



FAIR HOUSING AND YOU

**Your Rights and
Responsibilities**

Prepared by



For the City of Chico
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Preface

This booklet was prepared for the City of Chico by Legal Services of Northern California with the goal of providing an overview of fair housing law. This is an update to the 2003 booklet “Fair Housing and You.”

As you read this booklet, please remember that the many codes and statutes discussed here are not simple legislative acts easily described in a brochure. This booklet is designed to be easy to read and understand, but it is by no means intended to replace legal advice or address all questions or concerns. A list of organizations and agencies that provide assistance to those with housing problems is provided at the back of this booklet.

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Introduction

There are federal and state laws designed to protect individuals against discriminatory housing practices. Federal law prohibits discrimination based on race, color, religion, sex (gender), national origin, physical or mental disability, and families with children. California law, in addition to the above categories, further prohibits discrimination based on ancestry, age, sexual orientation, marital status, and source of income. California law also prohibits arbitrary discrimination based on personal characteristics such as appearance or lifestyle if such characteristics are unrelated to one's responsibilities as a tenant.

At the federal level, important anti-discrimination laws include the Fair Housing Act, as amended by the Fair Housing Amendment Act of 1988 (FHAA); Section 504 of the Rehabilitation Act of 1973, as amended; and the Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008. At the state level, Californians enjoy not only the protection of the Fair Employment and Housing Act (FEHA), which is nearly identical to the federal FHAA, but also the Unruh Civil Rights Act (Civil Code § 51), the Ralph Civil Rights Act (Civil Code § 51.7), and the Bane Civil Rights Act (Civil Code § 52.1). You can read these laws in their entirety at: www.leginfo.ca.gov/calaw.html

Overview of Federal Law

The Federal Fair Housing Act

The Federal Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex (gender), familial status (families with children), disability, or national origin in the sale, rental, financing, or advertising of housing. It is also illegal to coerce, intimidate, threaten, or interfere with anyone exercising a fair housing right or assisting others who are exercising that right.

The Federal Fair Housing Act uses the term “handicap” instead of the term “disability.” The U.S. Supreme Court, in this context, has stated that both terms have the same legal meaning and has noted that the definition of “disability” in the Americans with Disabilities Act is taken from, and almost identical to, the definition of “handicap” as defined in the Federal Fair Housing Act. The term “disability” is defined broadly and includes both physical and mental impairments that substantially limit one or more major life activities. Such impairments include, but are not limited to, visual, hearing, and speech impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and

alcoholism. The law also protects you from discrimination if you are regarded as being disabled but are not, or if you associate with someone who is disabled or is regarded as being disabled.

Another type of discrimination prohibited by the Federal Fair Housing Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations would provide a person with a disability an equal opportunity to “use and enjoy” a dwelling unit or common space. Courts have held that an accommodation is not reasonable if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider’s operations. This means that a housing provider may be required to absorb some costs in providing a reasonable accommodation, so long as the costs do not impose an undue financial burden.

Examples of reasonable accommodations include waiving a “no-pets” policy for a physically impaired tenant who needs the service of an assistance dog or a tenant with a mental illness who needs a companion animal; making an exception to a “first come, first serve” parking policy by creating a reserved parking space for a tenant whose disability makes it difficult to walk; installing automatic faucets for a tenant with a mental condition that causes him or her to forget to turn off the water; and providing an alternative means for trash disposal for a physically disabled tenant who

is otherwise unable to deposit trash into the receptacle.

The Federal Fair Housing Act also makes it unlawful to refuse to permit a reasonable modification to a dwelling unit or common area. A reasonable modification is a structural change made to an existing unit in order to afford a person with a disability full enjoyment of the dwelling. Installing grab bars in a bathroom of a tenant with a mobility impairment or installing a ramp outside the building in a common area for a tenant who uses a wheelchair are examples of reasonable modifications. While a housing provider must permit a reasonable modification, the tenant is responsible for paying the cost of the modification and may be required to restore the unit to the condition that existed before the modification.

