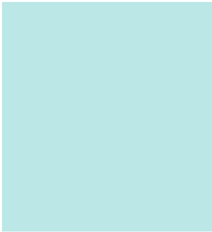
Guide to Renting and Managing Property: The Fair Housing Way



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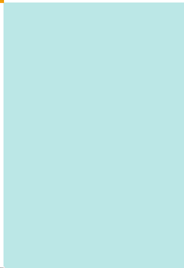

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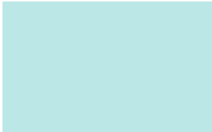

Tenants

Written and published by:
Housing Equality Project of Silicon Valley

The Housing Equality Project is a collaboration between Project Sentinel and the Law Foundation of Silicon Valley

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Introduction

The Housing Equality Project, a partnership between nonprofits Project Sentinel, Inc. and the Law Foundation of Silicon Valley, is pleased to present this **Guide to Renting and Managing Property the Fair Housing Way.**

Who should use this Guide? This book is designed specifically to help people who own and/or manage only one or a few rental properties. We know small-scale owners and managers may not have professional management companies to help them or the resources to retain a lawyer. It may be harder to access easy-to-understand information about fair housing (discrimination) laws. The goal of this handbook is to give basic advice on how to comply with fair housing laws. Real questions about fair housing often posed by small housing providers provide the basis of the following questions and answers.

We designed this Guide for small-scale property owners and managers. We therefore do not discuss how the law applies to properties that receive federal funding, properties that accept rents that are federally subsidized, or properties that operate under specific state licensing requirements. If your property receives any form of federal funding or rent subsidies, please note fair housing laws may be different for you and additional laws may apply. Be sure to ask for help from the U.S. Department of Housing and Urban Development or an attorney if you have questions about housing discrimination at a subsidized property.

If you rent to Section 8 Housing Choice Vouchers, however, the laws discussed in this Guide *do* apply.

How should you use this handbook? This Guide is not a substitute for a lawyer's evaluation of any specific fair housing problem. We do not intended to provide legal advice to specific fair housing issues you may face. The examples given are merely illustrations to help you understand how the law works, and may or may not be the way the law would apply to your specific situation. We hope you will gain a better understanding of fair housing laws, be better able to recognize fair housing issues, and know when and where to get help.

What is fair housing? Fair housing laws make it illegal to discriminate against someone in connection with the rental or sale of housing, including applicants, tenants, and homebuyers, based on their membership in a protected class.

Why should you care about fair housing? First, renting and managing your property the "Fair Housing Way" is just good business: you will have better tenants, better neighborhoods, and better protection of your investment. Second, the law says you must rent and manage your property without discriminating. If your tenant sues for discrimination and a court or government agency rules against you, you could damage your reputation as a small business owner and face significant financial liability.

This booklet covers laws that apply nationally and in California. There may be more specific local rules in your area that we do not describe in this Guide. In addition, this booklet does not discuss general landlord-tenant questions, such as security deposit issues, lease terms, or notices. For help with those questions, please contact an agency listed in the resources reference in the back of this booklet.
If you have more questions after reading this handbook, or have a specific fair housing issue you would like some help with, you can call us with questions using the contact information in the back of this book. You may also talk to a private lawyer.

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Fair Housing Basics

"Fair housing" is a term for the laws that prevent discrimination in housing. Housing discrimination happens when housing providers treat applicants or tenants differently because of specific characteristics. The law calls these special traits "protected categories." Both federal and California laws identify seven such categories: race, color, national origin, religion, sex, familial status, and disability (both mental and physical).

Housing discrimination happens when someone is treated differently *because of* a special trait protected by the law. For example, it is illegal to refuse to rent to someone because she is disabled; disability is a protected category. Other examples of illegal housing discrimination include:

- Not letting children play outside or having rules that unreasonably limit where children play.
- Refusing to allow a tenant with a mobility impairment to have a closer parking spot when one is available and the tenant asks for it.
- Segregating tenants of one race or national origin in a particular area of a property.
- Refusing to rent to an applicant because she relies upon disability income to pay rent.

California Law Note — Additional Protected Groups

California adds six protected categories: sexual orientation, gender identity and expression, source of income, marital status, age, genetic information, military or veteran status, primary language or immigration status, and any arbitrary characteristics.

Discrimination is illegal during any part of the rental or sales process. This includes the content of advertisements, to choosing applicants, to how property owners and managers treat tenants once they live at a property, to how property owners or managers proceed with the eviction of tenants. Fair housing laws also apply to how housing providers treat the guests or caregivers of tenants.

Good Fair Housing Practices are Good Business Practices. Housing providers should choose applicants based on whether they are likely to be good tenants, not based on *assumptions.* The best practice is to base decisions on neutral, individualized facts such as financial qualifications and past rental history, not stereotypes and assumptions.

California Law Note – Covered Housing Providers

In California, fair housing laws apply to all housing providers, *except* those who share the same home as their tenants.

Fair Housing Basics: Frequently Asked Questions

What can I say in a rental advertisement?
You can ask that tenants have a certain income, good credit, and a positive tenant history. However, you cannot advertise that you prefer a certain group of people. This means you cannot say you prefer applicants who are Chinese or have a job outside the home. Be careful about limiting the number of people in the home (i.e., advertising the maximum number of people who may live in the unit), as that may be discrimination against families with children, as described in the section on Familial Status discrimination. It is OK to say "no smoking" and "no pets."

Examples of discriminatory statements in advertisements:

"I prefer tenants who speak Mandarin."
"Young professionals only."
"Not accessible for the disabled."
"Not safe for children."
"I'm only looking to rent to one person or a couple."
"Proof of two years of steady employment required."
"Students only."
"I am a Christian and want to rent to someone with similar values. It is against my religion to rent to anyone who is gay."
"No Section 8."

Advertising: It is a good idea to advertise in many places and ways. If you only advertise in a foreign language, for example, or just in a specific ethnic newspaper or website, you may be showing an illegal preference for tenants who speak that language or have that ethnicity. The better practice is to advertise in as many different forums as possible to ensure your rental property is available to everyone to rent.

How can I avoid making discriminatory advertisements?
The best thing you can do is to advertise the features of the property itself. Talk about the property's amenities, nearby services, and minimum rental qualifications in the advertisement. Do not advertise by describing the type of tenant you think would be happy living in your unit. If you do so, you may end up saying things that sound like you only want to rent to someone who does not fall within a protected classification. For example, someone who does not have children.

If including applicant requirements in your advertisements, use criteria that anyone with a protected characteristic can meet, such as "long-term tenant" or "tenant with a good credit history." A statement that the unit is "best for a young, working couple with steady jobs" could get you in trouble. It expresses illegal preferences based on age, source of income, and familial status, all of which are protected categories.

Do fair housing laws require that I rent to the first qualified applicant?
Fair housing laws do not tell you how to pick applicants, except to say that you cannot select applicants based on a protected characteristic. The safest and best practice, however, is to decide your rental qualifications in advance, and be sure those qualifications are objective. Objective qualifications you can use include income level or ability to pay, good credit record, previous evictions, and references from previous housing providers. You can base your final decision on time of receipt (the first application you receive from someone who meets your qualifications), credit score (qualified applicant with the highest credit score), income (qualified applicant with the highest income), or criteria that is not related to a protected characteristic.

What factors are NOT Okay to consider in choosing to rent to an applicant?
You cannot ask applicants whether they are citizens, legal residents, or undocumented immigrants.

Do not ask questions about protected characteristics. For example, do not ask applicants about their disabilities or minor children. California law says you cannot ask whether an applicant is married or single. Do not question an applicant about sexual orientation.

You should not make assumptions about applicants based on race, religion, or other protected characteristic. For example, you cannot refuse to rent to an Indian family because you think they will cause strong cooking smells that will bother other tenants. Do not refuse to rent to a Mexican family because of a stereotype that the family will move in relatives without permission.

The law also provides that you cannot refuse to rent to an applicant because of criminal history, unless you can demonstrate that the applicant crime conviction poses a direct threat to the safety of other people or property. Policies must be specific in stating that a housing provider will not rent to those with criminal convictions that could endanger the safety of the tenants or property. In addition, housing providers cannot refuse to rent to prospective tenants not convicted of arrest charges. Finally, providers must take into account how recently a crime occurred.

