

TENANTS' RIGHTS AND FAIR HOUSING

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Rental Qualifications

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

Income Qualifications – landlord can ask:

- Monthly income, source of income (SSI, SSDI, TANF, etc.);
- If employment can ask what kind of job you have and where you work;
- But cannot discriminate based upon source of income as long as it is legal, verifiable income (**Rental subsidies ARE NOT protected as source of income**); and
- Housing provider can require that the tenant make up to three times the monthly rent.

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

- Current and past employers
- Current and past landlords

Checking (verifying) identity:

- Social Security, Drivers' License, ID Card (matrícula) - **Can only ask for these to check credit or to verify identity, NOT to find out 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.

Impermissible criteria for accepting tenants

- Landlords may not treat applicants differently based on protected categories
- Requiring different/more information from women or minorities
- Applying different credit standards
- NOT counting alimony, AFDC etc. when computing income.
- Overly restrictive occupancy standards

Moving In – Contracts in a tenant's native language

If a tenant negotiates a rental agreement with the landlord in one of these five languages, the tenant has the right to receive a rental agreement in that language *before* signing it:

- Spanish
- Chinese
- Tagalog
- Vietnamese
- Korean

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

The Eviction Process

- Landlord must give **written** notice (warning) to end the tenancy.
 - 30-, 60-, or 90-day notice without cause (a reason).
 - 3-day notice to pay rent or quit
 - 3-day notice to perform covenants or quit
 - 3-day notice to quit
- 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.
- Additional protections for tenants in **subsidized/low-income housing**.

Rent Increases: California Law (if No Rent Control Law in City/Town)

- 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)
- 60 days written notice if more than 10%

Local Rent Stabilization and Other Tenant-Protection Ordinances – Examples from Other Cities

Rent Stabilization (Rent Control)

In Santa Clara County, Los Gatos, Mountain View, and San Jose have rent stabilization ordinances.

Example: San Jose, see: <http://www.sanjoseca.gov/index.aspx?NID=1355>

Mountain View, see:

<http://www.mountainview.gov/depts/comdev/preservation/rentstablization.asp>

1. Limits on the Amount of Rent Increases
2. If owner seeks rent increase above City's limit, they have to file a petition (written request) with the City. Tenant can oppose the increase.
3. Hearing - opportunity to state the reason for and reason against rent increase before a hearing officer (the decision-maker)

Just Cause Basis (Stated Good Reason) for Eviction

San Jose and Mountain View

Relocation Assistance for Displaced Tenants (Money to Help Tenants Find Other Housing in Some Cases)

San Jose and Mountain View

Tenant's Right to Privacy

- A landlord may only enter a leased premises under these certain limited circumstances, with reasonable notice: [Civ. Code § 1954]
- To make necessary agreed-upon repairs, alterations or improvements;
- To supply necessary or agreed-upon services;
- To exhibit the unit to prospective tenants, contractors, etc.; or
- To perform a pre-move-out inspection under Civ. Code § 1950.5(f).
- A landlord may enter a leased premises without reasonable notice under even more limited circumstances: [Civ. Code § 1954]
- In an emergency;
- When it objectively appears that a tenant has abandoned the premises; or
- With a court order.
- It is always appropriate for a landlord to enter if the tenant is there and consents to the entry.
- Remedies: there are no express remedies for violation of Civ. Code § 1954. If violation is severe or pervasive, it may result in breach of covenant of quiet enjoyment...

Quiet Enjoyment

- Every lease or rental agreement contains the landlord's implied covenant of quiet enjoyment, which means that the landlord implicitly agrees that the tenant will not be evicted or disturbed in his possession by himself or anyone acting on his behalf [Civ. Code § 1927].
- Breach may result in constructive eviction if tenant is not able to enjoy his unit in peace.
- Examples:
 - Landlord not taking reasonable measures to remedy nuisance or interference caused by neighboring tenant;
 - Landlord abuse of limited right of entry;
 - Bad faith eviction without cause;
 - Actions of landlord's agents.
- Remedies: see Civ. Code § 1940.2 (tenant may sue landlord for wrongful and illegal acts committed for the purpose of influencing him to vacate his dwelling).

