

# Anatomy of A Fair Housing Case: A Primer on Litigating a Housing Discrimination Claim

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## I. INTRODUCTION

The authors of this article are current or former prosecutors of housing and employment discrimination cases for the California Department of Fair Employment and Housing (Department or DFEH). Housing discrimination claims make up about 40% of the cases handled by the Department's Legal Division.<sup>1</sup> This article presents the "anatomy" of a fair housing case brought under California law for practitioners new to this type of litigation.

A housing discrimination case will sometimes look very similar to a case of employment-based discrimination; a client will have been denied the opportunity to rent or purchase housing based on a protected characteristic, such as race. At other times a discrimination claim will arise in a context more familiar to practitioners of real property law: during an unlawful detainer; as a result of a decision made by a homeowners association; during the planning or development of an affordable housing project; or as part of a residential real estate transaction. Successfully prosecuting or defending a claim of housing discrimination requires the knowledge of concepts borrowed from employment discrimination law, as well as familiarity with real property and landlord-tenant law. In addition, housing discrimination cases present unique procedural issues, such as standing, and require a re-thinking of compensable harm. By dissecting the housing discrimination case into its basic parts—procedure, proof, substantive law, and damages—the lawyer will be prepared to begin practicing in this rewarding and relatively little-known area of the law.

## II. THE DEVELOPMENT OF CALIFORNIA FAIR HOUSING LAW

Federal fair housing law developed in the wake of employment discrimination law. Title VII of the Civil Rights Act of 1964 prohibited employment discrimination on the basis of race, color, religion, sex, or national origin.<sup>2</sup> Four years later, Congress made housing discrimination illegal for the first time in Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act (FHA).<sup>3</sup>

Even before the federal law was enacted, California had made its own roundabout way to the prohibition of housing discrimination. The Unruh Civil Rights Act of 1959 required all "business establishments" to provide "full and equal accommodations" regardless of race, color, religion, ancestry, or national origin. The California Legislature also passed the Rumford Fair Housing Act in 1963, although it did not become law until after it had been repealed by the voters<sup>4</sup> and subsequently reinstated, after litigation before the California and United States Supreme Courts.<sup>5</sup> In 1988, the FHA was expanded to include "familial status" and disability as protected categories.<sup>6</sup> California accord-

ingly amended the FEHA in 1993 to conform to federal law, and the housing discrimination provisions of the statute remain substantially similar today.<sup>7</sup>

Practitioners looking for which substantive law to apply to a fair housing claim find two paths to follow—the Unruh Civil Rights Act and the Fair Employment and Housing Act. The former, is derived from case law interpreting Title VII and applying it, sometimes imperfectly, in the housing context, and the latter flows from California law.

To interpret claims of housing discrimination, both federal and state courts look to employment discrimination precedent. Federal courts have stated that Title VII analysis *applies* to fair housing claims or *provides guidance*.<sup>8</sup> California courts have held that the basic principles of employment discrimination can be applied in the housing context.<sup>9</sup>

California housing discrimination law must be "substantially equivalent" to the federal Fair Housing Act,<sup>10</sup> meaning that state law must provide at least as much protection for the person seeking or enjoying housing as the federal law provides. Yet California law is also independent from federal law and meant to be "liberally construed."<sup>11</sup> As explained by the Fair Employment and Housing Commission (FEHC), "...federal laws and their interpretations regarding discrimination in employment and housing are not determinative of the construction of [the FEHA] but, in the spirit of comity, shall be considered to the extent practical and appropriate."<sup>12</sup>

## III. PROCEDURAL ISSUES IN HOUSING DISCRIMINATION

Practitioners new to handling housing discrimination cases must familiarize themselves with the procedural issues unique to these claims, most importantly: standing, the role of the administrative agency (the Department), and the statute of limitations. Lawyers familiar only with employment discrimination must be especially aware of the differences between employment and housing.

### A. Exhaustion of Administrative Remedies

First, unlike an employment discrimination case, it is not necessary to exhaust any administrative remedy to perfect a housing claim before filing suit. For employment claims, an aggrieved applicant or employee must first obtain a right-to-sue from the Department, a prerequisite to the maintenance of a civil action for damages.<sup>13</sup> In contrast, there is no administrative exhaustion requirement for civil actions for housing discrimination alleged under the FEHA. A person or organization claiming injury from a discriminatory housing practice may file a complaint with the Department, which will investigate and attempt to resolve the dispute free of charge, but at the conclusion of the investigation the Department will not issue any "right-to-sue"

letter.

Nor is there any requirement to administrative remedies under the Unruh Civil Rights Act (CAL. CIV. CODE §§ 51-51.6, 51.8-52) or Disabled Persons Act (CAL. CIV. CODE §§ 54-55.3), although the Department has jurisdiction to investigate these claims. An injured party who wishes to file a civil suit for housing discrimination under the FEHA, the Unruh Civil Rights Act or the Disabled Persons Act may proceed directly to court.

### B. Statute of Limitations

The statute of limitations for filing a housing discrimination claim under the FEHA is two years,<sup>14</sup> in contrast to a one year statute applicable to employment.<sup>15</sup> The computation of the two-year period excludes any time during which an administrative investigation or accusation is pending with the Department.<sup>16</sup> As noted earlier, a civil action may commence regardless of whether a complaint has been filed with the Department, and may run concurrently with a DFEH investigation and prosecution.<sup>17</sup> The statute of limitations for commencing a civil action for housing discrimination under the Unruh Civil Rights Act or Disabled Persons Act is one year.<sup>18</sup>

### C. Standing to Sue

Standing in housing discrimination cases is an expansive concept and it is not atypical for one case to include multiple plaintiffs and defendants. Standing is available to any individual or group that can show “injury in fact” from any discriminatory housing practice.<sup>19</sup> Whereas employment discrimination standing is limited to applicants and employees (also, in limited circumstances, independent contractors), standing for housing discrimination claims is not similarly limited to individuals applying for housing or already living in housing, but also may include groups such as fair housing organizations or testers.

In its housing provisions, the FEHA broadly defines “aggrieved person” to include “any person who claims to have been injured by a discriminatory housing practice or believes that [he or she] will be injured by a discriminatory housing practice that is about to occur.”<sup>20</sup> Consider application of this broad definition when a landlord refuses to rent an apartment to an applicant because of the race of the applicant’s spouse. Such discriminatory refusal to rent can injure the applicant, the applicant’s spouse, and any children or other adults with whom the applicant and spouse reside, regardless of age or relationship to the applicant. Even the tenants to whom the landlord rented may be injured by the landlord’s discriminatory housing practices and thus, have standing to sue.<sup>21</sup> For example, tenants who allege that because of their landlord’s discrimination against nonwhites they lost social, business, and professional benefits derived from living in an integrated community have standing to sue.<sup>22</sup> Similarly, individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers to collect evidence of unlawful housing practices (“testers”) have standing to sue.<sup>23</sup>

Standing in housing discrimination cases extends even to community-based organizations that promote fair housing. An organization that can show a drain on its resources, either from a diversion of its resources or frustration of its mission, or both, has suffered a legally cognizable injury and has direct standing to sue.<sup>24</sup> Thus, a fair housing group that diverted resources to

investigate and counteract a complaint of discrimination against a landlord and incurred frustration of mission damages for creating and disseminating literature to redress the impact of the landlord’s discrimination on the local housing market has direct standing to sue the landlord.<sup>25</sup>

Consider again the landlord who refuses to rent an apartment to an applicant because of the race of the applicant’s spouse. If, before filing a lawsuit, the applicant filed a complaint with a fair housing organization that investigated the complaint and redressed the discrimination, then the applicant, the applicant’s spouse, any children or other adults who reside with the applicant, and the fair housing organization all have standing to sue if each has suffered an injury in fact.