How do I respond if applicants ask me what kinds of people live on my property?
Simply respond that you cannot answer the question because it is discriminatory. You can encourage interested applicants to visit the apartment and see the property and neighborhood for themselves. Trying to describe the kind of people that live on the property is a dangerous practice. For example, if you volunteer that no families with children live on your property, then applicants might think you are discouraging families with children from applying to rent an apartment. If you describe your current tenants as mostly Mexican, applicants might consider you to be discriminatorily choosing tenants based upon race, color, or national origin.

I hire a property manager. Why do I need to know about fair housing laws?
You are responsible for actions taken by your property manager or any other employees, including maintenance staff. If your employees break the law, treat tenants unfairly, or discriminate, you could be liable, even if you did not approve or know of the discrimination. Have your property manager and staff trained in fair housing laws. Your own understanding of fair housing law will help you manage your property with decisions and instructions to property management and employees that avoid liabilities.

What should I do if I discover that one tenant harassed another tenant because of a protected characteristic?

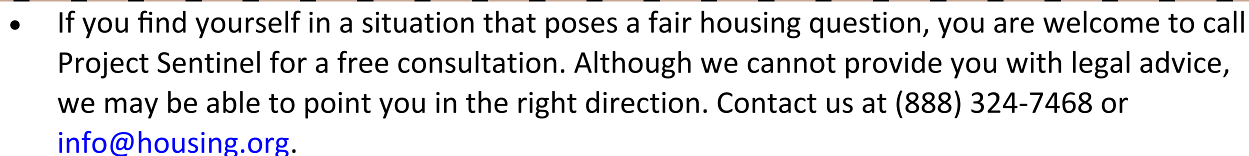
Tenants sometimes have disagreements with one another. You may feel like those disagreements are not your concern. As a housing provider, however, you must step into a disagreement if one tenant is harassing another tenant because of a protected characteristic. This could happen if certain tenants bother their neighbors because they do not like being around children, or because they hold biases toward other tenants' religion, race, color, national origin, sex, sexual orientation, age, or disability. This is discrimination. You must take action as soon as you know there is a problem.

When your tenant tells you that another tenant is discriminating against her because of a protected characteristic, you should investigate the complaint. One way to investigate is by talking to anyone who may have seen what happened to the complaining tenant or to the involved neighbors of the tenants. You can ask to see any notes, videos, police reports, text messages or other documents that might verify what happened. If you determine the complaint might be valid, you must take some action. An action may include warning the tenant who is harassing or discriminating against other tenants, issuing a lease violation, and, if the behavior does not stop, evicting the harassing tenant. Let your tenants know upfront that you will not put up with any discriminatory behavior. However, you should not just evict all of the tenants involved in the disagreement without investigating the discrimination complaint.

Noise Complaints: Be especially careful in dealing with noise complaints. Try to determine whether other tenants corroborate complaints of excessive noise. Be careful in upholding neighbor's noise complaints that founded on biases against people from a protected class. For instance, if the tenant who is complaining just does not like the normal sounds of children, issuing a lease violation based to the tenant with children may constitute familial status discrimination. Upholding a neighboring tenant's complaints about the sounds made by a tenant with a physical or mental disability may lead to a fair housing discrimination complaint. Issuing a lease violation to a tenant who is deaf, hard of hearing, or has a physical or mental disability that causes the tenant to communicate in a different manner, may constitute unlawful discrimination against disabilities.

What else can I do to make sure that I am complying with fair housing laws?

- Educate yourself and your staff. You and staff should attend a fair housing training at least once a year. The law changes from time to time. Staying updated is good policy.
- Join a professional association of other housing providers. There are several in the area, including the California Apartment Association, the Rental Housing Network, the Rental Housing Association, and the National Association of Rental Property Managers. These organizations provide free or low-cost training and technical assistance.
- Have written lease agreements, rental policies, and house rules. Have these documents reviewed by a lawyer knowledgeable in fair housing laws.
- Make sure to follow written lease obligations, policies, and rules.
- Keep good written records for at least five years. Your records on tenants should include lease agreements, written policies, house rules, rent receipts, written notices, repair requests, and requests and your responses to requests for reasonable accommodations based on disability.



- If you find yourself in a situation that poses a fair housing question, you are welcome to call Project Sentinel for a free consultation. Although we cannot provide you with legal advice, we may be able to point you in the right direction. Contact us at (888) 324-7468 or info@housing.org.

If HUD or DFEH serves me with a housing discrimination complaint, what should I expect?
The U.S. Department of Housing and Urban Development (HUD) and/or the California Department of Fair Employment and Housing (DFEH) will investigate the complaint. HUD and DFEH investigators are not on the side of either the tenant or the housing provider. Their job is to investigate the facts to determine whether the housing provider, including owner, management, and staff, followed or violated fair housing laws.

The way that HUD and/or DFEH investigate complaints includes talking to you and the tenant, reviewing documents, and talking to witnesses. You will have a chance to tell the investigator your side of the story, and to give him or her any documents you have that support your case.

HUD and DFEH settle many discrimination complaints through negotiation. Both agencies offer a confidential process for both parties to resolve the case before determining whether the law has been broken. You are not required to hire a lawyer to help you in the investigation or negotiation phases of the complaint process, but it is often a good idea to have one.

Cases that do not settle through negotiation go through a full investigation. At the end of the investigation, HUD or DFEH will either find that there was discrimination or find that there was not enough evidence to support the tenant's claim. If there is not enough evidence, the agency will close the case. If there is enough evidence, the agency may file a lawsuit against you or request that you try to settle the case.

A tenant's accusation of discrimination can be upsetting. However, try to respond to such a complaint in a professional, calm way. Be careful how you treat your tenant after he or she makes a complaint. It is illegal for you to retaliate, punish, or take negative actions against the tenant. For instance, if you increase a tenant's rent, issue a lease violation, a notice to quit, or file an eviction proceeding after the tenant has made a discrimination complaint, HUD or DFEH might deem your actions to be illegal retaliation.

Race, Color, and National Origin Discrimination

Race discrimination occurs when housing providers treat a tenant differently because of race. Race refers to whether a person is White, Black/African-American, Asian, American Indian or Alaskan Native, Native Hawaiian or Pacific Islander, or a combination of these races. Color, closely to race, refers to the color of a person's skin.

National origin, in comparison, refers to a person's place of birth, ancestry, or ethnicity. For example, a person's national origin could be Mexican, Honduran, Chinese, Indian, Filipino, Russian, or Jordanian. Housing providers can't treat a person differently because of where the individual comes from, or because that individual has a culture, customs, dress, or food that differ based on the country of origin.. Housing providers also cannot treat people differently because they speak a different language, and may not speak English or speak it with an accent. National origin discrimination does not just happen to people who are recent immigrants to this country; it can also happen to people who were born and raised in the United States, but have parents, grandparents, or relatives who were born in another country, or are otherwise identified as belonging to a family or culture from another country.

Race, Color, and National Origin: Frequently Asked Questions

What constitutes discrimination based on race, color, or national origin?
Stereotypes or assumptions about persons of a particular race, color, or national origin are often the basis of discrimination. Discrimination includes:

- Refusing to rent to someone because of the person's race, color, or national origin.
- Limiting where people can live on the property based on their race, color, or national origin. For example, only allowing Indian tenants to live on certain floors.
- Preferringa certain racial or national origin group. For example, only renting to Asian families.
- Charging people different rents or security deposits based on their race, color or national origin. For example, charging Black tenants higher security deposits.
- Applying different rules to different tenants because of race, color, or national origin. For example, serving eviction notices on Latino tenants the first time they are late with rent, while allowing non-Latino tenants to pay rent late several times before being served with a notice.
- Using racial slurs or derogatory terms based on race, color, or national origin against a tenant. Permitting other tenants to use those terms toward a tenant.
- Treating a tenant differently in any way because of race, color, or national origin. For example, making repairs in units of White tenants but not African-American tenants.

