

# TENANTS' RIGHTS, FAIR HOUSING, AND LOCAL TENANT PROTECTIONS

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A Presentation by:

**Law Foundation of Silicon Valley**

# Today's presentation will cover:

- Rental Qualifications
- Negotiating Contract (Native Language)
- Habitability
- Retaliation
- Discrimination
- Evictions
- Rent Increases
- Protections for Renters in San Jose
- Where to go for help

# Vocabulary

- Rent – Regular payment (to a landlord) to use/live at an apartment.
- Tenant – A person who rents an apartment.
- Landlord – A person who rents out an apartment to a tenant. They may or may not own the apartment.
- Negotiate – Work to bring about an agreement (about renting an apartment).
- Contract – An agreement that can be in writing about things we promise to do and rights we have.
- Lease – A contract to rent for a fixed period of time.
- Periodic Rental Agreement – A contract that continues without a stated ending date.
- Right – Ability to do something under a law or a contract.
- Responsibility – Promise to do something.
- Eviction – An action through court started by a landlord so they can get an apartment back after the notice (warning) they gave to the tenant has expired.

# TENANTS' RIGHTS BEFORE AND DURING THE TENANCY

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Rental Qualifications, Moving In (Contracts in Native Language), Habitability, Retaliation

# Rental Qualifications

**A landlord should only ask questions about very specific issues, like:**

**Income Qualifications – Do you make enough to (afford to) pay the rent?**

- Monthly income
- What kind of job you have and where you work

**References – Will you pay the rent on time and follow the rules?**

- Current and past employers
- Current and past landlords

**Checking (verifying) who you are.**

- Social Security, Drivers' License, ID Card (matrícula) - **Can only ask for these to check credit or to verify identity, NOT to find out your immigration status**
- Bank Accounts, Credit Reports

**How many people will be living in the rental unit?**

- The landlord *may* limit occupancy, but occupancy limits need to consider square footage of the apartment and health and safety (building) codes.
- More restrictive policies may be housing discrimination.

# Moving In – Contracts in your native language

If you negotiate your rental agreement with your landlord in one of these five languages, you have the right to receive a rental agreement in that language *before* you sign it:

- Spanish
- Chinese
- Tagalog
- Vietnamese
- Korean

Make sure you understand your agreement before you sign it, and keep a copy of it in a safe place.

# Tenants' Rights and Responsibilities

- Tenants' Rights
  - Safety
  - Habitability – Safe place to live
  - Privacy
  - No discrimination – Treat someone different based on their membership in a protected group.
  - No retaliation – To get back at someone because they stood up for their or someone else's rights to be free of discrimination.
  - No rent increase or eviction without proper legal process -
- Tenants' Responsibilities
  - Pay rent
  - Maintain property – keep property in good/working condition
  - Follow rules

# Habitability

- Housing must meet basic standards.
  - Secure—doors and windows that close and lock.
  - Healthy—no vermin, mold overgrowth, etc.
  - Safe—properly installed electrical system, no holes in floor, etc.
  - Heat and ventilation (but generally not A/C).
  - Hot/cold running water.
- Landlord duties
  - Provide habitable housing
  - Make repairs
- Tenant duties
  - Keep the home clean
  - Tell the landlord of items that need repair (recommend putting this in writing)



# Dealing with Habitability Problems

- First, notify the landlord (in writing).
- If the landlord does not make repairs, options include:
  - Report to Code Enforcement (City department that requires landlords to follow health and safety standards).
  - Contact legal services organization.
  - Organize!
  - Repair/deduct.\*
  - Rent withholding.\*

**DOCUMENT EVERYTHING (WRITE EVERYTHING DOWN)**

\*LFSV generally does not recommend doing these things because they increase the chances of eviction.

# Retaliation

- Retaliation - Getting back at someone because they stood up for their or someone else's rights.
- It is illegal for a landlord to retaliate against a tenant for:
  - Requesting repairs.
  - Complaining to code enforcement.
  - Using the repair and deduct remedy.\*
  - Filing a lawsuit based on the conditions of the apartment.
  - Opposing (fighting back against) discrimination.
  - Reporting discrimination or other illegal activity to a government agency.
  - Helping someone else oppose discrimination.
  - Participating in a tenant's organization/organizing fellow tenants.
- Examples of retaliation:
  - Eviction
  - Rent increase
  - Harassment (Pressure, threats)
  - Saying you cannot use or limiting your use of the common areas

# HOUSING DISCRIMINATION

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State and Federal Fair Housing Protections

# What is discrimination?

- Discrimination occurs when someone is treated badly or differently because they are a member of a protected group.

# Protected Categories (Groups)

- Race
- Color
- National Origin
- Sex/Gender
- Sexual Orientation
- Family Status (i.e., families with children—but note exception for some housing designated for seniors)
- Marital Status (i.e., unmarried couples)
- Disability
- Source of Income
- Religion
- Arbitrary (such as political affiliation, having tattoos, etc.)
- Age (but note exception for some senior housing)

# Who is covered by fair housing laws?

- Housing Providers
  - Landlords
  - Mobile home parks
  - Condominium complexes and the Homeowners' Associations (HOAs)
  - Licensed care facilities (including board and care homes and nursing homes)
  - Supportive housing
  - Residential hotels
  - Master tenants/sublessors
  - Etc.
- Additionally...
  - Mortgage loan brokers, mortgage loan lenders, real estate agents
  - government agencies that provide housing or enforce housing policy, etc.

# Who is not covered by fair housing laws?

- In California, the main exception is a place where the owner lives (owner-occupied housing unit) and only rents out one room.
- But the owner still cannot make discriminatory statements/advertisements.