An organization also has standing to sue for denial of a reasonable accommodation under the FEHA’s prohibition against disability discrimination in housing. Thus, an organization operating drug and alcohol rehabilitation facilities, for example, that is denied a conditional use permit to remodel an existing building as a rehabilitation facility has standing to sue the city for denial of reasonable accommodation under the FEHA.<sup>26</sup> In the context of housing discrimination, even a fair housing organization that contracts with a city has standing to sue the city for violation of the FEHA’s prohibition against housing discrimination and retaliation.<sup>27</sup> Thus, attorneys new to the area of fair housing must think in broad terms when identifying potential plaintiffs.

### D. Who Can Be Sued?

Like the number of potential plaintiffs in a housing discrimination case, the pool of potential defendants can be large as well. Although most FEHA housing discrimination prohibitions apply to an “owner” of a housing accommodation, many also apply to “any person,” and both “owner” and “person” are broadly defined.<sup>28</sup> “Owner” includes a lessee, sublessee, assignee, managing agent, real estate broker or salesperson, and any person who possesses a legal right of ownership or right to rent or lease a housing accommodation.<sup>29</sup> “Person” includes “one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, ... receivers, ... fiduciaries,”<sup>30</sup> all individuals and entities included in the definition of “owner,” as well as institutional third parties, including the Federal Home Loan Mortgage Corporation (Freddie Mac).<sup>31</sup> By comparison, in most employment discrimination cases the defendant is typically a corporate employer or some other business-entity employer, although labor organizations and employment agencies also have liability for certain unlawful employment practices.<sup>32</sup> Individuals who do not themselves qualify as employers may not be sued in their individual capacity under the FEHA for alleged discriminatory acts,<sup>33</sup> except for instances of sexual harassment.<sup>34</sup>

Given the FEHA’s broad definition of “owner,” individual liability extends beyond acts of harassment to acts of discrimination engaged in by individuals who may have no ownership interest at all in a housing accommodation. Thus, an individual who manages an apartment complex can be liable for discrimination under the FEHA for inquiring about an applicant’s national origin, for example, or for refusing to rent an apartment because of the applicant’s race.<sup>35</sup>

Banks, mortgage companies, and other financial institutions are subject to suit if they engage in discriminatory lending practices.<sup>36</sup> Like the Act's employment provisions, the FEHA's housing provisions also apply to state and local governments which, for example, can be liable for discriminatory land use practices, such as discriminatory zoning laws and denial of use permits.<sup>37</sup>

Under the Unruh Civil Rights Act, which prohibits business establishments from discriminating in the provision of goods, services, and accommodations, a homeowners' association is a "business establishment" subject to suit for violation of the Act's prohibition against arbitrary discrimination in housing.<sup>38</sup>

#### IV. SUBSTANTIVE LAW

After becoming familiar with the basic procedural rules applicable to a housing case, the practitioner needs to know the relevant substantive law. Practitioners new to this area but familiar with employment law will find additional protected classes, a wide variety of unlawful acts, and an evolving case law that both borrows from and departs from employment precedent.

##### A. Protected Classes

Housing discrimination law covers more protected classes than employment law, including "source of income" and "familial status," as well as other forms of "arbitrary" discrimination captured under the Unruh Civil Rights Act. The FEHA prohibits housing discrimination against any person because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability.<sup>39</sup> "Familial status" means the presence of one or more minor children in the household.<sup>40</sup> The Unruh Civil Rights Act,<sup>41</sup> which covers housing as a type of "business establishment,"<sup>42</sup> expands the protected classes to include all forms of arbitrary discrimination.<sup>43</sup> Personal characteristics such as age<sup>44</sup> and occupation<sup>45</sup> have found protection under the Unruh Act.

##### B. Prohibited Acts

Prohibited acts of housing discrimination include: a refusal to sell, rent, or negotiate for housing; the provision of inferior terms, conditions, or privileges of housing; discrimination in lending; harassment; and refusal to provide reasonable accommodation for a person with a disability.<sup>46</sup> Certain types of communications about housing are also illegal: falsely representing that housing is unavailable; inquiring about a person's race or sexual orientation; or making any statement that indicates a preference, limitation, or discrimination for or against a protected group.<sup>47</sup>

##### C. Proof

Housing discrimination can be proven by intent or by adverse impact. For a case of intentional discrimination, the FEHA specifies that a violation "may be established by direct or circumstantial evidence."<sup>48</sup> In cases where direct evidence of discriminatory intent is lacking, courts apply the burden-shifting analysis borrowed from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).<sup>49</sup> To disprove disparate impact, a disputed practice must be proven "necessary to achieve an

important purpose sufficiently compelling to override [its] discriminatory effect and effectively [carry] out the purpose it is alleged to serve."<sup>50</sup>

#### D. Typical Claims

Housing discrimination is a developing area of the law, with many issues still open for interpretation. Two common types of claims are harassment and reasonable accommodation. For each of these claims, theories borrowed from employment law often fit imperfectly in the housing context, where unique issues arise.

##### 1. Sexual Harassment

Courts addressing sexual harassment in housing borrow wholesale from Title VII, finding such harassment to be discriminatory when it affects the "terms and conditions" of housing: "The harassment must be 'sufficiently severe or pervasive' to alter the conditions of the housing arrangement."<sup>51</sup> Whereas in employment the liability of an employer for sexual harassment committed by its agents and supervisors is a matter of black letter law, in a housing case, a court will likely apply traditional theories of agency liability to determine when a landlord is liable for harassment committed by a manager or other underling.<sup>52</sup> In other words, in a housing discrimination case, the question of vicarious liability involves a more fact-specific analysis. In an employment discrimination case, an employer is liable for the harassing conduct of *any* employee when it "knows or should have known" of the harassing conduct, yet "fails to take immediate and appropriate corrective action."<sup>53</sup> Whether this standard applies to housing, such as in a claim for landlord liability for tenant-against-tenant harassment, is an open question, and the answer will be influenced by the particular real property context giving rise to the claim.<sup>54</sup>

Housing plaintiffs have additional theories of recovery for sexual harassment under the FEHA and the Unruh Civil Rights Act not shared by plaintiffs in employment discrimination cases. In housing cases, the harassing conduct may take the form of a discriminatory statement of preference<sup>55</sup> or as unlawful coercion, intimidation, or threat.<sup>56</sup> Harassment that occurs in the landlord-tenant context could also be combined with a claim for breach of the implied covenant of quiet enjoyment or wrongful eviction.<sup>57</sup> The Unruh Civil Rights Act (CAL. CIV. CODE section 51.9) provides yet another theory of liability for a landlord or property manager—as a party liable for sexual harassment in a business or service relationship.

