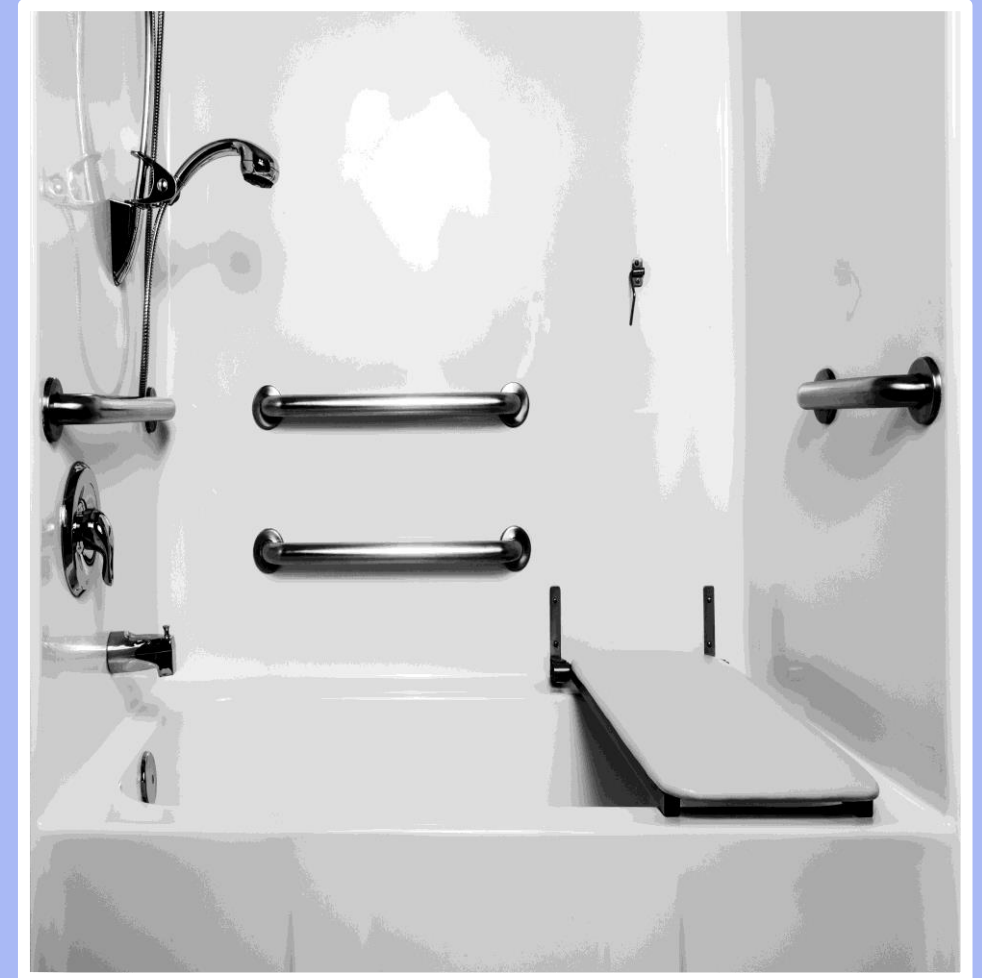
Ramp to front door or patio

Change flooring

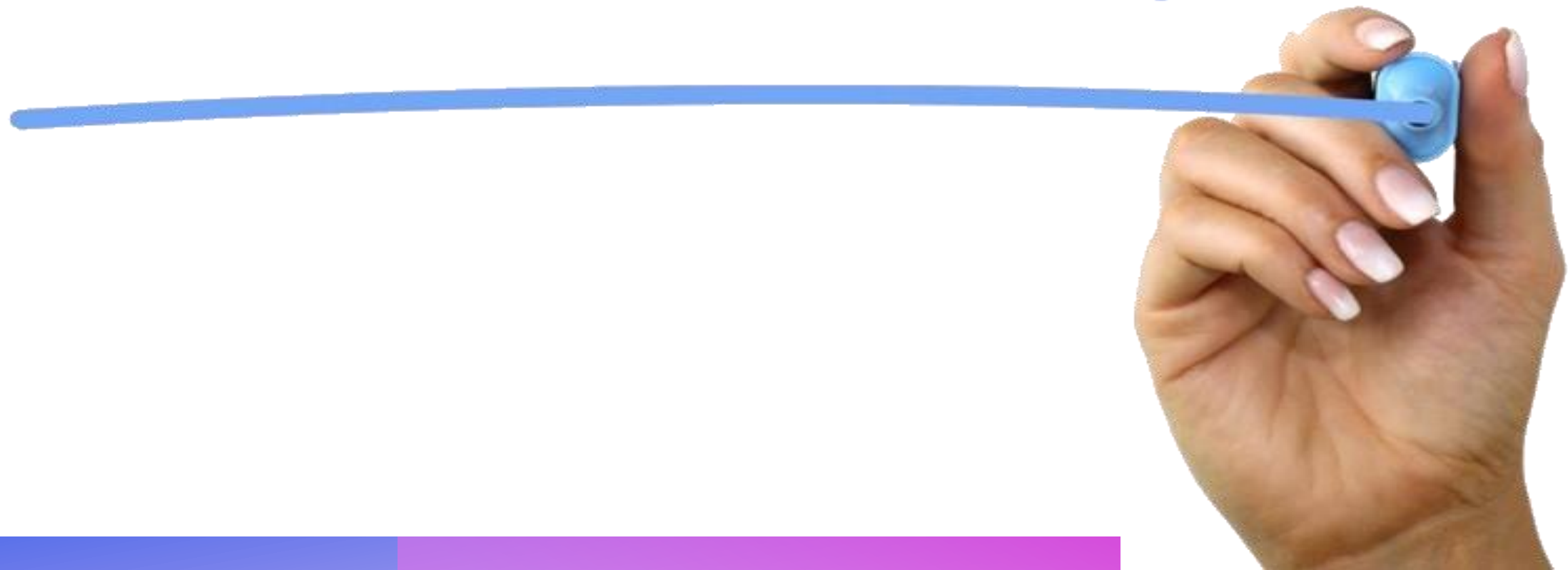
Install automatic door opener

BATH TUB MODIFICATIONS

- Showers are very expensive to install, so a shower is necessary only for a resident who cannot transfer in and out of a wheelchair
- If a shower is requested, find out what specific problems a resident is having using a tub
- Offer alternative alterations to achieve safe use of bathtub (i.e. transfer seat, grab bars, tub cut)



QUESTIONS



ACCESSIBLE UNITS



- Households requiring accessibility due to a mobility impairment should be housed in these units
- Can assign to nondisabled applicant only when no transfers or applicants showing need
- Priority of persons who need features

Ask applicant and verifier:

Which, if any, of the below listed accessible design features* does this applicant need:

_____ Wider doorways _____” throughout apartment

_____ Toilets are _____” high

_____ Grab bars installed around toilet and bathtub

_____ Roll-in shower in place of bathtub

_____ Adjustable kitchen cabinets

_____ Lowered kitchen counter at _____” high

_____ Open space under bathroom sink and under kitchen counter

_____ Environmental controls at _____”

_____ Lowered hanging rod in closet

DOCUMENTING OCCUPANCY OF ACCESSIBLE UNITS

- Application or form in file should indicate which features are needed
- Should verify need or indicate in file why need was not verified