If a reasonable accommodation or modification is necessary, the tenant should request it of the housing provider. A request is not required to be made in a particular manner or at a particular time. The request can be made by the person with a disability directly or it can be made by a family member or someone else who is acting on behalf of the person with a disability. Although a request can be made orally or in writing, it is often helpful for both the tenant and the housing provider if the request is made in writing. A housing provider has an obligation to provide a prompt response to a reasonable accommodation or modification request.

The Federal Fair Housing Act also includes accessibility requirements for multi-family housing. Although preexisting multi-family complexes do not have to be renovated to comply with the accessibility requirements, multi-family complexes of four or more units constructed after March 13, 1991, must comply with accessibility requirements such as accessible entrances; accessible common areas; doors wide enough for wheelchairs; accessible routes through units; light switches, electrical outlets and environmental controls in accessible locations; reinforcement in bathrooms to allow installation of grab bars; and kitchens and bathrooms designed to allow room for wheelchairs to maneuver.

The Federal Fair Housing Act also prohibits landlords or owners from refusing to sell or rent to agencies that will serve clients with disabilities (including chemical dependencies, AIDS and mental and physical disabilities), regardless of local zoning laws.

Families with children are also protected under the Federal Fair Housing Act under the term “familial status.” The term “familial status” includes parents or legal custodians of children under the age of 18. The definition also includes several types of families who may not actually have children in their households. For example, pregnant women and those in the process of securing legal custody of a child under 18 are also protected. A housing provider may not refuse to rent or sell to someone

because the potential buyer or tenant has children. Housing providers are also prohibited from charging a higher security deposit for households with children, requiring additional references for households with children, or requiring households with children to live in certain areas of a building.

Although the Federal Fair Housing Act allows states and local governments to set reasonable maximum occupancy limits for health and safety reasons, a housing provider may not place arbitrary or excessive restrictions on the number of occupants permitted in a dwelling.

Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973, as amended, is a civil rights law designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. Section 504 reads as follows:

“No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity receiving federal financial assistance or under any program or activity conducted by an Executive agency or by the United States Postal Service.”

Each Federal agency has its own set of section 504 regulations that apply to its own programs, and each

agency is responsible for enforcing its own regulations. The Department of Housing and Urban Development (HUD) has developed Section 504 regulations that apply to housing programs receiving federal financial assistance.

Requirements common to these regulations include effective communication with people who have hearing or vision disabilities; providing reasonable accommodations/modifications; pay for reasonable accommodations/modification (e.g. a ramp to a unit) unless the provision would be an undue financial and administrative burden or a fundamental alteration of the program; and ensure accessible new construction of housing facilities and substantial alterations.

Most local and state housing authorities receive federal financial assistance and therefore fall under Section 504's jurisdiction. Privately operated federally subsidized housing is also covered. If you live in public housing, disabled housing, housing for the homeless, or other low-income housing, you may be protected by the provisions of Section 504.

The Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008, is a far-reaching civil rights statute that prohibits discrimination against individuals with disabilities in employment, state and local government, public accommodations, transportation, and

telecommunications. The Department of Justice is the lead federal agency for implementation of the ADA.

In most cases, the ADA does not apply to residential housing. Title III of the ADA, however, covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public or when they are made available to the general public. Rental offices and sales offices for residential housing, for example, are places of public accommodation, and therefore, must comply with ADA requirements in addition to all applicable requirements of the Fair Housing Act. However, if a common area or community room is only open to residents of the housing development, Title III of the ADA would not apply.

Title II of the ADA covers the activities of public entities (state and local governments). Title II requires public entities to make both new and existing housing facilities accessible to persons with disabilities. Housing covered by Title II of the ADA includes, for example, public housing authorities that meet the ADA definition of public entity, and housing operated by States or units of local government, such as housing on a State university campus.

Overview of State Law

Although states may not offer *less* protection than federal law provides, many, including California, have expanded protection beyond the rights granted under federal law. This section provides an overview of some of the most significant housing discrimination laws in California.

The California Fair Employment and Housing Act

The California Fair Employment and Housing Act (FEHA) is the state counterpart to the federal Fair Housing Act. In many aspects, FEHA resembles the federal Fair Housing Act, but exceeds it in others.

