

Fair Housing: Who Is Protected & What You Need to Know

Conducted by the Housing Rights Center



Housing Rights Center Profile

- Nation's largest non-profit civil rights organization dedicated to securing and promoting fair housing
- Over the past ten years, HRC has assisted more than 300,000 residents
- HRC litigation department has filed over 175 federal lawsuits and grossed over \$15 million in recovery

Federal Fair Housing Act

- Where did it come from?
- Who is protected?
- What is prohibited?
- Who must comply?

Where Did It Come From?

- 1968 Civil Rights Act
- 1988 Fair Housing Amendments Act

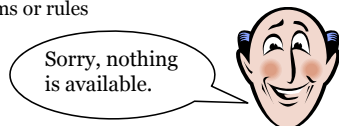
Who Is Protected?

- **Race**
- **Color**
- **Religion**
- **Sex**
- **National Origin**
- **Familial Status**
- **Disability: Mental and/or Physical**



What Is Prohibited?

- Refusal to sell or rent housing
- Refusal to negotiate for the sale or rental of housing
- Saying that housing is unavailable when it actually is available
- Applying different terms or rules



What Is Prohibited?

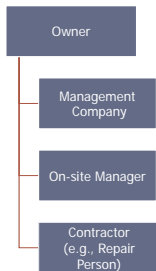
- Refusal to grant a reasonable accommodation and/or modification for a person with a disability.
- Discrimination based on association
- Threats, intimidation, harassment, coercion
- Steering
- Otherwise making housing unavailable
- Discriminatory statements or advertising

Who Must Comply?

- Owners and managers of:
 - Multi-family dwellings (apartments)
 - Condos
 - Single-family dwellings (houses)
 - Duplexes
 - Residential motels
 - Transitional shelters
 - Mobile Home Parks
 - Vacant Lots

Liability – Housing Providers

- Liability for breaking the fair housing laws flows *upward*.
- An owner is liable for the unlawful acts of management company, on-site manager, and contractor.
- The management company is liable for the unlawful acts of on-site manager.
- The on-site manager is liable for unlawful act of contractor.
- Those at the top of chain have a *duty to supervise*. **"I didn't know"** is **NOT** a valid defense.



CA Fair Employment & Housing Act

Federal law + Additional Protected Classes:

- Marital Status
- Ancestry
- Sexual Orientation
- Gender Identity
- Gender Expression
- Source of Income
- Genetic Information



Other California Laws

- Section 51 Unruh Civil Rights Act
 - Age
 - Arbitrary reasons
- Section 1940.3 Immigration Status
- Section 1946.7 Domestic Violence
- Section 51.7 RALPH Act
 - Freedom from Violence or Intimidation

Unruh Act

- Citizenship, primary language, or immigration status added as protected classes
- Includes a perception that the person is not a citizen, does not speak English or is undocumented or that the person is associated with a person who is not a citizen, does not speak English or is undocumented

Civil Code § 1940.3 Immigration Status

- No landlord or agent may: (a) make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant or prospective occupant of residential rental property; (b) Require that any tenant, prospective tenant, occupant or prospective occupant make any statement, representation, or certification concerning his or her immigration status
- Nothing prohibits a landlord from either (a) complying with any legal obligation under federal law or (b) requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant or to determine or verify the identity of a prospective tenant or prospective occupant

Immigrant Tenant Protection Act of 2017

- Prohibits landlords from threatening to disclose information about the immigration status of a tenant for the purpose of harassing or intimidating them, retaliating against them for exercising their rights or trying to force them to vacate
- Prohibits landlords from disclosing information about immigration status to any immigration authority or law enforcement agency for the purpose of harassing or intimidating them, retaliating against them for exercising their rights or trying to force them to vacate
- Adds reporting or threatening to report a tenant to immigration authorities as a form of retaliatory conduct
- Prohibits a landlord from evicting because of immigration or citizenship status

Other California laws cont.