Do rules prohibiting race, color, and national origin discrimination apply to guests?
Yes. Your tenants should feel comfortable in their homes and have the chance to spend time with their friends or family. You cannot treat your tenants' guests differently based on race, color, national origin, or any other protected characteristic. You also cannot require that your tenants limit their guests to persons of certain races. Additionally, you should be sure to treat all guests the same. For example, HUD charged one property manager with discrimination because he stopped and questioned his tenant's African- American guests, but not Asian or White guests. This kind of different treatment, based on stereotypes or assumptions about individuals based on race, color, or national origin, leads to tenants making a complaint about discrimination.

What if most of the tenants who live on my property are of the same race, color, or national origin? Am I violating fair housing laws?
If the race, color, or national origin of tenants living on your property reflect the demographics of people in the local community, then it is unlikely to be a violation of fair housing law. If the property is located in a diverse neighborhood, but most all of your tenants are White, this might signal a fair housing violation. Similarly, if the community is quite diverse but only Latino households live at a complex, this might also signal a problem. If this has happened at your property, review how you advertise units and choose applicants to be sure you are not discriminating against some applicants.

Sometimes you may have policies or rental qualifications that have the effect of unintentionally causing discrimination. These policies can violate the law. Sometimes housing providers prefer to rent to applicants who share the particular provider's race, color, or national origin. This is also unlawful under the fair housing laws. If you are not the one who is making rental decisions, make sure your property manager is not picking applicants based on a protected characteristic.

What if I worry that an applicant from a particular culture will damage my property or bother other tenants?
While it is understandable that you want to rent your property to tenants that will take care of it, you should never assume someone will be a bad tenant just because he or she comes from a specific culture or country. People from all places and cultures can be responsible and considerate tenants, just as people from all places and cultures can be terrible tenants.

You cannot tell whether someone will be a good tenant because of the person's race, color, or national origin. A better way of protecting property is to make sure you have an applicant screening process that checks whether applicants have favorable references from a previous property owner. Another way to protect your property is to charge a security deposit, so that you can subtract the cost of any damage from that deposit if you later discover that your tenants have damaged your property. Make sure you are charging the same security deposit for all tenants, regardless of race, color, or national origin. You cannot always tell who will take care of your property and who will not, so charging an adequate security deposit for all tenants will legally protect you.

If, after renting to certain tenants, it becomes clear that the tenants are creating a problem or bothering other tenants, you should deal with the issue in the same manner you would deal with an issue created by any other tenant, regardless of race, color, or national origin. Investigate the basis of the issue. Make sure neighbor complaints are genuine and reasonable, and not the result of prejudice or stereotyping.

If my tenants speak a different language, do I have to translate the lease into their language?
Failure to provide meaningful access for persons with Limited English Proficiency (LEP) to federally-funded housing programs is discrimination based on national origin. Federally funded housing providers are required to have a language access plan for oral and written communication to ensure meaningful access for applicants and tenants with LEP.

California Law Note — Translation

California law only requires that you translate the lease if you negotiate the lease with your tenants in a specific language. For example, if you negotiate the terms of the lease in Mandarin, then you must translate the lease into Mandarin. In other cases, if you have the ability to translate the lease, you should do so because tenants who understand their lease are more likely to comply with its terms. The same idea applies for notices. While the law may not require you to give notices to tenants in the language they speak, it is a good idea to do so if you can. Tenants are much more likely to comply with lease terms when they can easily understand those terms.

Do I have to provide a translator to talk with tenants who do not speak my language? Can I choose to rent only to people who speak my language?
You are not required to provide a translator. However, you cannot choose to rent only to people who speak your language. You are required to allow your tenants who speak another language to use translators, even if the translator is a friend or child. If you have a property manager who speaks your tenants' language, you should permit the manager to speak with tenants in that language and to work toward making communication easier. Better communication builds a stronger relationship with tenants.

While working with tenants who do not speak your language may require more effort, you cannot chose to rent only to tenants who speak your language. Renting **only** to people who speak the same language as you do is likely national origin discrimination. This rental policy, whether stated or unstated, shows a discriminatory preference for tenants from a certain national origin.

Recipients of federal funding are required to have a language access plan, which outlines procedures for providing oral interpretation and written translation of documents for persons with LEP. Applicants and tenants with LEP "shall not" be required to bring their own oral interpreters.

Can I require that applicants provide a driver's license or Social Security number?
As a housing provider, you may verify the identity of applicants to whom you are renting, verify their credit, check for evictions, or check for criminal convictions. You may to ask for verifying documents to check this information. However, you cannot require an applicant to produce documents that the applicant would possess only if she were legally in the country, or documents that would be harder for applicants who are not from the United States to give you. You can ask for a driver's license and social security card, but if applicants do not have either of these, you must also accept foreign ID documents like passports and Consular IDs, or taxpayer ID numbers. These documents will do what you need: verify that applicants are who they say they are, and allow you do background checks. You do not need a Social Security number to check applicants' credit or to do a criminal conviction check.

Many online companies allow you to do these checks with just applicants' names and their current or last address.

California Law Note — Inquiring About Citizenship

Can I ask applicants whether they are in this country legally or ask them to show me proof of citizenship?
No. In California, you cannot ask tenants whether they are in this country legally or require proof of citizenship or legal status. You can still ask them to provide proof of income, identification, or other information you need to run a credit check.

Familial Status Discrimination

The Fair Housing Act defines Familial status as having children under 18 in the household. This also applies to pregnant women and families who have foster or adopted children, or who are in the process of adopting or fostering children. Familial status discrimination is one of the most common fair housing complaints that tenants have against housing providers.

Examples include:

- Refusing to rent to families with children.
- Only letting families with children live in certain parts of the property or on certain floors.
- Limiting children's access to parts of the property, such as a grassy play area or a recreational room.
- Not letting children play or make noise outside.
- Requiring that an adult be present to watch children at all times.
- Refusing to rent to families because they have "too many" children.

Familial Status: Frequently Asked Questions

Can I have an "adults only" policy?
No. You may not refuse to rent to applicants with children because you want an "adults only" unit or even an "adults only" property. Sometimes, as a housing provider, you may think a unit or a property is not a good place for children to live, but this is not your decision to make. You may not rent to only adults because you want to create a certain kind of community or attract certain kinds of applicants.

Only a genuine senior property may exclude people under a certain age. Senior housing properties must strictly meet the requirements for "housing for older persons" as defined by the fair housing laws and regulations.

Can I charge a higher rent or higher security deposit for families with children? I am concerned about the damage children could cause to my property.
No. You may not charge a higher rent or security deposit simply because you are renting the unit to families with children. This is treating families with children differently than other tenants. Such differential treatment makes it more expensive for families to obtain the same kind of housing as people without children. A better practice is to charge all tenants a uniform security deposit large enough to cover any damage your tenants cause. Such a deposit provides tenants with an incentive to take care of the property. A good applicant screening process will help ensure that you do not rent to any applicants, regardless of family status, who have not been responsible tenants in the past.

Can I decide that only certain units are good for families with children or put all of the families with children in a specific area of the property?
No. Only allowing families with children to live in certain units or certain areas of a property is "steering" and is not allowed. A family may choose a unit near the playground or on the first floor, but it must be their choice, not yours.

Can I limit how many people can live in a unit?

You may limit how many people will live in a house or apartment, but the limit must be *reasonable.* Restricting the number of people that may live in a unit beyond what is reasonable will unfairly deny families with children the chance to rent a home in which they can safely and comfortably live. Unreasonable occupancy limitations violate fair housing protections for familial status, even if you did not intend the limitation to exclude families.

California Law Note — Occupancy

For most apartments and houses, you are permitted to use the "2 plus 1" guideline to figure out a reasonable number of occupants to allow in a house or apartment. This guideline says that you should ordinarily allow two people per bedroom plus one other person. Under this rule, the housing provider should allow at least three people to live in a one-bedroom unit (two people for the one bedroom, plus one additional person). Five people should be able to live in a two-bedroom unit (two people for each bedroom plus one). If a unit is larger than average, you may be expected to allow more residents than the 2-plus-1 guideline provides. Similarly, if a unit is much smaller in floor space than average, the "guideline" may not apply.