California Habitability Laws

- Landlord duty to provide habitable property: Ca. Health & Safety Code 17920-17928
- Housing habitability regulations & Landlord responsibilities: Ca. Civil Code 1940 -1954

Habitability: what is required

- Waterproofing and weather protection
- Plumbing and gas
- Water supply with hot and cold water
- Sewage
- Heat
- Electrical lighting and equipment
- Clean grounds
- Adequate trash receptacles
- Floors, stairways, railings, carpets
- Deadbolts on doors, locks on windows
- Working telephone jack
- **Standard: Effective and in good working order**

Common Habitability Complaints

- Vermin, Cockroaches, bedbugs, mold
- Leaks from pipes, roof, gas, walls
- Foul smell from sewage
- Holes in the floor, torn up carpet
- Large cracks in ceiling, walls
- Chronically overflowing toilets and showers
- Exposed wires, dead electrical sockets

Tenant responsibilities

- Maintain the property so it is clean and sanitary
- Operate all fixtures properly
- Do not damage or destroy the property
- Use each room for its intended purpose
- The bedroom is not the kitchen. The kitchen is not the bedroom.
- Notify landlord of maintenance issues
- Allow maintenance and repair personnel access to the property
- The Landlord has no obligation to repair when tenant actions substantially caused the condition!

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)

Rent Abatement

- Tenants are entitled to rent abatement for the period of time that the premises were uninhabitable. This means that tenants must be reimbursed for the rent that they paid for the period in which the premises were uninhabitable. The amount deducted from the rent payment generally coincides with the percentage of the property that has become affected or uninhabitable because of a certain problem. Cal Civ Code § 1942.4.
- A tenant is only obligated to make rental payments after the landlord has complied with his duty to obey the housing code and make the premises habitable when defects developed. *Stoiber v. Honeychuck*, 101 Cal. App. 3d 903, 913-914 (Cal. App. 5th Dist. 1980); see also *Green v. Superior Court of San Francisco*, 10 Cal. 3d 616, 635 (Cal. 1974) (tenant's duty to pay rent is "mutually dependent" upon the landlord's fulfillment of his implied warranty of habitability).
- Under Civil Code section 1942.4, a residential landlord may not demand or collect rent, increase rent, or serve a three-day notice to pay rent or quit if the dwelling is untenable as defined under Civil Code section 1941.1.

State Relocation Assistance

- Tenants who have been displaced as a result of a city abatement action are entitled to relocation assistance in an amount equal to two months of the established fair market rent for the area as well as the return of their entire security deposit. Cal Health & Saf Code § 17975.2.
- Housing Providers are required to make these relocation assistance payments within 10 days of the receipt of the notice of the city's intention to condemn the premises. Cal Health & Saf Code § 17975.3.
- Failure to pay tenants the relocation assistance within the 10-day period, increases the amount of relocation assistance to which they are entitled to an amount equal to 1½ times the relocation benefits payable pursuant to Section 17975.2.
- In Santa Clara County, the current fair market rent as established by HUD is \$2,031 for a one bedroom and \$2,522 for a two bedroom.
- <https://www.huduser.gov/portal/datasets/fmr.html#2018>

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

Security Deposits

- No more than three times the monthly rent for furnished units or two times the monthly rent for unfurnished units [Civ. Code § 1950.5(c)].
- No statutory obligation for landlord to pay interest to tenant on security deposit.
- Proper use of security deposit by landlord: [Civ. Code § 1950.5(e) & (f)]
- Application to rent defaults;
- Repair of damages to premises, exclusive of ordinary wear and tear, cause by tenant or tenant's guests; and
- Cleaning of premises, beyond ordinary wear and tear, upon tenant's move-out.
- If a lease allows, the landlord may apply the deposit to other unpaid monetary obligations [e.g. late fees, attorney fees, litigation costs]

Security Deposits

- Landlord has 21 days from the day the tenant moves out to refund the security deposit.
- They may deduct for damages (beyond normal wear and tear), cleaning fees, and unpaid rent from the security deposit.
- They should provide an itemized Statement of Deductions and receipts if they withheld some/all of the security deposit.
- If a tenant disagrees with amount withheld, consider writing a demand letter and small claims court action. See http://www.scscourt.org/self_help/small_claims/small_claims_advisor.shtml

Federal Anti-Discrimination Law

- **Fair Housing Act (FHAA)**, 42 U.S.C. §§ 3604 *et seq.* Federal law covers all dwellings except (1) an owner-occupied building of four or fewer units and (2) sale of a single-family house without use of agents.
- **Americans with Disabilities Act (ADA), Title II**, 42. U.S.C. §§ 12131 – 12165. Federal law covering services, programs or activities of a public entity.
- **Americans with Disabilities Act (ADA), Title III**, 42 U.S.C. §§ 12181 – 12189. Federal law covering privately owned public accommodations if operation affects interstate commerce (hotels, theaters, restaurants)
- **Section 504 of the Rehabilitation Act**, 29 U.S.C. § 794. Federal law covering any program or activity (including state, state departments and agencies and housing providers) that receive federal funds.