- 504 requires that accessible units be carefully managed – periodic checks on occupancy and documentation



PHA OBLIGATIONS UNDER ADA

Section 504

- Reasonable Accommodations and Modifications
- Pay costs of modifications
- 504 Coordinator
- Accessible Units = 5% mobility
2% AV
- Accessible common areas

Unique ADA Requirements

- Programmatic Accessibility
- If >50 employees, ADA Coordinator without other responsibilities
- All offices must meet ADAAG

**THESE ARE
THE FRONT-
LINE
EMPLOYEES
FOR
CUSTOMER
SERVICE**



Encourage:

- Positive interactions with residents
- Supervisions and support from supervisors
- Employee documentation of incidents



MAINTENANCE BEST PRACTICES

- Do not accept money from residents
- Do not perform favors or jobs for residents
- Follow policy for the order you perform work orders
- Inform supervisors of any incidents you witness
- * Do not enter unit if an adult is not home, even with permission of parent. In case of emergency enter with another employee present



VAWA BASICS

- Covered housing providers must provide VAWA rights to victims
- Protects both males and females
- Victims of domestic violence, dating violence, stalking, or sexual assault
- Provides 2 rights:
 - Cannot be denied or terminated from housing if the problem resulted because the applicant or resident was a victim of a VAWA crime
 - Emergency transfer if victim is in imminent danger