# Forms of Discrimination

- Disparate (different) treatment based on the protected category (group) the person is part of
  - Discriminatory statements
  - Refusal to rent/sell/lend/etc.
  - Different terms or conditions
  - Unequal enforcement of rules
  - Harassment
  - Steering (Directing a tenant to only certain housing opportunities)
- Retaliation and intimidation.
- Disparate impact (Practices or policies that seem neutral but have a negative impact on people in a protected category)



# Protections for Immigrant Tenants (AB 291)

- Forbids property owners from reporting or threatening to report tenants to immigration authorities in retaliation or to cause tenants to move out;
- Prohibits property owners from disclosing information related to the tenant's immigration status in retaliation or to cause the tenant to move out;
- It provides tenants with the right to sue property owners who report them to immigration authorities.

# Additional Protections for People with Disabilities

- Reasonable accommodations – A change in a rule or a policy that helps a person with a disability to live in the apartment (e.g., service animals or emotional support animals in an apartment complex that does not allow tenants to have pets)
- Reasonable modifications – A change or addition to the building (e.g., installing a ramp)

# RENT INCREASES, EVICTION, AND LOCAL TENANT PROTECTIONS

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San Jose Apartment Rent Ordinance (ARO), San Jose  
Tenant Protection Ordinance (TPO), Ellis Act and Ellis  
Act Ordinance

# Rent Increases: California Law

- No rent increases during the term (length of the time) of a lease.
- 30 days written notice when month-to-month (if 10% or less)
- 90 days written notice if more than 10%

# San Jose Apartment Rent Ordinance (ARO)

- Applies to large (> 3 units) apartment building built before September 7, 1979
- Exemptions for hotels, affordable housing, duplexes single family homes, condos, hospitals or care facilities, and university housing (dorms, fraternities or sororities)
- How the initial rent is set:
  - Set by LL (at market rate) if former tenants chose to move or were evicted for a good reason
  - Remains under rent control if former tenants were evicted for no reason or illegal conduct by LL coerced tenants to leave
- Rent limits: 5% each year
  - If LL failed to register with City, cannot raise rent!

# San Jose ARO: Limits on Rent

- No utility pass-throughs
  - All utilities must be separately metered (each tenant pays only for what it uses), unless LL applied for petition with City and was approved
- Limit on Fees:
  - Late fees: 5% for each payment that is 3 or more months late
  - Bounced Check Fees
    - \$25 first bounced check
    - \$35 2<sup>nd</sup> bounced check
  - Key replacement – actual replacement cost + \$10
  - Screening fees in excess of amount in Civil Code 1950.b
    - \$30 + CPI since 1998 (about \$50 currently)

# The Eviction Process: California Law

- Landlord must go through “unlawful detainer” (eviction) **court process** to evict.
  - Tenant has a right to respond.
  - No lock-out until **after** the court has entered the judgment and the sheriff has posted a notice to vacate

**Seek legal help immediately if you get an unlawful detainer**

**Law Foundation intake line: 408-280-2424**

- Landlord must give **written** notice (warning) to end the tenancy.
  - 3-day notice to pay rent or quit (get out)
  - 3-day notice to perform covenants (thing you promised in the agreement) or quit (get out)
  - 3-day notice to quit (get out)
  - ~~30-, 60-, or 90-day notice without cause (a reason).~~ → *Not allowed under San Jose Tenant Protection Ordinance*
- Additional protections for tenants in (government) subsidized/low-income housing

# San Jose Tenant Protection Ordinance (TPO)

- Applies to large apartments (> 3 units) **and unpermitted units**
- Tenancies can only be terminated for one of 13 causes:
  1. Nonpayment of rent
  2. Material or habitual violation of the lease
  3. Damage to the apartment
  4. Refusal to agree to a similar or new rental agreement
  5. Disorderly behavior/disturbing the peace
  6. Refuse access to the apartment when requested in accordance with law
  7. Unapproved holdover subtenant
  8. Criminal activity

## **Just Cause Reasons Based on Landlord Decision or Consequence of Action:**

9. Substantial rehabilitation of the apartment
10. Removal of apartments from the rental market under the Ellis Act
11. Owner move-in
12. City code enforcement actions requiring a moveout
13. Convert an unpermitted apartment for permitted use



# San Jose Tenant Protection Ordinance (TPO)

- Landlord's obligations:
  - Post a notice of tenants rights in the building
  - Before evicting a tenant in TPO-covered unit, the landlord must give the tenant a written Notice to Quit that:
    - States one of the 13 acceptable causes
    - States that the notice is being served in good faith
    - Provides information on homelessness prevention
  - Send a copy of the Notice to Quit to the City of San Jose
  - Pay the tenant to help move out (provide **relocation benefits**) if the eviction was caused by the landlord's actions (causes 9 -13):

Studio	1 Bedroom	2 Bedroom	3 Bedroom
\$6,925	\$8,400	\$10,353	\$12,414

(amounts current as of 6/26/2019)

# Where to Go for Help

- **Housing Discrimination**

- Law Foundation of Silicon Valley Housing (408) 280-2424
- Project Sentinel Fair Housing (408) 720-9888

- **Tenant Issues/Evictions**

- Law Foundation of Silicon Valley Housing (408) 280-2424
- Bay Area Legal Aid (408) 283-3700
- Asian Law Alliance (408) 287-9710
- Santa Clara County Court Self-Help Center (408) 882-2926
- <http://www.courts.ca.gov/27798.htm>