FEHA prohibits discrimination in the sale, rental, lease negotiation, or financing of housing based on a person's race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability. California's FEHA broadens the protections under the federal Fair Housing Act by including sexual orientation, ancestry, marital status, age, and source of income as additional protected categories. In this context "source of income" means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. The purpose of this protection is to prohibit different treatment of non-

employment income, such as income from Social Security or Supplemental Security Income (SSI).

FEHA specifically provides that a victim of housing discrimination may sue a housing provider solely on the basis of evidence of discriminatory effect or disparate impact. Therefore, a plaintiff is not required to show the defendant's discriminatory intent, proof of discriminatory effect is sufficient. Disparate impact discrimination is not motivated by discriminatory intent, but may be an outwardly neutral policy that has an unjustified adverse impact on a protected group of people. For example, if a person can show that a housing provider's otherwise neutral policy has the effect of excluding families with children, then there may be evidence of a fair housing violation. It should be noted that disparate impact discrimination is also prohibited under the Federal Fair Housing Act.

The Unruh Civil Rights Act

The Unruh Civil Rights Act, Civil Code § 51, prohibits business establishments from discriminating on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. The purpose of the Unruh Act is to prohibit discrimination on arbitrary grounds. In this context, "arbitrary" means "having no legitimate business purpose." The Act is intended to be liberally construed, so the courts have applied it to almost anyone who rents housing, as well as to non-

profit housing associations, lenders, and brokers. Courts have extended the Unruh Act's protection beyond the groups explicitly listed, thus the protections under the Unruh Act are not necessarily restricted to those that are listed but also include characteristics that are similar to those that are listed. Like the ADA, the Unruh Act also protects individuals who are perceived to be of a protected class, who associate with a member of a protected class, or who associate with someone perceived to be of a protected class.

The Ralph Civil Rights Act

The Ralph Act, Civil Code § 51.7, provides freedom for all people within the jurisdiction of California from violence, intimidation by threat of violence, and other hate crimes committed against their persons or property because of their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. The Act prohibits violence or threats of violence in rental housing situations, including houses, apartments, hotels, boarding housing and condominiums.

The Bane Civil Rights Act

The Bane Act, Civil Code § 52.1, in many ways exceeds the scope of the Ralph Act. The Bane Act protects all the people of California and forbids interference by force or threat of force with an individual's constitutional or

statutory rights. Since it prohibits interference with rights guaranteed by California laws, many Ralph Act violations are also violations of the Bane Act. The Bane Act also covers places of worship, housing, public and private property.

The Bane Act includes criminal penalties under Penal Code Section 422 et seq. for the commission of hate crimes, which are defined as the use of force or threat of force to injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by law. The Bane Act also applies to damage or destruction of real or personal property.

Exceptions to Coverage

Both California's FEHA and the federal Fair Housing Act are expansive statutes that cover most housing providers, however, there are limited exceptions to each. Exempt from the federal Fair Housing Act's requirements are owner occupied-housing with four or fewer units. Also exempted are owners who are renting or selling their single-family houses, provided that the owner does not own more than three houses, has not sold a house within the previous 24 months, does not use a real estate agent or broker to sell or rent the house, and does not use discriminatory advertising. Exempt from California's FEHA is the renting of an owner-occupied, single-family house to one boarder. Under both the federal Fair Housing Act and California's FEHA, religious organizations are exempt to the extent that they give preferences or limit the sale, rental or occupancy of housing to individuals of the same religion. However, membership in such religion may not be restricted on account of race, color, or national origin and the housing must be owned or operated for a non-commercial purpose.

Certain kinds of potential tenants or buyers are not protected by fair housing laws, either. Both state and federal fair housing laws exempt individuals whose tenancy poses a direct threat to the health or safety of others or whose tenancy would result in substantial physical damage to the property of

others. This includes individuals who are current users of illegal drugs. Additionally, under both the federal Fair Housing Act and California's FEHA, housing for older persons may legally exclude families with children, if the housing meets the statutory criteria for senior housing.