California Anti-Discrimination Laws

- **Fair Employment and Housing Act (FEHA)**, Cal. Gov't Code § 12900 **et seq.** Mirrors the federal Fair Housing Amendments Act of 1988 with some important differences but is generally broader.
- Broader definition of disability
- Applies to more buildings
- Only exception is owner-occupied single family dwelling
- More protected categories – i.e. source of income, sexual orientation, gender identity.
- **Unruh Civil Rights Act**, Cal. Gov't Code § 51 **et seq.** Prohibits arbitrary discrimination.
- **“Ralph Act,”** Cal. Civ. Code § 51.7. Provides protection against intimidation, violence and other hate crimes.
- **“Bane Act,”** Cal. Penal Code § 422 **et seq.** Includes criminal provisions under which perpetrators of hate crimes may be charged.

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
 - Shelters/transitional housing
- Additionally...
 - Mortgage loan brokers, mortgage loan lenders, real estate agents
 - government agencies that provide housing or enforce housing policy, etc.

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)

What is NOT Discrimination

- Refusing to rent to someone or evicting someone because of:
 - criminal convictions
 - past evictions or debts to prior landlords
 - bad credit
- Having a minimum income requirement is allowed (generally, three times the monthly rent).
- But, remember landlords must enforce the same policies and rules for all tenants and applicants. Otherwise, selectively enforcing rules could constitute a discriminatory housing practice.

Disability Defined

- A physical or mental impairment that limits one or more of a person's major life activities, regardless of mitigation (federal law requires substantial limitation)
- A record of having an impairment
- Being perceived as having such an impairment

Reasonable Accommodations

- Failure to grant reasonable accommodations (or allow reasonable modifications) can constitute discrimination.
- A reasonable accommodation is a change in rules, policies or procedures necessary to help people with disabilities access housing or housing-related services.
- Housing provider cannot charge fees for providing a reasonable accommodation.
- A “[r]easonable accommodation inquiry is highly fact-specific, requiring case-by-case determination.” *U.S. v. California Mobile Home Park Mgmt. et al.*, 29 F.3d 1413, 1418 (9th Cir. 1994) (“Mobile Home I”)

Logistics

- Timing: An accommodation can be requested at ANY TIME, from before a tenancy begins, up to the time that an eviction order is final.
- Interactive process required: When an accommodation is requested, if the requested accommodation cannot be granted by the landlord, the tenant and the landlord must engage in an “interactive process” to reach a compromise that will meet the tenant’s needs and will not be a burden on the landlord

“DANCE”

- **D: Disability**
- The tenant must have a DISABILITY covered by fair housing laws.
- **A: Accommodation**
- The tenant must request the ACCOMMODATION; there are
- no “magic words.”
- **N: Necessary**
- The accommodation must be NECESSARY for the tenant; there must be a nexus between the disability & the requested accommodation.
- **C: Cost**
- Landlord absorbs the COST, so the accommodation cannot be too expensive (i.e. can’t be an “undue financial burden”).
- **E: Effect**
- The EFFECT of the accommodation cannot be a fundamental change to the housing provider’s business.

“Necessary”

- Frees the tenant from a rule, policy, or practice that interferes with the person’s right to use and enjoy the dwelling.
- Enhances the person’s quality of life by ameliorating the effects of the disability.
- Enables the tenant to satisfy the essential requirements of tenancy.

Interactive process

- Failure to engage in an interactive process can mean a denial of the reasonable accommodation request.
- What does the “interactive process” mean?
- Acknowledging that the tenant made the request.
- Responding in a timely fashion to the request.
- Discussing the request with the tenant.
- If appropriate, offering suggested alternatives.
- Burden is on housing provider to show that the alternative accommodation is effective in fully removing the barrier to the person’s equal protection in the housing program.