##### 2. Reasonable Accommodation

Denial of reasonable accommodation, another common type of housing claim, likewise relies on the analysis developed in the employment context,<sup>58</sup> but has developed in unique ways. Whereas employment litigation in this area focuses on whether and how an employee with a disability might remain on the job, in housing the emphasis is on whether a reasonable accommodation "may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling."<sup>59</sup> The notion is that a person with a disability might need a reasonable accommodation to enable him or her to use and enjoy housing in a way that is equal to a person without a disability. A housing pro-

vider's rules, policies, practices, or services must be bent, altered, or waived when necessary to accommodate a person with a disability.<sup>60</sup> Common areas and amenities, and services attached to the housing, are included in this notion.<sup>61</sup> Accommodations that would pose an "undue financial and administrative burden" on the housing provider, or require a "fundamental alteration in the nature of the program" are not considered reasonable (and are therefore not required).<sup>62</sup> People with disabilities are also entitled to "reasonably modify" their living space if modification "may be necessary" to realize a "full enjoyment of the premises."<sup>63</sup> Claims for denial of reasonable accommodation, reasonable modification, or denial of access to common areas of a housing complex may also be made under the "Disabled Persons Act,"<sup>64</sup> usually considered part of the group of statutes known as the "Unruh Civil Rights Act."

It is now fairly common for housing residents to request, and receive, the right to live with service or "companion" animals as a reasonable accommodation, even where a landlord or homeowners' association has a "no pet" policy.<sup>65</sup> The "innate qualities of a dog, in particular a dog's friendliness and ability to interact with humans," one California appellate court has held, "made it therapeutic" for a resident who had psychological disabilities.<sup>66</sup> An accessible parking space is another common reasonable accommodation request. Even economic adjustments, such as permitting a tenant's mother to co-sign an apartment lease when the tenant's disability resulted in a lack of financial resources to meet the landlord's qualifications, have been found to be a reasonable accommodation.<sup>67</sup>

Although not a matter of black letter law, as it is in employment, housing providers are required to engage in a timely, good faith, interactive process with the person requesting an accommodation to determine whether an accommodation that is reasonable is available.<sup>68</sup> During the interactive process, the wishes of the person with a disability should be given paramount consideration.<sup>69</sup>

California practitioners handling these types of claims should first look to the FEHA and the Unruh Civil Rights Act's clear and strong statutory guidance, bearing in mind that the FEHA is intended to be construed liberally. Lawyers should then follow the threads of California and federal fair housing case law, all the while acknowledging that the real property context giving rise to the claims could alter the outcome. Both plaintiff and defense counsel must accept that many novel questions will arise for which there are no clear answers. The intent and purpose of California's fair housing laws must guide our practice: to preserve "[t]he opportunity to seek, obtain and hold housing without discrimination."<sup>70</sup>

## V. DAMAGES

Having mastered the procedural and substantive law applicable to the case, the practitioner must now turn to the question of damages. It is helpful here to discard any preconceived notion of damages for this dignity tort<sup>71</sup> and take a fresh approach to the concept of compensable harm. Housing discrimination plaintiffs may recover the following types of damages: (1) actual damages; (2) emotional distress damages; (3) injunctive relief; (4) punitive damages; and (5) attorney fees.

### A. Actual Damages

Individual plaintiffs are usually awarded actual damages based on their out-of-pocket expenses and lost housing opportunities.<sup>72</sup> Out-of-pocket expenses may include moving, storage, or travel costs incurred when alternate housing is sought; attorney fees paid to contest an eviction; wages lost to attend a hearing, deposition or trial; and, other expenses incurred to file and pursue a discrimination complaint.<sup>73</sup>

Another form of actual damages is known as "lost housing opportunity," where the "housing denied to the complainant was safer or closer to public transportation than the housing ultimately acquired by the complainant; [was located] in a quieter neighborhood[] [or] nearer to shopping centers and better schools; provided areas where children could play; [was] closer to a relative's house;" or was newly-built.<sup>74</sup> To calculate an award for lost housing opportunity, a court will consider evidence that the housing denied and the housing ultimately acquired "are comparable in size, quality, [] [and the like] in order that the plaintiff not be compensated for a loss not suffered."<sup>75</sup> Even if the denied housing was older and not as nice as the housing eventually obtained, lost housing opportunity damages may still be awarded; as is taught in law school, real property is unique, and the court will not "second guess what complainants' opinions about the [lost housing] would have been after they were prevented from viewing it."<sup>76</sup>

Organizational plaintiffs also may be owed actual damages to the extent that the discriminatory practice diverted their resources and frustrated their mission.<sup>77</sup> Diversion of resources damages may be awarded where a defendant's discrimination:

perceptibly impaired [a fair housing organization's] ability to provide counseling and referral services for low- and moderate-income homeseekers. [] Such concrete and demonstrable injury to the organization's activities - with the consequent drain on the organization's resources - constitutes far more than simply a setback to the organization's abstract social interests.<sup>78</sup>

Organizational plaintiffs must show "concrete drains on their time and resources" in order to be eligible under a diversion of resources theory.<sup>79</sup> In other words, an organizational plaintiff must prove that instead of spending its resources on its ordinary work, it spent its resources on other work created by the defendant's discriminatory conduct.<sup>80</sup> "To determine a value for the diversion of resources caused by [] [a particular] claim, the court may consider [] [an organization's] records of time and overhead costs attributable to pursuing such claim."<sup>81</sup> Evidence of such damage includes records of time the fair housing organization spent "investigating and attempting to resolve the violations which form the basis of the [] [discrimination complaint]," and "the hourly rate [] [for] such time, based on the [] [salary, fringe benefits, [and] a portion of office overhead" attributed to the employee who investigated the claim.<sup>82</sup>

Another category of actual damages applicable to organizational plaintiffs is known as "frustration of mission" damages,<sup>83</sup> which requires a showing that the organization will have to spend resources to counteract the harm caused to the organization's mission.<sup>84</sup> This type of damage award may include "design, printing, and dissemination of literature aimed at redressing the

impact [the defendant's] discrimination had on the [ ] housing market"<sup>85</sup> and increased educational and counseling programs "to rebut any public impression [unlawful] advertisements might generate [communicating] that [ ] discrimination in housing is permissible."<sup>86</sup>