Challenging Housing Discrimination

There are several options for individuals who believe that they have experienced housing discrimination. An individual may file an administrative complaint with the California Department of Fair Employment and Housing (DFEH) or the U.S. Department of Housing and Urban Development (HUD). An individual may also file a lawsuit in either federal or state court. If you believe that you have been a victim of housing discrimination, you can do any of these in any order. You do not have to file an administrative complaint before bringing a lawsuit, but it may be more cost effective and efficient to do so, since administrative complaints can be filed at no cost.

Filing a complaint with DFEH

The DFEH handles discrimination complaints arising from violations of California's fair housing laws. In addition to investigating discrimination complaints, DFEH also assists parties in voluntary resolution procedures and pursues violations of the law in a public hearing or in court.

A person may file a complaint with DFEH within one (1) year of the alleged discrimination. Once a person files a complaint with DFEH, the

Department begins its investigation. The investigation may include interviews with both parties and other witnesses, review of pertinent documents and records, on-site inspections, and use of subpoenas or depositions. In making its determination on whether a violation occurred, DFEH considers evidence from both sides as well as from any neutral parties the Department may have contacted.

If DFEH determines that a violation has occurred, the Department may schedule a formal conciliation or mediation conference. If the parties (the person who filed the complaint and the person against whom the complaint was filed) reach an agreement, the terms will be formalized in a written settlement.

If DFEH determines that the law has been violated and cannot resolve the issues in conciliation or mediation, it will issue an accusation of discrimination. The parties must then decide whether to have the issues heard by the Fair Employment and Housing Commission (“Commission”) or to have the case transferred to state court. If neither party elects to have the matter removed to state court, the Commission will hear it and issue a legally enforceable order. If either party decides to have the matter heard in state court, DFEH’s attorneys will prosecute the case in state court on behalf of the person who filed the complaint.

If the matter is heard before the Commission, the remedies available for housing discrimination include injunctive relief, actual damages, damages for emotional distress, and a civil penalty not to exceed \$10,000. If the matter is pursued in court, the remedies include those stated above but instead of a civil penalty, unlimited punitive damages may be awarded. The remedies may also include the payment of attorney's fees and other court costs.

To file a complaint of housing discrimination, contact DFEH at 1-800-884-1684. Once you have spoken with DFEH staff, the Department will mail you a Pre-Complaint Questionnaire. This questionnaire must be filled out and mailed back to DFEH. Once the completed questionnaire has been received by DFEH, the Department will contact you to arrange a telephone interview. A copy of the questionnaire may also be downloaded from: <http://www.dfeh.ca.gov/res/docs/Publications/DFEH-700-01.pdf>

Filing a complaint with HUD

If your federal fair housing rights have been violated, you can file a complaint with HUD. If a complaint has been filed with HUD, in most instances, HUD will send the complaint to DFEH for investigation. Similarly if your complaint is filed with DFEH and is jurisdictional with HUD, it will also be filed with that agency.

A person may file a complaint with HUD within one (1) year of the alleged discrimination. The HUD complaint process is very similar to the DFEH complaint process. HUD has the same authority as DFEH to conduct its investigation by interviewing witnesses, collecting relevant documents, conducting on-site visits, issuing subpoenas, and conducting depositions.

The Fair Housing Act requires HUD to bring the parties together to attempt conciliation in every fair housing complaint. As with the DFEH process, the choice to conciliate is completely voluntary on the part of both parties. If the parties sign a conciliation agreement, HUD will end its investigation and close the case. However, if either party breaches the agreement, HUD can recommend that the U.S. Department of Justice (DOJ) file suit to enforce the agreement.

If HUD determines that discrimination has occurred, and cannot resolve the issues in conciliation, HUD will issue a determination of “reasonable cause” and issue a charge against the entity or person against whom the complaint was filed. After HUD issues a charge, a HUD Administrative Law Judge (ALJ) will hear the case unless either party elects to have the case heard in federal civil court. If either party elects to go to federal court, DOJ will commence a civil action on behalf of the person who filed the complaint. The federal court can award actual and punitive damages as well as attorney’s fees.