What if I do not think the unit or a part of the property is safe for children?

First, it is your duty as the housing provider to ensure that the unit and the common areas of the property are in good repair and safe. If part of the property is unsafe, you should fix it.

It is not up to you, as the housing provider, to decide whether children may live at the property. This is true even if you think the features of the property make it unsafe for children. Safety decisions like that are up to tenants. If you refuse to rent to a family with children, or discourage a family from renting a unit, because you think the unit or property is unsafe or unsuitable for children, that is considered familial status discrimination.

As a housing provider, you may make reasonable rules to protect the health and safety of ***all*** tenants. These rules must apply to all tenants, not just children. For example, if there is a decorative fish pond on your property, you could have a "No Swimming" rule that applies to adults and children alike. However, it is not up to you to impose rules or limitations concerning how a child may safely live on the property. For example, it is not for you to decide a second floor unit is not safe for a toddler, or the street in front of the property is too busy for small children to live on the property. It is the parents' duty to ensure their children's safety, not yours. It is also the parent's obligation to decide whether and when their children need supervision.

Can I have rules limiting where children play, how loud they are, or where they can leave their toys?
Rules must apply to everyone, regardless of age. Children have the same right to use and enjoy the property as adults. If your rules do not allow children to use the property the same way that adults do, or do not allow children to play or do things that children normally do, you may be violating the law.

Here are some general guidelines:

- Rules that only apply to children are generally illegal. For example, you cannot have rules like, “No kids in the common area,” or “Children are not allowed in the recreation room.”
- Your rules should apply to all tenants in the same manner. For example, you can have a rule that tenants cannot loiter in the parking lot. This rule applies to all tenants and relates to a safety concern. Standing around in a busy parking lot can be unsafe for anyone. You may also require all tenants to bring all personal belongings--not just toys--inside when they are not using them.
- On the other hand, you cannot have a rule singling out children and behaviors common to children. A “No playing on the grass,” or a “No bouncing balls on the sidewalk” rule may unfairly apply to children, even when the rule does not state that “children” are prohibited from the activity.
- You also may not have “adult only” and “children only” areas of the property, or special “adults only” hours at pools or other facilities.

What should I do if my tenant complains that another tenant’s children are making too much noise?
You should not penalize children for being children: babies cry and kids laugh when playing. Children get to make a reasonable amount of noise for their age at reasonable times.

You may have a noise rule that applies to all tenants, such as instituting quiet hours. Make sure you apply any noise rules equally and reasonably to all tenants, not just to children.

When one tenant complains about noise from another tenant’s children, you should find out whether the children were making a reasonable amount of noise for their age, activity, and the time of day. Ask the complaining tenant what the children were doing. Ask about the time that the noise occurred. Were the children playing after school, a time when children normally play? Was it late at night? Was it one child or many? Were there circumstances that explained the noise? For instance, did a child cry after a fall or injury?

You should also consider whether the tenant who is complaining dislikes living near children. Is the tenant less tolerant of noise than a reasonable person would be? If he or she is the only tenant complaining about the noise while other neighboring tenants do not seem to be bothered, the problem may be with the person complaining and not with the family.

If you determine the amount of noise was reasonable, you should explain to the complaining tenant that children may make a reasonable amount of noise and to take action against the kids would break the law. You may explore other ways to solve the problem. Would soundproofing options help reduce the noise? Can you move the complaining tenant to another unit? Do not serve a family with children a notice of lease violation or notice to vacate without an investigation revealing unreasonable and uncured noise levels. Otherwise, you may face a familial status discrimination complaint.

Can I require that parents watch over their children at all times?
A rule requiring parents to supervise their children while on the property is overly broad. Such a rule covers teenagers, who generally do not need supervision. Requiring that parents supervise children excludes other people who may capably supervise young children, such as babysitters, relatives, and neighbors. By having child supervision rules, housing providers may prevent families with children from using and enjoying the property in the same way as tenants without children. You may be asking families to comply with different terms and conditions than families without children, and preventing parents from deciding what kind of oversight their children require. In exception to this rule, under California law, housing providers may require an adult supervise children under the age of 14 at the swimming pool.

Can I evict a family whose child repeatedly vandalized the property, or will I be accused of discrimination?
You do not have to allow vandalism or property damage by anyone, adult or child. The key is to treat property damage caused by a child the same way as property damage caused by an adult. By treating all acts of vandalism under the same rule, no matter the age of the person who committed the vandalism, you probably will not be breaking the law.

Be sure not to assume that a child who caused the damage. Assumptions that kids cause damage because "that's what kids do" may form the basis of a discrimination complaint. If a child *does* damage the property, do not react by making a rule that punishes all children. For example, if one child breaks a sprinkler, do not make a rule that no children may play on the grass because you are worried about more broken sprinklers. Instead, work with that child's family to try to correct the problem.

Can I decide to rent only to seniors? Then I would not have to allow children then, right?
While it is true properly, certified senior properties do not have to rent to families with children. However, senior properties must strictly meet the requirements of the "Housing for Older Persons Act," a part of the federal Fair Housing Act. (42 U.S.C., Section 3601, et seq.) You should work with a lawyer to understand these laws before you try to make your property into senior housing.

California Law Note — In-Home Day Cares

Can I refuse to rent to applicants who want to open an in-home daycare? California law protects licensed, home daycare providers from housing discrimination. You cannot refuse to rent to applicants or evict tenants who run licensed daycares from their homes. Lease provisions that prohibit tenants from running businesses do not apply to daycares.

In-home daycares must be licensed by the California Department of Social Services Community Care Licensing Division (CCLD). Tenants who wish to operate a licensed in-home daycare are required to comply with specific notice requirements to their housing providers. You can require that a tenant operating an in-home daycare provide proof of licensing.

Be aware, however, that the CCLD does not consider a tenant who babysits a child or two a operating an in-home daycare requiring licensing. Go to the CCDL website for more information about this distinction. (https://www.cdss.ca.gov/inforesources/community-care-licensing)

You may require a tenant operating a licensed home daycare add you to their insurance policy. Daycare providers who do not have insurance must get waivers from all of their clients. These insurance provisions protect housing providers from being liable for any injuries to children attending the daycare.

Disability Discrimination

One type of disability discrimination occurs when housing providers treat people with disabilities differently. Because the fair housing laws require housing providers affirmatively remove barriers to housing for people with disabilities, there are other, special types of disabilities discrimination.

California Law Note — Disability Defined

A person has a physical or mental impairment that limits a major life activity is disabled.

This broad definition of disability includes people living with many different physical or mental impairments. "Disability" includes noticeable disabilities, including persons confined to wheel chairs or with other obvious disability. It also includes conditions that may not be visible, noticed, or understood by others. Living with HIV/AIDS, mental illness, dementia, severe asthma, respiratory or heart disease, and many other conditions qualify as disabilities under the fair housing laws. Discrimination may occur when housing providers make assumptions about people with disabilities, such as assuming people with disabilities cannot care for themselves, are dangerous, will not be able to live safely on the property, or, conversely, really do not have a disability requiring any accommodation.

Reasonable accommodations: A special type of disability discrimination happens when housing providers deny a person with a disability's request for a "reasonable accommodation" or "reasonable modification" without a good reason. A "reasonable accommodation" is a change in a rule or a policy that is necessary to provide a disabled person with equal use and enjoyment of their dwelling and its facilities.

For example, a tenant with a mobility impairment might ask for a closer parking space to make it easier to get to her home. Other common requests for reasonable accommodation include requests to transfer to a different unit, permission for an emotional support animal, early release from a lease agreement without penalty, a "second chance" after a tenant violates a rule or lease provision because of a disability, or permission to hire a live-in caretaker. These changes frequently cost nothing to the housing provider. Some accommodations carry small or reasonable costs that must be borne by you, the housing provider, as a cost of doing business.