**B. Damages for Intangible Loss: Humiliation, Embarrassment, and Emotional Distress**

The FEHA authorizes courts to award emotional distress damages as "actual damages" caused by housing discrimination."<sup>87</sup> "Actual damages are 'compensatory damages [that] include non-quantifiable general damages for emotional distress and pecuniarily measurable special damages for out-of-pocket losses."<sup>88</sup>

The FEHA does not provide courts with factors to consider in determining the amount of emotional distress damage to award a housing discrimination plaintiff.<sup>89</sup> However, in evaluating emotional distress claims, practitioners should keep in mind that courts may borrow principles used in employment discrimination cases by considering evidence of an aggrieved party's nightmares, stress level, health, family relationships, sleeping habits, eating habits, and personality changes.<sup>90</sup> Courts and juries may also refer to the factors enumerated in the FEHA:

1. Physical and mental well being;
2. Personal integrity, dignity, and privacy;
3. Ability to work, earn a living, and advance in his or her career;
4. Personal and professional reputation;
5. Family relationships; or
6. Access to the job and ability to associate with peers and coworkers.<sup>91</sup>

Finally, practitioners should keep in mind that "there is no fixed or absolute standard by which to compute the monetary value of emotional distress, and the jury must necessarily be left to the exercise of a wide discretion, to be restricted by the appellate court only when the sum awarded is so large that the verdict shocks the moral sense and raises a presumption that it must have resulted from passion or prejudice."<sup>92</sup>

**C. Unruh Statutory Damages**

Housing discrimination plaintiffs may allege violations of the FEHA and the Unruh Civil Rights Act.<sup>93</sup> In contrast, employment discrimination plaintiffs may not allege Unruh Civil Rights Act violations.<sup>94</sup> Under the Unruh Act, a plaintiff may be awarded "up to a maximum of three times the amount

of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney's fees that may be determined by the court in addition thereto."<sup>95</sup> A complainant pursuing an administrative remedy through the FEHC must choose between recovering Unruh Civil Rights Act statutory damages or FEHA damages.<sup>96</sup>

**D. Injunctive Relief**

Plaintiffs in a fair housing case may also seek injunctive relief, including "the issuance of a temporary or permanent injunction, or temporary restraining order, or other order, as it deems appropriate to prevent any defendant from engaging in or continuing to engage in an unlawful practice."<sup>97</sup> Such remedies may include, for example, an order that the defendant cease and desist from engaging in the unlawful conduct;<sup>98</sup> develop, implement, and post policies consistent with the FEHA;<sup>99</sup> or provide and attend discrimination prevention training at the defendant's own expense.<sup>100</sup>

**E. Punitive Damages**

Courts also may award punitive damages,<sup>101</sup> for which there is no cap under the FEHA.<sup>102</sup> To obtain an award, a plaintiff must prove, by clear and convincing evidence, that the "defendant has been guilty of oppression, fraud, or malice."<sup>103</sup>

While the FEHA does not provide courts factors to consider in determining the amount of punitive damages to award, practitioners may find instructive the guidelines the FEHC follows in determining civil penalties. The FEHC determines the amount of civil penalties to award by evaluating evidence of the following:

1. Willful, intentional, or purposeful conduct;
2. Refusal to prevent or eliminate discrimination;
3. Conscious disregard for fair housing rights;
4. Commission of unlawful conduct;
5. Intimidation or harassment;
6. Conduct without just cause or excuse; or
7. Multiple violations of the Fair Employment and Housing Act.<sup>104</sup>

**E. Attorneys' Fees**

Reasonable attorneys' fees and costs also are available to the prevailing party in housing discrimination cases.<sup>105</sup> However, when a case involves a public agency, fees and costs may not be awarded to or against any state agency.<sup>106</sup>

**REMEDIES COMPARISON**

	FEHC		Court	
	Employment	Housing	Employment	Housing
<b>Actual Damages</b>	CAL. GOV'T CODE § 12970(a)(3).	CAL. GOV'T CODE § 12987(a)(4).  For fair housing organizations: <i>Havens Realty Corp. v. Coleman</i> , 455 U.S. 363 (1982).	CAL. GOV'T CODE § 12965(c)(3).	CAL. GOV'T CODE § 12989.2(a).  For fair housing organizations: <i>Havens Realty Corp. v. Coleman</i> , 455 U.S. 363 (1982).

<p><b>Emotional Distress Damages</b></p>	<p>CAL. GOV'T CODE § 12970, subd. (a)(3). - Statutory cap on non pecuniary losses in employment cases heard by the FEHC of \$150,000.</p>	<p>CAL. GOV'T CODE § 12987. - No statutory cap on damages.</p>	<p>CAL. GOV'T CODE § 12965(c)(3). - No statutory cap on damages.</p>	<p>CAL. GOV'T CODE § 12989.2(a). - No statutory cap on damages.</p>
<p><b>Injunctive Relief</b></p>	<p>CAL. GOV'T CODE § 12970(a)(5). - Called Affirmative Relief  CAL. GOV'T CODE § 12970(f). - Commission can give order to <i>state</i> licensing agency if unlawful practice occurred in connection with exercise of <i>state</i> license/privilege</p>	<p>CAL. GOV'T CODE § 12987(a)(2). - Called Affirmative Relief  CAL. GOV'T CODE § 12987(c). - Commission can give order to <i>state or federal</i> licensing agency if unlawful practice occurred in connection with exercise of <i>state or federal</i> license/privilege</p>	<p>CAL. GOV'T CODE § 12965(c)(3).</p>	<p>CAL. GOV'T CODE § 12989.2(a).</p>
<p><b>Punitive Damages</b></p>	<p>Called Administrative Fines - Must meet CAL. CIV. CODE § 3294 - In combination with emotional distress, up to \$150,000, per aggrieved person per respondent (CAL. GOV'T CODE § 12970(a)(3) and (5).) - Payable to the General Fund - None assessed against public entity (CAL. GOV'T CODE § 12970(d).)</p>	<p>Called Civil Penalty - Must meet CAL. CIV. CODE § 3294 (CAL. GOV'T CODE § 12987(b).) - Not to exceed \$10,000 for first violation; not to exceed \$25,000 for second violation in five years; not to exceed \$50,000 for two or more violations in seven years (CAL. GOV'T CODE § 12987, subd. (a)(3).) - Payable to complainant</p>	<p>CAL. GOV'T CODE § 12965(c)(3). "A court may grant as relief in any action filed pursuant to this subdivision any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purposes of this part."</p>	<p>CAL. GOV'T CODE § 12989.2(a). "[T]he court may award the plaintiff or complainant . . . punitive damages. . . ."</p>
<p><b>Attorney's Fees</b></p>		<p>CAL. GOV'T CODE 12987(a)(3). "The commission may award the prevailing party, other than the state, reasonable attorney's fees and costs against any party other than the state."</p>	<p>CAL. GOV'T CODE § 12965(b). "[T]he court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs. . . except where the action is filed by a public agency or a public official, acting in an official capacity."</p>	<p>CAL. GOV'T CODE § 12989.2(a). "The court may, at its discretion, award the prevailing party, other than the state, reasonable attorney fees and costs . . . against any party other than the state."</p>
<p><b>Waiver of Unruh Damages</b></p>		<p>CAL. GOV'T CODE § 12987, subd. (e). Injured party must make written election to receive either FEHA damages or Unruh statutory damages; cannot recover both.</p>		<p>CAL. GOV'T CODE § 12987, subd. (e). Injured party must make written election to receive either FEHA damages or Unruh statutory damages; cannot recover both.</p>

## VI. CONCLUSION

Congratulations! You have now completed your course on the basic anatomy of a fair housing case. Housing discrimination persists in California as a pernicious social problem that has a widespread impact on the cultural and economic opportunities of persons who are denied the right to live where and how they choose. We hope that we have provided you with the foundation upon which you can begin, or expand, your work in this engaging area of the law.



