

Fair Housing: Sales & Rental Issues



The “Fair Housing” Laws



- The Federal Fair Housing Act (“FHA”), Section 504 of the federal Rehabilitation Act of 1973, the federal Americans with Disabilities Act (“ADA”);
- California Fair Employment and Housing Act (“FEHA”), California Unruh Civil Rights Act (“Unruh”), California Disabled Persons Act, California Ralph Civil Rights Act; and
- Local fair housing ordinances

Discrimination 101: Protected Classes/Characteristics

Protected Classes

(FEHA & Unruh 24; FHA 7)

- Color & Race
- Religion
- Sex & Gender
- National Origin & Ancestry
- Familial Status (kids under 18)
- Handicap/Disability
- Source of Income (Section 8)
- Military or Veteran Status
- Perceived membership to or Association with protected group/persons
- Arbitrary or Unreasonable
- Disability/Handicap (Physical or Mental)

Who must Comply with Fair Housing Laws? (not exclusive list)

Housing Accommodation Providers

- Sellers
- Landlords
- Sublessors
- Property managers
- Real estate licensees
- Real estate firms
- HOA's

Financial Assistance Services Providers

- Lenders
- Insurance Co
- Appraisers



Discrimination 101: Prohibited Act

Housing Provider Shall Not



Discriminate



Treat Unequally (treatment vs impact)



Member of protected class in housing

Common Discriminations

- Deny or make unavailable sale or rental opportunity
- Failing to show, including steering
- Offer unequal terms
- Provide different treatment
- Advertise or make statement that indicates limitation, preference or restriction based on protected status
- Inquire about protected status
- Refuse request to reasonably change a rule or policy to accommodate a disability

Issues to be Aware in Sales: Seller/Listing Agent **SHALL NOT**

- **Deny** or **make unavailable** sale
 - Ex: Buyer letter/name/personal interaction identifies buyer's race and seller rejects offer based on protected characteristics
- Provide **unequal treatment**
 - Not offer to show; respond to inquiries
- Offer **unequal terms**
 - Offers less favorable terms (higher emd/shorter cont time/more stringent pre-qual) to this buyer based on protected characteristics
- Make statement or advertise **preference, limitation or restriction** based on protected characteristic
- **Inquire** about protected characteristic of buyer
- LA shall not Induce **panic selling** or cause **blockbusting**



Issues to be Aware of in Sales: Buyer/Buyer Agent



- Buyer may choose the type of neighborhood they wish to reside
 - Ex: Orthodox Jewish buyer requires home within walking distance to a synagogue
- BA shall **not** provide **unequal treatment**
- BA shall **not steer** buyer into or away from certain neighborhoods based on buyer's race or neighborhood's racial composition

Common Rental Issues for Owner/Landlord

- Disability (Mental): Emotional Support Animals
 - **Unreasonably Refuse** request for **reasonable accommodation** in policy (ie no pet policy/pet rent) to accommodate a disability
- Source of Income: Section 8
- Race: Use of Criminal History
- Familial Status: Use of Occupancy Limits



Disability: Emotional Support Animals (ESA)