Reasonable modifications: A "reasonable modification" is a physical change to the property that is necessary for a disabled person to use and enjoy the home. For example, a disabled tenant who has difficulty standing might ask if he can install a grab bar in the shower. Other common requests for reasonable modification include removing carpet, widening a doorway, or lowering the kitchen counter to make it usable for someone in a wheelchair. Unless the housing is federally subsidized, the tenant pays for the modification. In federally subsidized housing, the housing provider is generally

responsible for the cost of the modification.

Once a tenant or applicant makes a reasonable accommodation or modification request, whether in person or writing, a housing provider must answer the request in a timely and meaningful way. This means a housing provider cannot ignore a reasonable request or wait too long to respond. It also means a housing provider cannot simply say “no” without explaining why or discussing a different possible solution to the problem. When a housing provider ignores or does not respond to a reasonable accommodation or modification request within a reasonable time, that provider may face a discrimination suit.

Disability: Frequently Asked Questions

How do I know that the applicant or tenant needs a reasonable accommodation?
First, the applicant, tenant, or someone on the applicant or tenant's behalf must *ask* for a reasonable accommodation. You do not have to do anything until you receive a request. No special words are required for a tenant to ask for a reasonable accommodation. When your tenant, because of a disability, asks you to do something differently than the way you usually do it, or asks you to make an exception to a rule or lease term, that is a reasonable accommodation request. Your tenant can ask for a reasonable accommodation either verbally or in writing.

Though you may find using a form to be helpful, you may not require applicants or tenants to make the accommodation request in any particular format. To protect yourself from liability, you should keep careful written records of your interactions with your tenants regarding reasonable accommodation requests. You should be able to show the request's nature, the time when the request was made, and when and how you responded.

Can I ask the applicant or tenant for proof that she really needs what she asks for as a reasonable accommodation or modification request?
It depends. If the disability is apparent or known to you, you should not ask for additional proof of need for the accommodation. For example, if your tenant is in a wheelchair, you can observe that she needs a closer parking spot without needing additional verification from a knowledgeable third party.

If the disability is not visible or apparent, you can request a note from someone who can verify that the person has a disability that requires the accommodation so that the disabled person may use and enjoy the rented premises as other tenants would enjoy it. The note can be written by any knowledgeable third party, which might be a doctor, therapist, psychologist, nurse practitioner, or even a social worker or teacher.

The note does not have to explain details about your tenant's medical history or exact diagnosis. You cannot demand to see supporting medical records or insist on talking directly to the doctor, or knowledgeable third party. If you do not understand why your tenant is asking for the accommodation or the nature of the accommodation, you should ask your tenant your questions. If necessary, you may ask your tenant to get information that is more specific from her health care provider. However, if the note indicates that the tenant has a disability that relates to the need for the requested accommodation, the housing provider has sufficient information. You must then grant the accommodation as requested, if it is reasonable, or work toward an accommodation that you reasonably can grant. This may include placing the disabled tenant on a waiting list for the accommodation.

What should I do if I receive a reasonable accommodation or modification request?
The first step is to confirm that you have received the request. Indicate to the tenant, preferably in writing, that you are considering the request. If the need for the requested accommodation is not obvious, you can ask for a note from a knowledgeable third party. If the tenant or applicant gave you a note but the disability or the request are not clear, you can ask for clarification. Remember, though, that the note only has to confirm the person has a disability and explain why he or she needs the policy change or exception. The note does not need to provide detailed medical or disability information. You must respect the requester's right to privacy.

Once you received a request in any form, you have a duty to respond promptly. Do not ignore the request. Even if you think the person is not disabled, or you have a good reason for refusing the specific requested accommodation, you must work with the applicant or tenant to find another way to solve the disability-related problem. If you do not respond in a reasonable time, or refuse to work with the individual, you might be failing to meet your obligations under the law. Rather than ignoring an unreasonable request or refusing to discuss it with the applicant or tenant, you should explain why you believe the requested accommodation is unreasonable and, if possible, propose another solution.

When can I deny a reasonable accommodation or reasonable modification request?
You may only deny requests if the person does not qualify as disabled under the fair housing law, or if the request is "unreasonable." Remember that you are not the one who decides whether the requester has a disability. You should not substitute your own opinion for that of a third party such as a health care provider. If the disability is not obvious, and the requester cannot produce a note from a third party verifying that they have a disability, you may deny the request.

If the person has a disability, you may deny their request if it is unreasonable. A request is unreasonable if granting it: 1) poses an undue financial and administrative burden; 2) would be a fundamental alteration of the nature of the services you provide; or 3) poses a credible, verifiable, direct threat to the health or safety of others or would cause substantial property damage. You cannot decide that someone poses a "direct threat" based on stereotypes, assumptions, or speculation. You must also consider alternatives that may eliminate any threat.

Whether a request poses an undue financial or administrative burden, depends on how much it will cost to grant the request, how large your operation is, how much time it will take to do what your tenant asks, and how much the accommodation will benefit the tenant. Keep in mind there may be some costs you will have to absorb in granting a reasonable accommodation. You may *only* deny an accommodation based on undue financial burden -- when the cost is objectively *unreasonable*.

If your tenant asked for a unit transfer, you do not have to make another tenant move out to accommodate the disabled tenant making the request. In this situation, you may want to ask other tenants to trade units voluntarily. If there are no other units available, you may put the disabled tenant, who made the accommodation request, on the top of a waiting list for a suitable unit. If you are considering denying a request, consider consulting an attorney first, particularly if you have never handled such a request before.

What if I am concerned that my tenant is lying about needing an accommodation?
Some housing providers worry tenants will try to "scam" them with false reasonable accommodation requests. Remember, you can ask your tenants for verification from a knowledgeable third party to confirm they have a disability and need what they are asking for. You can ask that the supporting letter be on professional letterhead and signed.

You do not have to grant a reasonable accommodation or modification request that cannot be verified. However, do not substitute your own opinion for that of a health care professional about whether the tenant is really disabled or whether she really needs the requested accommodation.

Sometimes, individuals who request permission for an emotional support, assistance, or service animal as a reasonable accommodation may provide you with a "service animal certification" or "service animal registry" card. These cards may come from a breeder or seller, or a website. Do not assume that tenants presenting you with such a card are trying to deceive you. These businesses lead many people to believe the card will satisfy fair housing requirements. If an applicant or tenant gives you such a card, you may ask for verification from a treating health care professional who is personally familiar with the tenant's disability-related need for an emotional support animal assistance animal.

Can I raise the rent of tenants who ask for reasonable accommodations if it costs me money to comply?
No. Many accommodations have no cost to you at all. Even if there is some small cost to you in granting the request, this is a cost of doing business. You may not pass the cost to tenants with disabilities. Remember that you will not have to grant the request if the cost is unreasonable. You may not charge fees to your disabled tenants because you are concerned their disability may cause damage to your property or cost you money. You also cannot refuse to rent to applicants with disabilities because you are afraid they will ask you for reasonable accommodations or modifications.

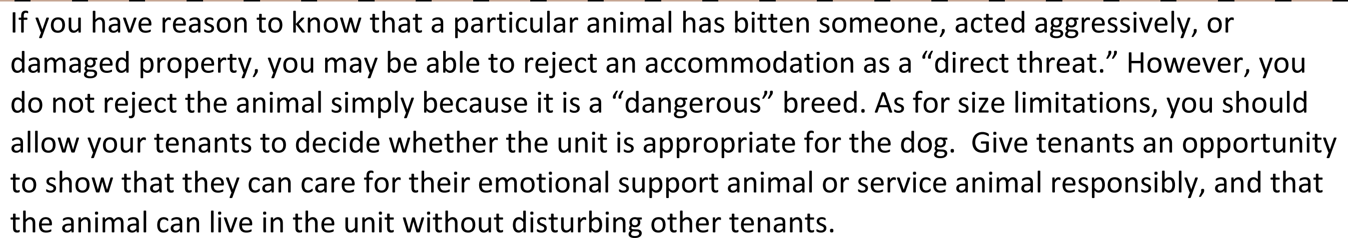
Do I have the right to know if an applicant or tenant has a communicable disease or some other disability? No. Unless someone has asked for a reasonable accommodation or modification, you have no right to know whether an applicant or tenant has a disability. Everyone is entitled to privacy about medical conditions. You may not ask whether they have a disability. Nor may you ask for details about an applicant or tenant's condition. On the other hand, you do not have to make any sort of accommodation for people with disabilities *until and unless* they ask for it.