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## ENDNOTES

- 1 Based on internal record-keeping of the Department.
- 2 42 U.S.C.A. §§ 2000(c)(2) et seq.
- 3 42 U.S.C.A. §§ 3601 et seq.
- 4 The voter initiative "Proposition 14" stated that: "Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses." *Mulkey v. Reitman*, 64 Cal. 2d 529, 533 (1966).
- 5 *Id.*; *Reitman v. Mulkey*, 387 U.S. 369 (1967).
- 6 42 U.S.C. § 3604.
- 7 CAL. GOV'T CODE §§ 12955-12956.2, 12980-12989.3, as amended by 1993 Cal. Stat. ch. 1277 (A.B. 2244, 1993-1994 Reg. Sess.). The definitive article describing the process of bringing California law into substantial equivalency is Jim Morales' *California Enacts Nation's Strongest Fair Housing Law*, 12 CALIFORNIA REAL PROPERTY JOURNAL (Summer 1994).
- 8 *Gamble v. City of Escondido*, 104 F.3d 300, 304 (9th Cir. 1997) ("We apply Title VII discrimination analysis in examining Fair Housing Act ("FHA") discrimination claims."); see *Honce v. Vigil*, 1 F.3d 1085, 1088 (10th Cir. 1993).
- 9 *Brown v. Smith*, 55 Cal. App. 4th 767, 782 (1997) (noting that basic principles of sexual harassment in employment cases are applicable in the housing context); *Auburn Woods I Homeowners Ass'n v. Fair Employment and Hous. Comm'n*, 121 Cal. App. 4th 1578, 1591 (2004) ("[P]rinciples at issue in cases of employment discrimination are often applied in housing discrimination cases.").
- 10 CAL. GOV'T CODE § 12955.6; see *Brown v. Smith*, 55 Cal. App. 4th 767, at 780 ("FEHA in the housing area is thus intended to conform to the general requirements of federal law in the area and may provide greater protection against discrimination."). Thus, under the federal scheme of enforcement of the Fair Housing Act, if a state or local law is "substantially equivalent," then HUD will waive the processing of fair housing complaints to the state or locality.
- 11 CAL. GOV'T CODE § 12993(a) (The provisions of this part shall be construed liberally for the accomplishment of the purposes of this part. ); see also CAL. GOV'T CODE § 12921(b): (The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, disability, or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right. ).
- 12 CAL. CODE REGS., tit. 2, § 7285.1(b).
- 13 *Morgan v. Regents of Univ. of Cal.*, 88 Cal. App. 4th 52, 63 (2000). To obtain a right-to-sue, an aggrieved employee or applicant for employment must file a complaint with the DFEH within one year after the date an alleged discriminatory employment act occurs. CAL. GOV'T CODE § 12960(d). When an employee or applicant for employment files a complaint for investigation with the DFEH, the DFEH will issue a right-to-sue notice when the case closes or one year after the complaint was filed, whichever occurs first. An employee or applicant for employment may forgo an investigation and file a complaint for the sole purpose of obtaining an immediate right-to-sue. Counsel for employment discrimination complainants may obtain an immediate right-to-sue notice for their clients online at [www.dfeh.ca.gov](http://www.dfeh.ca.gov). See *Commodore Home Sys., Inc. v. Super. Ct. (Brown)*, 32 Cal. 3d 211, 214 (1982) (holding that failure to exhaust administrative remedy is a jurisdictional defect); See also *Okoli v. Lockheed Technical Operations Co.* 36 Cal. App. 4th 1607, 1613 (1995) (explaining that FEHA's exhaustion requirement requires filing written charge with DFEH within one year of alleged unlawful employment discrimination and obtaining notice from DFEH of right to sue).