1. INFORM OF VAWA RIGHTS

- Applicants if rejected
- Residents if terminated
- Form 5380 and Form 5382 must be provided at 3 times:
 1. At the time the applicant is denied;
 2. At the time the individual moves in; and
 3. With any notification of eviction or notification of termination of assistance

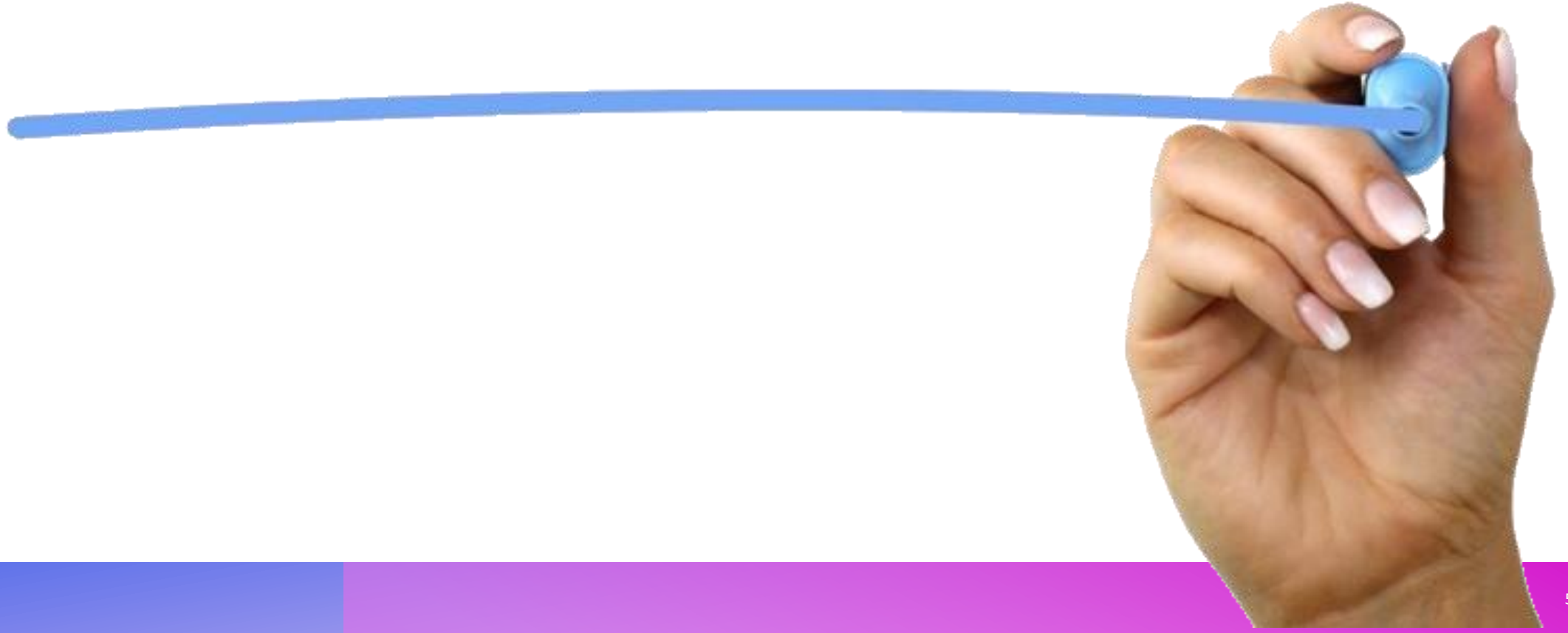
2. DO NOT DENY OR EVICT VICTIM OF VAWA CRIMES

- Permit applicant or resident to complete self certification (HUD form 5382) explaining when they were victimized, by whom, and how their victim status relates to the past or present termination
- Cannot require 3rd party verification unless both accuser and accused claim VAWA status
- Take appropriate steps to remove perpetrator from property
- Remember there **may be** an expanded definition beyond domestic violence to “family violence” that may include elderly parents or children as victims or “affiliated individuals”

3. PROVIDE EMERGENCY TRANSFER OR ADMISSION IF VICTIM IS IN IMMINENT DANGER

- Self Certification HUD Form 5383
- Must explain why victim believes s/he is in imminent danger
- Follow Emergency Transfer Plan
- It is victim's preference whether to transfer in or out of current property
- Document all reasonable steps you take to assist VAWA victim by working with other properties in an emergency transfer

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