- Government Code Sections 65008 and 65589.5
 - Prohibits adverse discrimination in land use decisions in residential developments.
 - Prohibits discrimination in land use decisions and policies re affordable housing developments.
- Government Code 1135.
 - Prohibits discrimination in housing funded by the state of California

Allowable Tenant Selection Criteria

- Income level
- Credit scores
- References from previous landlords
- Criminal history
- Smoking status
- Pets
- Section 8

Disparate Impact

- What is disparate impact theory?
- Why is it this legal theory necessary?
- Recent U.S. Supreme court decision and other cases based on disparate impact.
 - REO blight cases
 - Mortgage lending cases
 - Government/municipal policies that adversely impact certain protected classes including occupancy restrictions, local preferences

Duty to Affirmatively Further Fair Housing

- What AFFH and HUD's new AFH rule provide
- Importance of Analysis of Impediments studies
- Examples of bad government AFFH actions
 - U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York (S.D.N.Y. 2009), Westchester County violated the False Claims Act by knowingly making false certifications to affirmatively further fair housing when its Analyses of Impediments to Fair Housing did not identify impediments on the basis of race.

Further examples of bad government actions

- NAACP v. HUD. HUD failed to affirmatively further fair housing by failing to ensure that federal funds for the city of Boston were used in a non-discriminatory manner.
- Thompson v. HUD. Court in Maryland held that HUD violated the Fair Housing Act by failing to take adequate action to disestablish the vestiges of past discrimination in city's public housing policies. HUD failed to affirmatively further fair housing through regionalizing public housing outside poor urban areas. See also, e.g., Shannon v. HUD,; United States v. Yonkers Board of Education, 624 F. Supp. 1276 (S.D.N.Y. 1985), aff'd, 837 F.2d 1181 (2d Cir. 1987), cert. denied, 486 U.S. 1055 (1988); Young v. Pierce, 628 F. Supp. 1037, 1046 (E.D.Tex., 1985).

Top 3 Reported Basis of Discrimination

1. Race
2. Disability
3. Familial Status

Familial Status

- Who is protected?
 - Households with at least one person under age 18
 - Includes pregnancy
 - Senior properties exempt
- What is prohibited?
 - Refusal to rent, sell or lease
 - Steering
 - Restrictive house rules

Disability

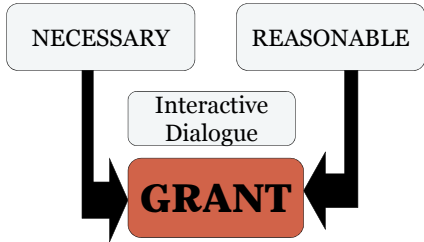
Accommodation



Modification



Disability Accommodations & Modifications



What is “Necessary”?

- Frees a tenant from a rule or policy
- Enhances a tenant’s ability to enjoy a dwelling
- Enables a tenant to satisfy an essential element of tenancy

What is “Reasonable”?

- Is not an undue burden to landlord
- Does not fundamentally alter landlord’s business

What is an “Interactive Dialogue”?

Landlord’s duty to engage with the tenant to determine if an accommodation or modification is possible, reasonable, and not unduly burdensome. The discussion between landlord and tenant may include possible alternative accommodations or modifications.

Common Reasonable Accommodations

- Changing Rent Due Date
- Service and Companion/Therapy Animals
- Parking space
- Transfer units
- Ending tenancy early or extending vacate date
- Live-in caregivers
- Repair elevator in operable condition
- Rescind notice to terminate tenancy/dismiss UD

Reasonable Modifications



Common Reasonable Modifications

- Wheelchair ramp
- Grab bars in bathroom
- Carpet removal

FOR MORE
INFORMATION
OR ASSISTANCE

PLEASE CALL
(800) 477-5977
TTY (213) 201-0867

OUR VISIT OUR WEBSITE:
www.housingrightscenter.org

QUESTIONS & ANSWERS