- 14 CAL. GOV'T. CODE § 12989.1.
- 15 *Id.* § 12965(b).
- 16 *Id.*
- 17 However, the commencement of an administrative hearing by the Department on a claim of discrimination will bar an aggrieved person from initiating a civil suit regarding that same discriminatory practice. *Id.*
- 18 *Mitchell v. Sung*, 816 F.Supp. 597 (N.D. Cal. 1993).
- 19 *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209-210 (1972).
- 20 CAL. GOV'T. CODE §12927(g).
- 21 *Trafficante, supra*, 409 U.S. at 209-210.
- 22 *Id.*
- 23 *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).
- 24 *Fair Hous. of Marin v. Combs*, 285 F.3d 899 (9th Cir. 2002).
- 25 *Id.* at 905. *See also Urban Habitat Program v. City of Pleasanton*, 164 Cal. App. 4th 1561 (2008), *review denied*, (nonprofit housing corporation had standing under the FEHA to bring a claim for housing discrimination against city based on city's low-income housing-related regulations that caused a drain on corporation's resources from both a diversion of its resources and frustration of its mission).
- 26 *Behavioral Health Services, Inc. v. City of Gardena*, WL 21750852 (C.D. Cal. 2003) (holding that city violated accommodation requirements of FEHA when it denied organization providing drug and alcohol rehabilitation conditional use permit allowing remodeling of abandoned hospital for use as facility).
- 27 *Walker v. City of Lakewood*, 272 F.3d 1114 (9th Cir. 2001), *cert. denied*, 535 U.S. 1017 (2001) (independent fair housing services provider that had contract with city had standing to sue city for retaliation under the FEHA based on allegations that city delayed payments due under contract, attempted to interfere with the investigation of fair housing complaints, and failed to renew contract).
- 28 *See generally* CAL. GOV'T. CODE § 12955.
- 29 *Id.* § 12927(e).
- 30 42 U.S.C. § 36029(d).
- 31 CAL. GOV'T. CODE § 12927(f).
- 32 *See id.* §12940(g), pursuant to which it is an unlawful employment practice "[f]or an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment[]because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract."
- 33 *Reno v. Baird*, 18 Cal. 4th 640, 957 (1998); *see also Rohm v. Homer*, 367 F.Supp.2d 1278 (N.D. Cal. 2005) (holding that managerial or supervisory personnel cannot be individually or personally liable to an employee under the FEHA, even under an aiding and abetting theory, for alleged acts of employment discrimination).
- 34 CAL. GOV'T. CODE § 12940(j)(3).
- 35 *Id.* §§ 12927(e) & 12955(b).
- 36 *Id.* § 12955(e).
- 37 *Id.* §§ 12927(e) & 12955(l).
- 38 *O'Connor v. Village Green Owners Ass'n*, 33 Cal. 3d 790 (1983).
- 39 CAL. GOV'T. CODE § 12955.
- 40 *Id.* § 12955.2 (requiring that adult resident be a parent or have "care and legal custody" of child, and also covers individual who is pregnant).
- 41 CAL. CIV. CODE § 51, incorporated into the FEHA by CAL. GOV'T CODE § 12955(d); practitioners generally refer to CAL. CIV. CODE §§ 51-51.6 and 51.8-52, inclusive, as "The Unruh Act."
- 42 *Marina Point, Ltd. v. Wolfson*, 30 Cal. 3d 721, 731-732 (1982).
- 43 *In re Cox*, 3 Cal. 3d 205 (1970); *see also Harris v. Capital Growth Investors DIV*, 52 Cal. 3d 1142 (1991).
- 44 CAL. CIV. CODE § 51.2. "Senior housing" is exempt from this prohibition against age discrimination, however it is a complex exemption that is beyond the scope of this article.
- 45 *Sisemore v. Master Financial, Inc.*, 151 Cal. App. 4th 1386, 1405 (2007).
- 46 CAL. GOV'T. CODE §§ 12955 & 12927(c)(1).
- 47 *Id.* §§ 12955(b), 12955(c), & 12927(c)(1).
- 48 *Id.* § 12955.8(a).
- 49 *Dept of Fair Employment and Hous. v. Super. Ct.*, 99 Cal. App. 4th 896, 902 (2002), *citing Gamble v. City of Escondido*, 104 F.3d 300, 304-305 (9th Cir. 1997).
- 50 CAL. GOV'T. CODE §12955.8(b); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1238, 1289-90 (7th Cir. 1977) (adopting disparate impact analysis of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) for housing cases arising under Title VIII); *Keith v. Volpe*, 858 F.2d 467 (9th Cir. 1988); *Sisemore v. Master Financial, Inc.*, 151 Cal. App. 4th 1386, 1417-1423 (2007) (discussing legislative history of CAL. GOV'T. CODE §12955.8(b) as well as federal case law and substantial equivalency); *Dept of Fair Employment & Hous. v. Merrbrook Apartment* (1988) No. 88-19, FEHC Precedential Decs. 1988-1989, CEB 7, at 1.
- 51 *Brown v. Smith*, 55 Cal. App. 4th 767, 782 (1997), *citing Honce v. Vigil*, 1 F.3d 1085, 1089 (10th Cir. 1993). HUD has proposed, but not adopted, a regulation on both quid pro quo and hostile environment sexual harassment (*see* 65 Fed. Reg. 67668 (Nov. 13, 2000)).
- 52 *Meyer v. Holley*, 537 U.S. 280, 290-291 (2003); *see also Glover v. Jones*, 522 F.Supp.2d 496, 506-07 (W.D. N.Y. 2007).
- 53 CAL. GOV'T. CODE § 12940(j)(1).
- 54 *See* 65 Fed. Reg. 67668 (Nov. 13, 2000) ("A person shall be responsible for acts of sexual harassment by third parties, where he or she, or his or her agent, knew or should have known of the conduct and failed to take immediate and appropriate corrective action, *and had a duty to do so* []. The duty to take corrective action may be established by leases, contracts, condominium by-laws and local ordinances. Examples of third parties include tenants and independent contractors.")

- (citations omitted) (emphasis added). *See also Reeves v. Carrollsburg Condominium Owners Ass'n*, U.S. Dist., LEXIS 21762, \*23 (D. D.C. 1997) (upholding claim against condominium association for resident-on-resident harassment).
- 55 CAL. GOV'T. CODE §12955(c).
- 56 CAL. GOV'T. CODE §12955.7.
- 57 *But see Beliveau v. Caras*, 873 F.Supp. 1393 (C.D. Cal. 1995) (holding claim for breach of covenant of quiet enjoyment not available where tenant sexually harassed by apartment resident manager unless tenant moves out).
- 58 In interpreting reasonable accommodation issues, “[c]ourts often look to cases construing the FHA, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 when interpreting FEHA.” *Auburn Woods I Homeowners Ass'n. v. Fair Employment and Hous. Comm'n*, 121 Cal. App. 4th 1578, 1591 (2004).
- 59 CAL. GOV'T. CODE §12927(c)(1).
- 60 CAL. GOV'T. CODE §12927(c)(1).
- 61 Services such as an accessible parking space must be available as a reasonable accommodation. *See Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2d Cir. 1995). Common areas must be made accessible either via modification or accommodation. *See United Veterans Mutual Hous. No. 2 Corp. v. N. Y. City Comm'n on Human Rights*, Fair Housing-Fair Lending Rep. P-H ¶ 18, 155 (N.Y. App. (2nd Dep t) 1994) (accommodation); *Lindsey v. Nob Hill P'ship*, Fair Housing-Fair Lending Rep. P-H ¶ 18,166 (Wisc. Ct. App. (Dist. 4) 1995) (modification).
- 62 *Southeastern Cmty. College v. Davis*, 442 U.S. 397, 410, 412 (1979).
- 63 CAL. GOV'T. CODE § 12927(c)(1). (“[I]n the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter’s agreeing to restore the interior of the premises to the condition that existed before the modification (other than for reasonable wear and tear.)”)
- 64 CAL. CIV. CODE §§ 54 - 51.6, 51.8-52. Housing accommodations are specifically addressed in CAL. CIV. CODE § 54.1(b).
- 65 Although the Disabled Persons Act, CAL. CIV. CODE §§ 54.1(b)(5) and 54.1(b)(6), appears to limit the right of reasonable accommodation to guide dogs, signal dogs, or service dogs, the rights provided by the FEHA, CAL. GOV'T. CODE §§ 12955(a) and 12927(c)(1), are broader, and include protection for “companion animals.” *See Auburn Woods I Homeowners Ass'n. v. Fair Employment and Hous. Comm'n*, 121 Cal. App. 4th 1578, 1596 (2004).
- 66 *Auburn Woods*, 121 Cal. App. 4th 1578, at 1596.
- 67 *Giebelier v. M & B Associates*, 343 F.3d 1143, 1146-1147 (9th Cir. 2003).
- 68 *Auburn Woods*, 121 Cal. App. 4th 1578, 1598; *see* Joint Statement of the Dep't of Hous. and Urban Dev. and the Dep't of Justice: Reasonable Accommodations under the Fair Housing Act, <http://www.usdoj.gov/crt/>