If the matter is heard before the ALJ, an attorney from HUD will represent the person who filed the complaint in front of the ALJ. If the ALJ finds that housing discrimination has occurred, the ALJ can award a maximum civil penalty of \$11,000, per violation, for a first offense, in addition to actual damages, injunctive, or other equitable relief, and attorney's fees.

You can file a fair housing complaint with HUD in the following ways:

1) Online at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint

2) Calling HUD at 1-800-669-9777

3) Printing out a complaint form at

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12150.pdf

completing it and mailing to:

Fair Housing Hub
U.S. Dept. of Housing and Urban
Development
600 Harrison Street, Third Floor
San Francisco, CA 94107-1300

- 4) Writing a letter outlining your complaint which contains
- Your name and address
 - The name and address of the person your complaint is about
 - The address of the house or apartment of the complaint
 - The date when the incident occurred
 - A short description of what happened

Filing a civil lawsuit

Any person who has been discriminated against may file a civil state or federal lawsuit within two (2) years of the discriminatory act. This two (2) year period does not include any time that a HUD or DFEH complaint was open. The plaintiff in a civil suit need not file an administrative complaint with HUD or DFEH first, before filing a civil lawsuit. However, a plaintiff may want to make use of the investigatory powers of HUD or DFEH by filing an administrative complaint. All information discovered by HUD or DFEH in the process of its investigations may be helpful in a civil lawsuit.

If you have filed a complaint with DFEH, you may choose to file a civil suit at any time during the administrative process. If you do decide to file a civil suit, DFEH's involvement in the case ends. If

you have filed a complaint with HUD, you may still file a civil suit, but only if you have not signed a conciliation agreement and an ALJ has not started a hearing on your case. If you decide to file a civil suit, you may have to obtain your own representation, at your own expense.

Retaliation

Retaliation is a violation of fair housing laws. Both state and federal fair housing laws make it unlawful to retaliate against any person because he or she has filed a housing discrimination complaint, is associated with one who has filed such a complaint, has counseled or otherwise assisted any person to file such a complaint, or has provided information to HUD or DFEH during a complaint investigation. If the person you filed such a complaint against, or anyone else, retaliates against you by raising your rent, trying to evict you without cause, taking your name off of a waiting list, or refusing to process your application, for example, you should contact HUD or DFEH immediately to report the incident.

Resources to Help

The following organizations can provide information, referrals, legal assistance, and in some cases, legal representation:

California Department of Fair Employment and Housing

Oakland Housing District Office

1515 Clay Street, Suite 701

Oakland, CA 94612

Phone: (510) 622-2941 or 1-800-884-1684

www.dfeh.ca.gov

City of Chico

Housing and Neighborhood Services Department

441 Main Street, 1st Floor

P.O. Box 3420

Chico, CA 95927

Phone: (530) 879-6301

Fax: (530) 879-6399

www.chico.ca.us/housing_neighborhood_services/home_page.asp

Disability Rights California

Sacramento Regional Office

1831 K Street

Sacramento, CA 95811-4114

Phone: (916) 488-9950 or 1-800-776-5746

TTY: 1-800-719-5798

www.disabilityrightsca.org

Disability Rights Education & Defense Fund
3075 Adeline Street, Suite 210
Berkeley, CA 94703
Phone: (510) 644-2555
Fax/TTY: (510) 841-8645 fax/tty
www.dredf.org

Housing Authority of the County of Butte
2039 Forest Avenue
Chico, CA 95928
Phone: (530) 895-4474
Fax: (530) 895-4469
TDD: 800-735-2929
www.butte-housing.com

Independent Living Services of Northern California
1161 East Avenue
Chico, CA 95926
Phone: 1-800-464-8527
V/TTY: (530) 893-8527
Fax: (530) 893-8574
www.ilsnc.org/

Legal Services of Northern California
541 Normal Avenue
P.O. Box 3728
Chico, CA 95927
Phone: (530) 345-9491 or 1-800-345-9491
Fax: (530) 345-6913
www.lsn.net

Office of Fair Housing and Equal Opportunity

HUD Regional Office

600 Harrison Street, 3rd Floor

San Francisco, California 94107-1387

Phone: (415) 489-6524 or 1-800-347-3739

TTY: (415) 436-6594

portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp

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