Fair Housing Part I Overview and preventing discrimination harassment

R O RICHARDSON OBER

Presented by Kelly G. Richardson, Esq.

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Richardson Ober LLP 3-13-24

Disclaimer

- This is a presentation of suggested best practices for responding to and minimizing exposure to liability.
- Nothing in this presentation is meant to convey any promise that the concepts in the presentation will prevent liability or claims.
- When a claim arises, seek guidance from experienced and qualified legal counsel immediately.



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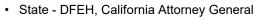
California Fair Housing Law: A Quick Overview

- The California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.)
 was enacted in 1980, creating two enforcement agencies: the Department of Fair
 Employment and Housing (DFEH) and the former Fair Employment and Housing
 Commission (FEHC). Now it's called the "Civil Rights Division"
- Housing complaints made up 5% of total complaints filed by DFEH in 2017 <u>but were</u>
 40% of cases prosecuted.

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· Local - Fair Housing organizations - non-profit

• Individual – lawsuits ("dialing for dollars")



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Fair Housing law vs. the ADA Fair Housing laws applies to private entities. ADA probably doesn't - unless is "public accommodation." Evan Carolyn v. Orange Park Comm. Assn. (2009)

Fair Housing law vs. the ADA

Fair Housing laws limit accommodations to "reasonable" – no cost limitation

Vs.

ADA has a defense of impracticability if modification to the public accommodation would be major/expensive

Fair Housing – in most instances requesting party pays for accommodation

Vs.

ADA modifications are at the cost of the property owner

"Landlord" or "Housing Provider"

Not only the lessor...

Also common interest developments... and

The MANAGER

Housing Protected Bases Disability * Ancestry Race/Color * Religion Familial Status * Source of income Sex Medical condition Sexual Orientation Age Marital Status Gender National Origin Identity/Expression Citizenship Genetic Information Immigration status Veteran or military status Primary language * These three bases comprised the majority of all cases filed. R O

Fair Housing Regulations

- Process began December 2014, final draft APPROVED AS FINAL AUGUST 2018.
- ▶ Took effect on 1/1/20
- NOTE housing MANAGER IS SPECIFICALLY GOVERNED BY REGULATIONS AND CAN SEPARATELY BE SUED

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Harassment - §12120

(a)...

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to any of the following: the sale, rental, or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, conditions, or privileges of a housing opportunity. An unwelcome request or demand may constitute quid pro quo harassment even if an individual acquiesces in the unwelcome request or demand.

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CURRENT FEDERAL REGULATION – over 3 years old

Key Definitions – "Owner"

"housing provider" in the housing industry;

(u) "Owner" includes ...:

... and

Sexual Harassment by Landlord... or other tenant became effective <u>10-14-16</u>

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

(1) A lessee, sublessee, assignee, managing agent, real estate broker

(3) Any person that is defined as a "housing provider" in a statute, regulation or government program or that is commonly referred to as a

(6) Governing bodies of common interest developments.

- 24 CFR part 100:
- § 100.7 (NEW):
- Liability for discriminatory housing practices.
- (a) Direct liability. (1) A person is directly liable for:
- (i) The person's own conduct....
- (ii) Failing to ...correct and end a discriminatory housing practice by ...employee or agent, where the person knew or should have known of the discriminatory conduct.

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Hostile Environment - §12120(b)

- (2) Hostlie environment harassment. Hostlie environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with any of the following: the availability, sale, rental, or use or enjoyment of a dwelling; Hostlie environment harassment does not require a change in the terms, conditions, or privileges of the dwelling, housing opportunity, or housing-related services or facilities.
- (A) Whether hostile environment harassment existed or exists depends upon the totality of the circumstances.
- (i) Factors to be considered in determining whether hostile environment harassment existed or
 exist include, but are not limited to, the nature of the conduct, the context in which the incident(s)
 occurred, the severity, scope, frequency, duration, and location of the conduct, and the
 relationships of the persons involved.
- (ii) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment existed or exists. ...
- (iii) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is viewed from the perspective of a reasonable person in the aggrieved person's hostiton

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Sexual Harassment

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- It is unlawful for a housing provider to subject a person to sexual harassment or require sexual favors for housing rights or privileges.
- Vendor v. resident
- Manager v. resident
- Director v. resident
- Resident v. resident

What is Harassment or Hostile Environment Conduct? §12120(c)

(c) Type of Conduct Quid pro quo and hostile environment harassment in housing can be written, verbal, or other conduct and do not require physical contact...(I)ncluding:
(1) Verbal harassment, including epithets, derogatory comments, or slurs;
(2) Physical interference with normal movement;
(3) Visual forms of harassment, including derogatory posters, carbons, drawings, writings, or other documents. Nothing herein shall be construed to contravene the protections provided by Civil Code sections. 1940.4 and 4710;
(4) Unwelcome sexual conduct, or other unwelcome conduct, linked to an individual's sex, gender, gender identity, gender expression, or sexual orientation;
(5) Any coercion, intimidation, threats, or interference with a person's exercise or enjoyment of a housing opportunity;
...
(7) Revealing private information to a third party about a person, without their consent, in a manner that constitutes quid pro quo or hostile environment harassment, ...

§ 12010. Liability for Discriminatory Housing Practices.

(a) Direct Liability.

(1) A person is directly liable for:

(A) The person's own conduct

(B) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct, including because supervisors, managers, or principals of the person had or should have had such knowledge.

(C) Failing to take prompt action to correct and end a discriminatory

housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action ... depends upon the extent of any legal responsibility or authority the person may have with respect to the conduct of such third party. The power, responsibility, or authority can be derived

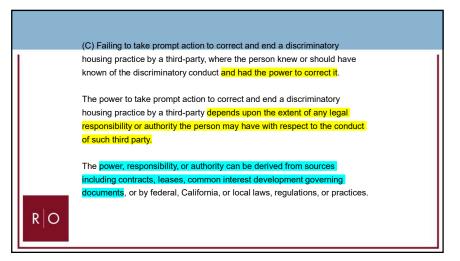
from sources including contracts, leases, common interest development

governing documents, or by federal, California, or local laws, regulations,

or practices.

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§11265 Prohibited Use of Criminal History Information

- Landlords cannot have a blanket ban against renting to any person with a criminal record.
 - For example, it is a violation of the law to never rent a property to anyone with a felony conviction, under any circumstances.
- However, a policy that combines a bright line rule for certain types of criminal convictions with an individualized assessment for other types of convictions (either discretionary or required) may be lawful
 - E.G. no arson background; other criminal convictions may be acceptable.

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