- housing/jointstatement\_ra.php; compare CAL. GOV'T. CODE §12940(n) (failure to engage in the interactive process constitutes an independent cause of action in the employment context).
- 69 “There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual’s disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if [the individual] believes it will not meet her needs and her preferred accommodation is reasonable.” (Joint Statement of the Dep't of Hous. and Urban Dev. and the Dep't of Justice: Reasonable Accommodations under the Fair Housing Act, response to Question #7.) In contrast, in the employment context, the employer has the choice among reasonable accommodations. (*Hansen v. Lucky Stores, Inc.*, 74 Cal. App. 4th 215, 228 (1999) (“The employer is not obligated to choose the best accommodation or the accommodation the employee seeks. Rather, ...the employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide.”) (citations omitted).)
- 70 *Id.*
- 71 *Meyer*, 537 U.S. at 285.
- 72 *See* CAL. GOV'T. CODE § 12987(a)(4) (authorizing award of actual damages before the FEHC); CAL. GOV'T. CODE § 12989.2(a) (authorizing award of actual damages before the court); *see also Banai v. Sec'y, US Dep't of Hous. and Urban Dev.*, 102 F.3d 1203 (11th Cir. 1997); *Morgan v. Sec'y of Hous. and Urban Dev.* 985 F.2d 1451 (10th Cir. 1993); *Phillips v. Hunter Trails Cmty. Ass'n*, 685 F.2d 184 (7th Cir. 1982).
- 73 *See Phillips v. Hunter Trails Cmty. Ass'n*, 685 F.2d 184, 190; *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977); *DFEH v. O'Neill* (Sept. 16, 2008) No. 08-08, FEHC Precedential Decs. (2008 WL 5869851), p. 11; *DFEH v. Fulkerson* (Sep. 18, 2007) No. 07-05, FEHC Precedential Decs. (2007 WL 5172405), p. 13; *DFEH v. Light* (Aug. 2, 1995) No. 95-04, FEHC Precedential Decs. (1995 WL 908701); *DFEH v. Kokado* (Aug. 2, 1995) No. 95-05, FEHC Precedential Decs. (1995 WL 908702), p. 8; *DFEH v. Davis Realty Co., Inc.* (Jan. 23, 1987) No. 87-02, FEHC Precedential Decs. (1987 WL 114850), pp. 16-17; *see also Auburn Woods I Homeowners Assn. v. Fair Employment and Hous. Comm'n*, 121 Cal. App. 4th 1578, 1591 (2004) (“In reviewing a decision of the [Fair Employment and Housing Commission], we acknowledge that the Commission’s interpretation of FEHA ‘is entitled to great respect.’”).

- 74 *DFEH v. Jevremov* (Feb. 5, 1997) No. 97-02, FEHC Precedential Decs. (1997 WL 253179) (internal citations omitted), p. 8.
- 75 *DFEH v. Neugebauer* (Apr. 30, 1980) No. 80-14, FEHC Precedential Decs. (1980 WL 20887), p. 4; *but see Morgan v. Sec’y of Hous. and Urban Dev.*, 985 F.2d 1451, 1458 (10th Cir. 1993).
- 76 *DFEH v. Davis Realty Co., Inc.* (Jan. 23, 1987) No. 87-02, FEHC Precedential Decs. (1987 WL 114850), pp. 16-17.
- 77 *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *Urban Habitat Program v. City of Pleasanton*, 164 Cal. App. 4th 1561, 1581 (2008); *Sisemore v. Master Financial, Inc.*, 151 Cal. App. 4th 1386, 1426 (2007); *DFEH v. Green* (June 12, 1986) No. 86-07, FEHC Precedential Decs. (1986 WL 74378), p. 5.
- 78 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).
- 79 *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 29 (D.C. Cir. 1990); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379, n. 21.
- 80 *See Havens Realty Corp. v. Coleman, supra*, 455 U.S. at 379; *Fair Hous. of Marin County v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002); *Saunders v. General Servs. Corp.*, 659 F.Supp. 1042, 1059-61 (E.D. Va. 1987); *Sisemore v. Master Financial, Inc.*, 151 Cal. App. 4th 1386, 1426; *DFEH v. Green* (June 12, 1986) No. 86-07, FEHC Precedential Decs. (1986 WL 74378), p. 5.
- 81 *Saunders v. General Servs. Corp., supra*, 659 F.Supp. at 1060.
- 82 *Id.*
- 83 In non-precedential FEHC cases, which cannot be cited before the FEHC or the courts, the costs of future training have not been awarded to fair housing organizations because those found to have violated the FEHA are not required to use the complainant fair housing organization as their trainer. *See DFEH v. Gonzalez* (Feb. 26, 2008) No. 08-02, FEHC Precedential Decs. (2008 WL 895839); *DFEH v. Prunty’s New Beginnings, Inc.* (June 6, 2006) No. 06-07, FEHC Precedential Decs. (2006 WL 2239661).
- 84 *See Havens Realty Corp. v. Coleman*, 455 U.S. at 379; *Saunders v. General Servs. Corp.*, 659 F.Supp. at 1059-61.
- 85 *Fair Hous. of Marin County v. Combs*, 285 F.3d at 905-06.
- 86 *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 28-29 (D.C. Cir. 1990).
- 87 *See* CAL. GOV’T. CODE § 12989(a).
- 88 *Konig v. Fair Employment and Hous. Comm’n*, 28 Cal. 4th 743, 748 (2002).
- 89 *Compare* CAL. GOV’T. CODE § 12970(b) (employment) with CAL. GOV’T. CODE § 12989.2(a) (housing).
- 90 *See, e.g., Iwekaogwu v. City of Los Angeles*, 75 Cal. App. 4th 803, 812, 821 (1999); *see also Auburn Woods I Homeowners Ass’n v. Fair Employment and Hous. Comm’n*, 121 Cal. App. 4th 1578, 1591 (2004) (“principles at issue in cases of employment discrimination are often applied in housing discrimination cases”); CAL. GOV’T. CODE § 12980(c) (the FEHA’s housing provisions incorporate the FEHA’s employment provisions except where the housing provisions provide greater rights and remedies to an aggrieved person).
- 91 CAL. GOV’T. CODE §§ 12970(b) & 12980(c); *see also DFEH v. Fulkerson* (Sep. 18, 2007) No. 07-05, FEHC Precedential Decs. (2007 WL 5172405), p. 13 (adopting FEHA’s employment provisions) & CAL. GOV’T. CODE § 12970 (regarding emotional distress to determine the amount of emotional distress damage awarded to a housing discrimination complainant).
- 92 *Fletcher v. Western National Life Ins. Co.*, 10 Cal. App. 3d 376, 409 (1970).
- 93 *See Rojo v. Kliger*, 52 Cal. 3d 65, 77-78 (1990); CAL. GOV’T. CODE §§ 12948 & 12955(d).
- 94 *See Alcorn v. Ambro Engineering, Inc.*, 2 Cal. 3d 493, 500 (1970).
- 95 CAL. CIV. CODE § 52(a).
- 96 *See* CAL. GOV’T. CODE § 12987(e).
- 97 *Id.* § 12989.2(a).
- 98 *See, e.g., Id.* § 12987(a).
- 99 *See, e.g., DFEH v. O’Neill* (Sept. 16, 2008) No. 08-08, FEHC Precedential Decs. (2008 WL 5869851).
- 100 *Id.*; *see also, DFEH v. Fulkerson* (Sep. 18, 2007) No. 07-05, FEHC Precedential Decs. (2007 WL 5172405).
- 101 *See* CAL. GOV’T. CODE § 12989.2(a).
- 102 *Compare* CAL. GOV’T. CODE § 12989.2(a) (authorizing courts to award punitive damages with no mention of any caps) with CAL. GOV’T. CODE § 12987(a) (3) (capping the FEHC’s punitive damage awards at \$10,000 for first time violators, \$25,000 for two separate violations within a five year period, and \$50,000 for two or more separate violations within a seven year period).
- 103 CAL. CIV. CODE § 3294(a).
- 104 CAL. GOV’T. CODE § 12987(b).
- 105 *See id.* § 12989.2.
- 106 *See id.*