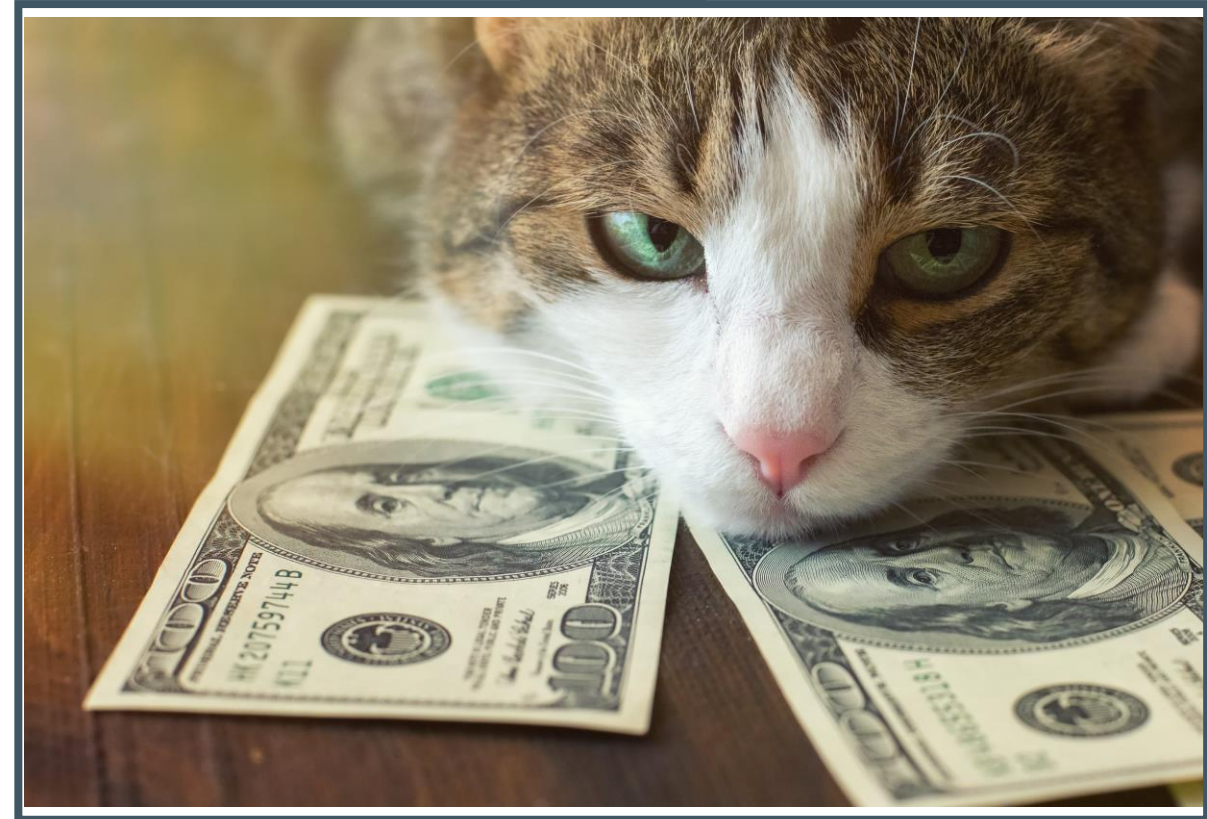


Law: Cannot deny a reasonable accommodation request to keep an animal for person with disability to afford equal opportunity to use and enjoy a dwelling

- ESA's- what are they? Animals not trained to perform tasks; presence in life of disabled person improves condition or alleviates a symptom of disability
- Evidence: Online certificate from medical professional or written verification from a reliable 3rd party in position to know
- Interactive process
- Very narrow grounds for denial:
 - undue burden;
 - pose direct threat to health or safety of persons;
 - pose threat to cause substantial damage to property

Prohibited Practices

- No blanket advertising/statements ban: “No Pets” without disclaimer
- No unequal treatment: only cite ESA for rules violation; push application down the list
- No unequal terms: higher rent or security deposit (no pet deposit)
- No inquiry about medical condition



Source of Income: Section 8



Law:

- Treat income “paid” from govt subsidy, alimony or social security the same as “earned” income
- For govt subsidy, financial qualifications must be based on T’s portion of rent only

Prohibited Practices:

- No blanket advertising/statements: “No Section 8”
- No unequal treatment: require a guarantor or more stringent application process
- No unequal terms: higher rent or security deposit, fewer privileges in complex (no pool)

Race: Use of Criminal History

Law:

- LL's have a legitimate interest in protecting the safety of persons and property but must do so in a manner that does not disproportionately affect people of color

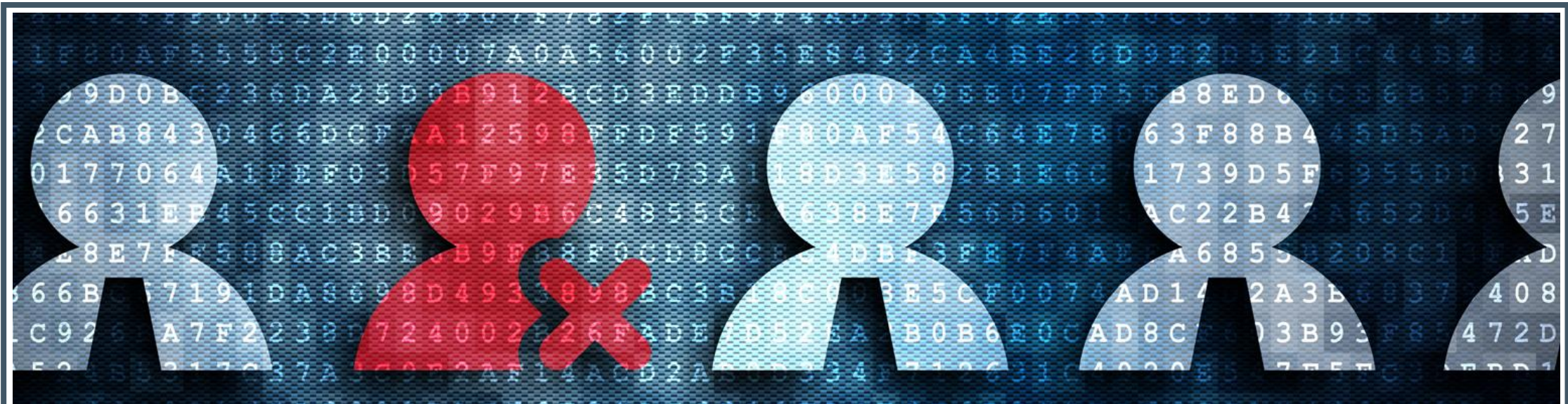
Limits on how to review info:

- Only after applicant passed financial and other screening criteria
- Only relevant, directly related convictions (no arrest records) with max 7 year look back period (or shorter)
- Must allow mitigating circumstances, give opportunity to respond



Prohibited Practices

- No blanket advertising/statements ban: “No Felony”
- No unequal treatment: accept white applicant over Black applicant with same conviction/history; push application to bottom of the list
- No unequal terms: higher rent or security deposit



Familial Status: Occupancy Limit



Law:

- Families with kids under the age of 18 are protected
 - Exception for legally compliant senior communities
- “2 plus 1” per Bedroom Rule? Not exactly
 - Depends on size & configuration of unit
 - 1200 sq ft 3 bed condo vs 2400 sq ft 3 bed house

Prohibited Practices

- No blanket advertising/statements ban: “No Kids”
“Max 2 people”
- No inquiry into family makeup
- No steering into certain sections or units: not show upper level units to families
- No unequal treatment: only cite parents with kids for noise violation
- No unequal terms: higher security deposit or fewer privileges in complex (no pool)



NO CHILDREN ALLOWED

Practice TIPS

1. **Ask tenant/buyer client for objective selection criteria** for property: location/neighborhood; features (3bed/2bath); price range; other considerations
2. **Avoid subjective descriptions** of neighborhoods
 - Urban, safe, nice or dangerous street/block/area
 - Great, mixed or poor school district
3. **Use objective info from 3rd party citation** to describe neighborhoods
 - Ranked #1 high school by x source
4. **Share same neighborhood info with everyone** inquiring about X neighborhood
5. **Don't impose own judgment** for selection of prop/neighborhood – take instructions from tip #1



Practice TIPS (cont'd)

6. Use **Blind Selection** process based on objective factors only
7. **Treat everyone with same** professional courtesy
 - Return inquiry calls
 - Respectful address
 - Share same info
 - Offer of assistance
8. Offer same terms and/or privileges
9. Review advertisements; do not seek info related to family makeup, or protected characteristics
10. Be **Conscious** about **Unconscious or Implicit Bias**
11. **Ignorance** of law or following instructions from Seller/Owner client **is not a defense**
12. Turn mistakes into **learning opportunities**



WHERE TO FILE HOUSING DISCRIMINATION COMPLAINTS

1. Federal: https://www.hud.gov/program_offices/fair_housing_equal_opp
2. State: <https://www.dfeh.ca.gov/housing/>
3. Local: local Fair Housing Council office (non-profit, free service)
4. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
5. Local Association of REALTORS®

Penalties

- Violations of various fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and cost.
- A violation of DRE regulations or real estate laws prohibiting discrimination by a real estate licensee may result in the loss or suspension of the licensee's DRE license.
- A violation of NAR Cod of Ethics Article 10 which prohibits discrimination in employment practices or in rendering real estate license services may result in disciplinary actions.



Resources

- [Quick Guide: Fair Housing Laws](#)
- [Quick Guide: Emotional Support Animals](#)
- [Summary of Fair Housing Laws](#)
- [Pets and Assistance \(Service and Emotional Support\) Animals](#)
- [Mandatory Section 8 and Source of Income Discrimination](#)
- [Code of Ethics](#)
- [Nov 2019 Investigative Project: Long Island Divided](#)
- [June 2020 Boston Rental Housing Discrimination Investigation](#)