Limits on Reasonable Accommodations

- Accommodations that create an undue burden on provider...
- Accommodations that would create a fundamental alteration of the provider's business model....
- ...are NOT required

Direct Threat Exemption

- A reasonable accommodation may be denied if granting that accommodation will:
 - Create a direct threat to the health or safety of other tenants; or
 - Result in substantial physical damage to the property of others.
- Must look at nature, duration, severity of risk of injury, probability injury will occur, any accommodations that could eliminate the direct threat.
- CAUTION: Don't automatically conclude that a seemingly dangerous tenant cannot be accommodated. The housing provider must still engage in the interactive process if that tenant requests an accommodation.
- *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109 (D.C. Cir. 2005)

Common Reasonable Accommodations

- Service or emotional support animals
- Large-print leases or signs
- Provision of nearby parking space
- Extensions of time
- Live-In Aides
- Waiver of fees
- Early lease termination
- Allowing qualified co-signor for minimum income requirements
- Transferring from a top floor to bottom floor unit
- “Second chance” tenancies

Emotional Support Animals

- Can be any type of animal
- Provide comfort, companionship, relieve loneliness
- No special training required
- Not covered under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act

Emotional Support Animals

- Emotional support animals are allowed in any residential setting (as opposed to a public accommodation).
- Landlords or other housing providers may ask whether the person has a disability; the need for the animal to assist the person with that specific disability; that the animal actually assists the person with a disability.
- Whether emotional support animals are allowed in student housing is still unsettled.

Emotional Support Animals

- Does the animal need to be certified?
- No! Any animal could potentially qualify: cats, birds, hamsters, etc.
- But, its probably reasonable for the LL to require that the pet be updated on its vaccinations and licensed.
- What about breed restrictions?
- Maybe. A bad unpublished case allows for breed restrictions but see HUD guidance on service animals prohibits breed restrictions and requires housing providers to focus on the animal itself:
- http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf
- What about shared housing?
- The landlord must still accommodate a person's disability. The landlord must engage in an interactive process to come up with a solution if there are dueling accommodation requests

Discrimination under the ADA

- A public accommodation may not discriminate against an individual with a disability in the operation of a place of public accommodation. Individuals with disabilities may not be denied full and equal enjoyment of the "goods, services, facilities, privileges, advantages, or accommodations" offered by a place of public accommodation. The phrase "goods, services, facilities, privileges, advantages, or accommodations" applies to whatever type of good or service a public accommodation provides to its customers or clients.

Service Animal under the ADA

- A service animal is a dog (or a miniature horse) that is individually trained to do work or perform tasks for people with disabilities.
- The work or task a service animal is trained to provide must be directly related to a person's disabilities.

What is permissible to ask under the ADA

- When it is not obvious that the animal is a service animal there are only two questions that may be asked:
- Is the service animal required because of a disability; and
- What work or task is the service animal trained to perform.

Reasonable Modifications

- Housing providers must permit reasonable modifications of premises.
- Examples: wheelchair ramp, grab bar, door widening, lift
- Subsidized housing providers must take on the cost of the accommodation.
- A housing provider may require the renter to restore the interior premises to its original state.
- Multi-family dwellings constructed for first occupancy after March 1991 must meet accessibility requirements for persons with disabilities.

Special Requirements for Subsidized Housing

- Make program accessible as a whole.
- Pay for modifications.
- Provide auxiliary aids and services necessary for effective communication with persons with disabilities.
- Have an internal grievance procedure designed to address claims of discrimination against program participants with disabilities.
- Develop a transition plan to ensure that structural changes are properly implemented to meet program accessibility.
Requirements.
- Perform a self-evaluation of its programs and policies to ensure that they do not discriminate based on disability.
- Operate its programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

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.

Criminal History

- Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction.
- Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics.
- While the [Fair Housing] Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.
- US Dept of HUD, Office of General Counsel Guidance on Use of Criminal Records by Providers of Housing and Real Estate Related Transactions, 4/4/2016, p.10. See: https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf

Legal Protection for Victims of Domestic Violence

- Gender” also includes discrimination against victims of domestic violence
- It may be discriminatory to evict a victim of DV for violence committed on property
- Landlords cannot reject applications or evict people because they find out that they are victims of DV