## CRPJ MCLE Test No. 18 (Vol. 27, No. 4)

# Anatomy of A Fair Housing Case: A Primer on Litigating a Housing Discrimination Claim

### 1 Hour MCLE Credit How To Earn MCLE Credit

After reading the article *Anatomy of A Fair Housing Case: A Primer on Litigating a Housing Discrimination Claim* complete the following test to receive 1.00 hour of MCLE credit. Please mark all answers on the sheet provided. The Real Property Law Section of the State Bar of California certifies that this activity is approved for and will earn 1 hour of MCLE credit.

1. *True/False* Before initiating a civil suit for housing discrimination, plaintiff must obtain a right-to-sue letter from HUD or the California Department of Fair Employment and Housing.
2. *True/False* In some areas, California's fair housing law provides more rights to applicants and residents when compared with federal law, and in some areas in provides fewer rights.
3. *True/False* The statute of limitations for bringing an Unruh claim for housing discrimination is one year.
4. *True/False* The statute of limitations for bringing a FEHA claim for housing discrimination is one year.
5. *True/False* A plaintiff alleging housing discrimination need not be a member of a protected class to state a claim.
6. *True/False* The FEHA makes it illegal not only to deny an apartment to a prospective tenant because of his or her membership in a protected group, but also to make any statement that indicates any preference for or against a protected group.
7. *True/False* Housing is a type of "business establishment" covered by the Unruh Civil Rights Act, Cal. Civ. Code §51.
8. *True/False* Where plaintiff has direct evidence of a housing provider's intent to discriminate, courts will apply the burden-shifting analysis developed for employment discrimination cases in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
9. *True/False* If a housing discrimination plaintiff presents a prima facie case that a facially neutral policy has a disparate impact on a protected group, the burden shifts to the housing provider to prove that the policy is necessary to achieve an important purpose sufficiently compelling to override its discriminatory effect, and to effectively carry out the purpose it is alleged to serve.
10. *True/False* The question of whether the owner of housing will be held liable for sexual harassment committed by a managing agent will depend on the housing context in which the complaint arises.
11. *True/False* A housing provider has a duty to grant a reasonable accommodation when a plaintiff shows that he or she would be unable to live in the housing without an accommodation.
12. *True/False* A housing provider's duty to provide reasonable accommodation does not extend to the common areas of a housing complex.
13. *True/False* The duty to provide a reasonable accommodation for a pet is limited to guide dogs, signal dogs, or service dogs.
14. *True/False* A landlord may be required to change its rental procedures, for example by permitting another person to co-sign for an apartment, to accommodate a person with a disability.
15. *True/False* The FEHA provides for an independent cause of action for failure to engage in a timely, good faith, interactive process in housing accommodations.
16. *True/False* A landlord may make permission to modify housing to make it more accessible for a physical disability upon an agreement by the tenant to restore the interior of the premises to the condition that existed before the modification, other than for reasonable wear and tear.
17. *True/False* Housing discrimination plaintiffs may recover money damages for "lost housing opportunity," based on a comparison between the housing they were denied and the housing they ended up living in.
18. *True/False* A community-based fair housing organization can recover damages for the educational efforts it undertakes after housing discrimination has occurred.
19. *True/False* Like a lodestar calculation of attorney's fees, fair housing councils can recover "diversion of resources" damages for staff time multiplied by a reasonable hourly rate, including overhead.
20. *True/False* Under the Unruh Civil Rights Act, a prevailing plaintiff can recover three times the amount of actual damages or, at a minimum, \$4,000.

## ***MCLE Test Instructions -- Test No. 18 (Vol. 27, No. 4)***

This MCLE test is a free benefit for members of the Real Property Law Section of the State Bar of California. In order to receive credit, you must submit this original Answer Sheet from the *California Real Property Journal*. Photocopies of the test and answers are not permitted.

Please read and study the MCLE article in this issue of the *California Real Property Journal*. Then answer the questions by marking "true" or "false" next to the appropriate number on the answer sheet below. There is only one correct answer to each question.

After you finish the test, mail the original completed Answer Sheet to:

Real Property Law Section  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

You may wish to retain a copy of the test for your records. Within approximately eight weeks, the Real Property Law Section will return your answers via email. This MCLE Test is valid for one year from the date of publication; Issue 1—March 31; Issue 2—June 30; Issue 3—September 30; Issue 4—December 31.

### **ANSWER SHEET TO CRPJ MCLE TEST NO. 18**

1.    \_\_\_\_\_ True        \_\_\_\_\_ False
2.    \_\_\_\_\_ True        \_\_\_\_\_ False
3.    \_\_\_\_\_ True        \_\_\_\_\_ False
4.    \_\_\_\_\_ True        \_\_\_\_\_ False
5.    \_\_\_\_\_ True        \_\_\_\_\_ False
6.    \_\_\_\_\_ True        \_\_\_\_\_ False
7.    \_\_\_\_\_ True        \_\_\_\_\_ False
8.    \_\_\_\_\_ True        \_\_\_\_\_ False
9.    \_\_\_\_\_ True        \_\_\_\_\_ False
10.    \_\_\_\_\_ True        \_\_\_\_\_ False
11.    \_\_\_\_\_ True        \_\_\_\_\_ False
12.    \_\_\_\_\_ True        \_\_\_\_\_ False
13.    \_\_\_\_\_ True        \_\_\_\_\_ False
14.    \_\_\_\_\_ True        \_\_\_\_\_ False
15.    \_\_\_\_\_ True        \_\_\_\_\_ False
16.    \_\_\_\_\_ True        \_\_\_\_\_ False
17.    \_\_\_\_\_ True        \_\_\_\_\_ False
18.    \_\_\_\_\_ True        \_\_\_\_\_ False
19.    \_\_\_\_\_ True        \_\_\_\_\_ False
20.    \_\_\_\_\_ True        \_\_\_\_\_ False

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City: \_\_\_\_\_ State \_\_\_\_\_ Zip: \_\_\_\_\_

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