

Fair Housing Part I Overview and preventing discrimination - harassment



Presented by Kelly G. Richardson,
Esq.
March 13, 2024

Richardson Ober LLP 3-13-24

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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 **but were 40% of cases prosecuted.**

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Fair Housing Enforcement i.e., who can sue you



- Federal - HUD/US DOJ
- State - DFEH, California Attorney General
- 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."

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Evan Carolyn v. Orange Park Comm. Assn. (2009)

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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

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“Landlord” or “Housing Provider”

Not only the lessor...

Also common interest developments... and

The MANAGER

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Housing Protected Bases

- ▶ Disability *
- ▶ Race/Color *
- ▶ Familial Status *
- ▶ Sex
- ▶ Sexual Orientation
- ▶ Marital Status
- ▶ National Origin
- ▶ Citizenship
- ▶ Immigration status
- ▶ Primary language
- ▶ Ancestry
- ▶ Religion
- ▶ Source of income
- ▶ Medical condition
- ▶ Age
- ▶ Gender
- ▶ Identity/Expression
- ▶ Genetic Information
- ▶ Veteran or military status

* These three bases comprised the majority of all cases filed.

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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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Key Definitions – “Owner”

- (u) “Owner” includes ...:
- (1) A lessee, sublessee, assignee, **managing agent**, real estate broker or salesperson;
 - (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 “housing provider” in the housing industry;
- ... and
- (6) Governing bodies of common interest developments.**

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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

Sexual Harassment by Landlord... or other tenant became effective 10-14-16

- PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT
- [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) **Hostile environment harassment. Hostile 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**; Hostile 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 position.**

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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) Including:
- (1) **Verbal harassment**, including epithets, derogatory comments, or slurs;
 - (2) **Physical harassment** directed at an individual, including assault, impeding or blocking movement, or any physical interference with normal movement;
 - (3) **Visual forms of harassment**, including derogatory posters, cartoons, 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. ...

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Sexual Harassment

- ▶ 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

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§ 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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(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 to correct and end a discriminatory housing practice by a third-party **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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RICHARDSON|OBER
 1 (877) 446-2529
 www.roattorneys.com
 PASADENA | IRVINE | RIVERSIDE



THANK YOU ARCADIA AOR

Presented by Kelly G. Richardson, Esq.
 kelly@roattorneys.com

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