What if I am concerned about whether applicants with disabilities can live on the property safely?
You cannot refuse to rent to applicants with disabilities because you are worried that they might injure themselves. Applicants with disabilities are entitled to choose to live in diverse communities with non-disabled tenants. Statements such as, "I don't think you can live independently," or "The second floor isn't safe for someone with a walker" are discriminatory. Let applicants decide what is safe for them. They know better than you do what they are capable of doing. Your job is to maintain your property in a safe condition. Of course, you should have good general liability insurance for your property that covers all sorts of injuries and incidents.

What if an applicant tells me she has an emotional support animal, and I do not allow pets?
This is a request for a reasonable accommodation. You should treat it like any other request for a reasonable accommodation. The disabled tenant is asking you to make an exception to your no pet policy based on disability so the tenant can live with an emotional support animal to help their disability. Like other reasonable accommodations, you may ask the applicant or tenant to provide verification from a knowledgeable health care provider, such as a doctor or therapist. The verification letter will indicate that the health care provider's patient has a disability, and that living with the ESA will be helpful in treating the disability. While the animal might look like a pet to you, an emotional support animal can be as important to the mental and physical health of a disabled person as a prescription for a drug. Any kind of animal--a dog, a cat, a bird--can qualify as an emotional support animal. Emotional support animals are not required to have any special training. Sometimes their value is just in providing companionship and love.

Can I charge a pet deposit or pet rent for a service animal or emotional support animal?
Although you can charge a disabled tenant with an assistance animal the same standard security deposit you charge all tenants, you can't charge an additional deposit or "pet rent" for the animal. Even if you allow pets on your property and ordinarily charge tenants pet deposits and pet rent if they have animals, you must waive those fees for assistance animals, including emotional support (ESA) and service animals. People with disabilities who have assistance animals need those animals to use and enjoy the property. Charging them an extra amount for their animals would deny them equal use and enjoyment of the property as nondisabled tenants. One way to think about this is to remember that assistance animals really are NOT pets, but a necessary part of your tenants' medical treatment. However, if the animal damages the property, you can deduct the cost of any repairs from the standard security deposit when the damage occurs or after your tenants move out or when, depending on your policy.

Can I require that my tenants only have assistance animals that are under a certain weight or size, or ban specific breeds, such as pit bulls?
No. Rules that limit the size and breed of pets do not apply to service or emotional support animals. These requirements have nothing to do with the individual animal's ability to provide a necessary benefit to disabled tenants. Certain breeds may have a stereotype or reputation as being more aggressive than other breeds. A breed's general reputation, however, has nothing to do with the character and temperament of a specific animal. There are many gentle Pit Bulls and vicious Chihuahuas. Each animal is different; its behavior has as much to do with its training as with its breed.



If you have reason to know that a particular animal has bitten someone, acted aggressively, or damaged property, you may be able to reject an accommodation as a "direct threat." However, you do not reject the animal simply because it is a "dangerous" breed. As for size limitations, you should allow your tenants to decide whether the unit is appropriate for the dog. Give tenants an opportunity to show that they can care for their emotional support animal or service animal responsibly, and that the animal can live in the unit without disturbing other tenants.

Can I require my tenants to neuter or spay their assistance animals or to keep current on vaccinations?

Unless your local government requires spaying or neutering of the animal, you probably cannot require spaying or neutering assistance animals. Spaying or neutering a dog or cat might be a financial hardship for many disabled tenants. There is also debate about whether these procedures are beneficial for all animals. However, you can require that your tenants vaccinate their assistance animals. Vaccinations are a health and safety issue and required by law in most jurisdictions. If your city or county requires licensing of animals, you may require your tenants to license their animals.

Do I have to allow a tenant to have more than one assistance animal?

The answer to this question may depend on whether the need for the accommodation is verifiable and reasonable within the law. Sometimes a person with a disability develops a therapeutic bond with more than one animal, in which case a housing provider may be required to accommodate both animals. Some animals provide different functions, such as diabetes alert dogs and companion animals. Where there is a verifiable need, more than one animal is typically acceptable. However, a request for a specific animal, such as a farm animal in an apartment setting, or a continuous collection of multiple animals in limited or urban spaces may be unreasonable.

What should I do if my tenant's assistance dog barks a lot or soils the common areas?

You should treat these issues as you would if another tenant's animal posed a problem. You may notify the tenant that the assistance animal is barking through the night and provide a chance to fix the problem. If, after a reasonable period, your tenant were unable to stop the dog from barking all night, you likely would be able to ask your tenant to remove the dog from the property. It is also reasonable to ask every tenant to clean up after their animal in common areas, and to provide notices and escalating consequences if a tenant fails to do so. City or county leash laws will apply to assistance animals in the same manner as other animals.

Do I have to allow visitors with companion or service animals on the grounds to visit tenants if I have a no pet policy?

Yes. You must permit tenants' guests to bring their service animals onto the property.

What should I tell my other tenants when they want to know why I allowed a tenant with a disability to have a dog or cat when I have a "no pet" policy?
A tenant's disability is private. You must be careful not to tell other people that a tenant with an assistive animal has a disability or disclose any details about their disability. Unauthorized disclosure of your tenant's disability to other tenants is a violation of the law. You may want to respond to this kind of question by simply saying you comply with the law and cannot discuss the details.

Can I evict a tenant for having a messy unit or too much junk in their unit?
Generally, the inside of a tenant's unit is not the property owner's business unless excessive possessions are causing a fire or other safety hazard, or are causing property damage. Tenants who accumulate excessively and refuse to throw things out may be hoarders. Hoarding can be the result of a mental disability, and that may mean you have to treat these situations a little differently. If the possessions are causing a hazard, first issue a notice requiring your tenant to clean their dwelling within a reasonable time. If your tenant or a tenant's representative then comes to you and explains that a disability is the cause of their hoarding, you should work together towards reasonable accommodation of the disability. This may include asking the tenant to contact local organizations to help clean the unit or remove excessive possessions, or providing a structured plan for cleaning the home room-by-room over a reasonable period. Your tenant may never be able to clean the home fully. Focus on getting the rental property healthy and safe to live in.

Do I have to allow my tenant to have a live-in caregiver? If so, can I run a credit check and criminal history check on the caregiver?
If your tenant needs a live-in caregiver because of her disability, then you must allow your tenant to have one. Your tenant may choose her own live-in caregiver. Sometimes a caregiver is a relative, or may hold a certification as a caregiver.

The caregiver is not a tenant. The caregiver is not responsible for paying rent and does not have the same rights as a tenant. Because a caregiver is not a tenant, you may not screen the caregiver for credit or demand to add the caregiver to the lease agreement.

You may run a criminal conviction check on the caregiver *if* you run such checks on all applicants. However, you may not arbitrarily refuse permission for a caregiver because the person has a criminal record. Similar to tenant applicants, you must demonstrate that the specific criminal conviction poses an ongoing threat to the health or safety of residents. Although caregivers are not tenants, they must follow the rules for the property, including rules restricting parking and limiting noise.

Must I allow a disabled applicant to have a co-signer or waive other application requirements?
While you can decide that as a general policy, you do not accept co-signers, you may be required to waive that policy for disabled tenants as a reasonable accommodation. If your tenant can show her income is limited due to having a disability and she asks you to accept a co-signer in order to qualify to rent the unit, then you must permit one. You can require the applicant and co-signer meet your minimum income and credit requirements. If an applicant requests it, you also must consider waiving other application or financial policies if it is necessary to afford a person with a disability an equal chance to rent the property.

My tenant receives a monthly disability check that does not arrive until after rents are due. Do I have to move her rent due date?
Disability checks and other government benefits often do not arrive by the first of the month. Some persons with disabilities also have their checks issued to a person known as a representative payee, who is responsible for ensuring rent payment. If your tenants, or payees ask, you may be required to move the rent due date as a reasonable accommodation of disability. The due date should coincide with the date your tenants receive the disability check or the date the payee can issue the rent check. In these circumstances, you cannot charge tenants late fees for checks received after the normal due date for rents.

If I gave my tenant a valid termination of tenancy notice, can she ask to stay longer as a reasonable accommodation?
Your tenant's disability may make it difficult to relocate within the usual 30, 60, or 90 days provided by a termination notice. A tenant with a mobility impairment, for example, may have difficulty packing belongings or finding a new unit with an elevator or on the first floor within the noticed time.

As with any reasonable accommodation, you may ask the tenant making the request to provide a note from a knowledgeable third party verifying that the disability means she needs more time to move. There is no set time for how much longer you must allow your tenant to remain. It depends on the tenant's specific disability, the amount of time provided in the original notice, and the reason why you are asking your tenant to leave. You and your tenant should work together to come up with an appropriate timeframe.

What should I do if a disabled tenant asks for help in taking out the trash once a week?
You do not have to remove the trash from your tenant's home if it is not something you normally do for other tenants at the property. Under fair housing regulations, such a request is considered a fundamental alteration of your services. You may be required to accommodate your tenant's disability in other ways besides providing an additional service such as the physical removal of trash. For example, if physical barriers make it hard for a tenant to remove her own trash, you may be required to remove those barriers.

What if an applicant or tenant asks me to install grab rails in the bathroom, or make other changes to the unit because of a disability?
This is a request for a reasonable modification because it seeks a change to some physical aspect of the unit or the facilities. Like a reasonable accommodation, you can ask the applicant or tenant for a supporting note from a knowledgeable third party if her disability and need for these changes is not obvious. If you receive the verification, you are required to allow your tenant to make these changes in most circumstances. One important difference between reasonable accommodations and reasonable modifications is that your tenant is responsible for the cost of making physical modifications. If your tenant assumes the cost, you must permit her to make the change. You may also require that your tenant makes any modifications in compliance with local building codes and uses a person who is competent to do the work. You may not charge an extra security deposit or require your tenant to obtain any liability insurance related to the proposed modification, and you cannot refuse to continue to rent to her because you do not want her to make modifications to your unit.

Note: Housing providers who receive federal funding are required to bear the cost of making reasonable modifications for tenants. Recipients of federal funding do not include housing providers who accept Section 8 Housing Choice Vouchers issued by public housing authorities.

If my tenant installed grab bars in the bathroom when she moved in, can I require removal of the grab bars upon move-out?

Probably not. Tenants only have to remove modifications when they move out if the modifications would affect the ability of the next tenant who moves in to use or enjoy the home. If there is no reason to believe the modifications would negatively affect a future tenant's use of the unit, then you cannot make the disabled tenant remove the modifications. A tenant who lowers the kitchen counters might need to restore the counters to the original height. Counters that are a good height for someone in a wheelchair would be too low for someone who is not in a wheelchair. In contrast, a disabled tenant would not have to remove a grab bar installed in the bathroom because it would not make the bathroom more difficult to use for the next tenant.

Religious Discrimination

Religious discrimination is illegal. Fair housing laws prohibit housing providers from expressing preferences for one religious group over another. These laws do not require housing providers to change tenancy rules or structures because of a tenant's religious belief or practices.

The laws prohibiting religious discrimination do not apply to not-for-profit religious organizations that own or operate housing for non-commercial purposes.

Religion: Frequently Asked Questions

For religious reasons, one of my tenants asked my maintenance person to take off his shoes when doing work in his unit. Does the maintenance man have to do what my tenant asks?
You do not have to change the way you normally do things to accommodate the religious beliefs of your tenants. As a common courtesy, however, removing shoes at a tenant's request should be encouraged.

Can I put holiday decorations in the lobby of my property?
It is best to stick with decorations in common areas that are not overtly religious. It should not appear to reasonable people that you prefer tenants of a certain religion to tenants of different religions. Symbols such as Christmas trees and Easter eggs are generally fine; many people of various religions have adopted them. On the other hand, prospective and current tenants may view crucifixes and nativity scenes placed in the property's common areas as indicating a preference for Christian residents.

My tenants want to decorate their doors and windows for the holiday. Should I let them?
If you generally allow tenants to place decorations on their doors and windows, then you should allow them at the holidays. If you generally do not allow such decorations, you may prohibit them at the holidays, too. However, some exceptions may be required for tenants who belong to religions that require an exterior adornment, such as a small Mezuzah that Jews place on the post of their front door. Even if you have a rule that forbids any exterior signs or decorations, you should grant an exception for those who require one for religious purposes.

I am a Christian. I hope that my rental property can be a place where people of faith come together and share their love of God. Can I hold bible studies on the property or request that my tenants participate in faith-based activities?
Although you might have strong religious beliefs that you want to share with your tenants, you cannot prefer tenants who share your same faith. Nor can you only rent to people with the same religion as you. You can host a religious study on your property, but be careful not to force or coerce tenants to participate, or favor tenants who participate over tenants who do not. You may not give special privileges to tenants who agree with your religious beliefs, or make exceptions for those tenants if they violate rules.

Sex Discrimination

Fair housing laws prohibition against sex discrimination means a number of things. Housing providers cannot refuse to rent to a particular sex, or to anyone who identifies as a particular gender or is non-binary. Housing providers may not prefer men to women as tenants, or vice versa.

It is also illegal for housing providers or their employees to sexually harass tenants, or allow one tenant to sexually harass another.

Sex discrimination also includes discrimination against victims of domestic violence.

Sex Discrimination: Frequently Asked Questions

What is sexual harassment?
Sexual harassment in housing is a form of sex discrimination prohibited by the Fair Housing Act. (42 U.S.C., §3601, et seq.) Sex discrimination is also prohibited by other federal laws, such as Section 109 of the Housing and Community Development Act of 1974 and Title IX of Education Amendments of 1972. There are two main types of sexual harassment: (1) quid pro quo sexual harassment, and (2) hostile environment sexual harassment.

<u>Quid Pro Quo</u>
Quid pro quo harassment occurs when a housing provider requires a person to submit to an unwelcome request to engage in sexual conduct as a condition of obtaining or maintaining housing or housing-related services. For example:

- A landlord tells an applicant he won't rent her an apartment unless she has sex with him.
- A property manager evicts a tenant after she refuses to perform sexual acts.
- A maintenance man refuses to make repairs unless a tenant gives him nude photos of herself.

<u>Hostile Environment</u>
Hostile environment harassment occurs when a housing provider subjects a person to severe or pervasive unwelcome sexual conduct that interferes with the sale, rental, availability, or terms, conditions, or privileges of housing or housing-related services, including financing. For example:

- A landlord subjects a tenant to severe or pervasive unwelcome touching, kissing, or groping.
- A property manager makes severe or pervasive unwelcome, lewd comments about a tenant's body.
- A maintenance man sends a tenant severe or pervasive unwelcome, sexually suggestive texts and enters her apartment without invitation or permission.

Sexual harassment can happen even when someone harasses another person of the same gender.

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California Law Note — Domestic Violence

The police were called to my property. A tenant's husband was arrested for domestic violence. What should I do?
Tenants who are the victims of domestic violence have specific rights in California that you should know. Specifically:

- You cannot evict your tenant because domestic violence occurred on your property if the abuser is no longer there. If the abuser lives in the home, you may evict the abuser. You can also require that the abuser stay away from the property.
- If the victim asks to get out of her lease, you must release the victim without penalty. The victim must prove she is the victim of domestic violence (through a doctor's letter, police report, or restraining order), and the victim must give you written notice. If the abuser is also on the lease, you can continue to hold him responsible for the rent until the end of the lease.
- If asked, you must also change the locks or allow your tenant to change the locks within 24 hours. You can require that your tenant first provide you with a copy of a police report or court order showing that she was a victim of domestic violence.

Note: The information in this text box is really about California Landlord-Tenant law, rather than fair housing law.

Fair housing law is actually broader than the California Landlord-Tenant protections. The simple answer in fair housing terms is that it is unlawful discrimination based on sex to take adverse action against someone merely because they have been the victim of domestic violence ("DV"), or police have been called to the scene, or the victim has obtained a DV restraining order

California Law Note

Sexual Orientation and Gender Identity Discrimination

In California, it is illegal to discriminate against people because of their sexual orientation or sexual identity. This means that housing providers cannot treat applicants or tenants differently because they do not look, dress, or behave the way you think people of that gender should look, dress, or behave. For instance, a housing provider cannot discriminate against a man because he "acts too feminine" or discriminate against a woman because she "dresses like a man." It also means that housing providers cannot treat people differently because they are gay, lesbian, bisexual, transgender, gender-fluid, or non-binary.

Sexual Orientation and Gender Identity Discrimination: Frequently Asked Questions

Being gay, being transgender, and same-sex marriage are against my religion. Does the law still apply to me?
Yes. You may not discriminate based on sexual orientation or gender identity even if you personally hold different religious beliefs. As a housing provider who rents to the public, you are running a business and you must conduct that business according to the law.

How should I refer to my transgender tenants?
If you are not sure what pronoun to use, you can ask. You can also simply use their name. If you deliberately refer to a tenants by a name and gender pronoun, other than what they have indicated they prefer, your gender reference may be viewed as harassment, especially if you do it repeatedly.

What should I do if one of my tenants tells me she does not want to live next to a gay or transgender person?
Although other tenants may have personal objections to those who are gay or transgender, it is not up to your tenants to decide who can live on your property – especially if those tenants object to another tenant because of a protected trait. You should inform your tenant that it is illegal to discriminate because of sexual orientation or gender identity, and that you will not honor their biases. If you learn your tenant is harassing a gay or transgender tenant in any way, you must take swift action to stop the harassment.

California Law Note

Source of Income Discrimination

In California, discrimination against applicants or tenants based on their source of income is illegal. Source of income refers to how people obtain their income, including what type of job they have, and/or if they receive any public benefits like welfare or disability income. It also includes people who receive housing vouchers, such as Housing Choice Vouchers (or "Section 8"). Income does not include money that you reasonably believe the tenant obtained through illegal means.

Source of income discrimination occurs when housing providers treat people differently because of where their money comes from, or refuse to rent to people with housing subsidies. For example, a housing provider cannot refuse to rent to an applicant, or treat a tenant differently, because that person receives Social Security or other state benefits instead of employment income.

A housing provider can decide how much income applicants must have to qualify to rent the unit. However, if the applicant has a government-housing voucher that covers a portion of the rent, the housing provider must apply any minimum income requirements only to the share of the rent that the tenant will actually pay. For example, if the total rent is $2,000 but the Housing Authority will pay $1500 of that amount, you must calculate the he minimum income requirement must based on the $500 share that the tenant will pay – not on the entire $2,000 monthly rent.

Source of Income: Frequently Asked Questions

Can I require that applicants earn two and a half or three times the rent?
Yes, with some exceptions. You may have minimum income requirements for applicants. You may not demand that the income come from a job, as opposed to some other reliable sources such as a pension or Social Security benefits. You should also try to apply the same income standards consistently to all applicants, although that does not prevent you from making exceptions from time to time for special circumstances. As mentioned above, you must you must only apply your minimum income requirement to the share that to be paid by the tenant, deducting any amount that will be paid through a voucher.

Can I just rent to the applicant with the highest income?
Generally, you can select the applicant with the highest income. However, it is best to look at the whole application. Someone can earn a lot of money, but have a terrible credit record or a history of poor compliance with tenant agreements.

California Law Note

Marital Status Discrimination

Marital status refers to whether or not someone is married, in a domestic partnership, single, divorced, or separated. Put simply, in California, housing providers prefer couples who are married to other types of relationships. The law also prohibits treating room or housemates differently from married couples.

Marital Status: Frequently Asked Questions

Can I prefer to rent to married couples because I think they are more stable?
Preferring married couples for any reason would be discriminatory. Unmarried couples and groups of room or housemates frequently are just as financially stable as married couples.

Due to my religion, I believe that unmarried couples should not live together. Do I have a right to exercise my religious beliefs and rent only to married couples?
No. You must obey fair housing laws regardless of whether you have a religious objection to the way applicants live their lives. You cannot discriminate based on marital status, even if your religion teaches that cohabitation before marriage is wrong. Your personal religious beliefs do not exempt you from complying with the laws that apply to all businesses, including the business of renting property.

Do I have to apply my income rules the same way to married couples and unmarried roommates? I am worried that with unmarried roommates, one person will move out and the rest of the roommates will not be able to afford the rent.
The law states that, if you have a minimum income requirement, you must add together all of the income for the household before applying the requirement. You must treat married couples and unmarried or unrelated roommates the same way. If you ordinarily require that a married couple earn a combined three times the rent in monthly income, you must add together their income. Likewise, you must add together each unmarried roommate's income to see if the sum is at least three times the rent. Apply any income requirement to the total household, regardless of tenants' marital status or the relationship. Housing providers are sometimes worried that one or more roommates might move out and leave the others to pay the rent. However, there is no guarantee that a married couple will not divorce and create the same situation. All of the tenants on the lease, married or not, are legally responsible for the rent.

California Law Note

Marital Status: Frequently Asked Questions, Continued...

Can I terminate a lease because my tenants are divorcing? I do not think the remaining tenant can afford the rent.

Generally, you should allow the remaining tenant(s) to figure out if they can continue to afford the rent. Even if you suspect that the remaining tenant cannot afford to stay, you should not automatically evict that tenant. If he or she fails to pay rent on time, you may serve the appropriate warnings and notices. If there is a lease agreement in place, you may ask the tenant for income verification at the time of the lease renewal if you have a policy of verifying income with lease renewals.

California Law Note

Age Discrimination

California's ban on age discrimination in housing applies to persons of *all* ages, not just those over or under a certain age. It is illegal to discriminate against persons because they are young, old, or middle aged. Housing providers cannot prefer younger tenants, or older tenants, or tenants of a certain age group. Housing providers also cannot treat tenants differently, or make assumptions about their ability to pay or be good tenants because of their age.

Age: Frequently Asked Questions

What if I become concerned that my elderly tenants can no longer live alone in their apartment safely? Can I ask them to leave?
No. This question touches on both age discrimination and disability discrimination. Though your intentions may be good, it is ultimately not up to you to decide whether elderly tenants can live alone safely. However, if your elderly tenants do things that jeopardize the health or safety of others, you may raise these problems with your tenants and work with them to stop or change the dangerous behaviors. In some cases, if your tenants ask for it, you may need to make a reasonable accommodation to solve the problem, such as allowing a live-in caregiver.

Families with children are a protected group. Does that mean I can prefer to rent to families with children?
Although you may affirmatively welcome families with children to your property, you cannot prefer them to adult or senior households. This would be akin to preferring younger tenants to older tenants, and would be age discrimination under California law.

An elderly man applied to live in one of my apartments. I'm afraid he is going to die in the unit. Then I will have to disclose the death to the next tenant. Can I refuse to rent to him?
No. Although California law requires you to disclose if a prior tenant died in the unit within the past three years, you cannot refuse to rent to elderly applicants or evict elderly tenants because you are afraid of having to make this disclosure. This would be age discrimination. It may also be disability discrimination if you believe elderly individuals will die because they have an illness or appear sick.

California Law Note

Arbitrary Discrimination

The law against arbitrary discrimination is a “catch all” category that is unique to California. The law prohibits discrimination based on personal characteristics having no relationship to a person’s ability to be a good tenant, such as personal appearance or membership in a group. For example, it is illegal to refuse to rent to someone because of tattoos or particular political beliefs. Housing providers also cannot prefer to rent to applicants from a specific geographical region.

Avoid stereotypes or irrelevant characteristics and keep an open mind.

Legal Authorities

The Fair Housing Act, 42 U.S.C. §§ 3601 et seq.
Regulations under the Fair Housing Act, 24 C.F.R. §§ 100 et seq.

California Fair Employment & Housing Act (FEHA), Government Code §§ 12927, 12955 et seq.
Regulations under FEHA, 2 Cal. Code of Regs. §§ 12005 et seq.

California Unruh Act, Civil Code §§ 51 et seq.

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