



# Building Blocks of Fair Housing Litigation

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# 1. Identify the Allegation

- ❑ If allegation is true, is it a violation of FHA or FEHA?
  - ❑ Covered dwelling?
  - ❑ Policy, practice or statement related to housing based on protected class under FHA or FEHA?
    - ❑ Review regulations or HUD guidance for specific DHP examples

# Covered Dwellings

- ▶ Under FHA, must own at least four units to be covered
  - ▶ Very narrow exemptions for non-commercial religious housing, some senior housing, some shared housing
- ▶ Under FEHA, must own at least two units to be covered
  - ▶ Also narrow exemptions
- ▶ Unruh Act has no minimum; covers all private rentals as business establishments

# Discriminatory Housing Practices

- ▶ Any policy, practice, or statement related to housing because of/based on...
  - ▶ Race/color
  - ▶ National origin/ancestry
  - ▶ Religion
  - ▶ Gender, gender identity, sexual orientation
  - ▶ Familial status
  - ▶ Marital status (Cal only)
  - ▶ Disability
  - ▶ Source of Income (Cal only)
  - ▶ Veteran status (Cal only)
- *Refusal to rent/sell or negotiate*
  - *Steering or discouraging*
  - *Eviction/move out notices*
  - *Discriminatory rules or policies*
  - *Facially discriminatory statements*
  - *Lying about available units*
  - *Harassment*
  - *Interference, retaliation, threats*
  - *Accommodations/modifications*
  - *Others*

# Does the allegation, if proven, violate the FHA?

- ▶ Latina complainant alleges that she was turned down for an apartment because of her credit, but management rented to her Asian friend who had similar credit score
- ▶ African American family alleges they were evicted for noise complaints, but their white neighbors were just as noisy
- ▶ Manager only rents to people with young children on the ground floor
- ▶ Owner tells female applicant that he will give her a rent discount if she has sex with him
- ▶ Rules prohibit children from playing anywhere on the property

## 2. Look for corroboration

Type of complaint	Investigative tools
Rental inquiry or application	Testing, policy review if available
Current tenant disparate treatment or harassment	Surveys, witness interviews, rule/policy review
Move-out notices, evictions	Surveys, witness interviews, doc review Testing if circumstances warrant
Reasonable accommodations/modifications	Confirmation of disability and written request, review of docs

# Is there reliable corroboration?

- ▶ Anything in writing? (notices, emails, texts, policies, rules)
- ▶ Fair Housing tests
- ▶ Surveys – in person or by mail, either victims or corroborators
- ▶ Litigation searches for former tenants
  - ▶ Potential witnesses/victims to interview
  - ▶ Cases or defenses that corroborate
- ▶ Records requests to HUD, CRD, Housing Authority, Police, others
- ▶ Interviews of witnesses (neighbors or others)
- ▶ Interviews of former employees

# 3. Discriminatory Statements

- ▶ Written Statements such as rules, discriminatory notices
- ▶ Or corroborated Verbal Statements
  - ▶ Witnesses
  - ▶ Testing
  - ▶ Contemporaneous reports made by complainant to police or others
- ▶ Discrim statements violate FHA and FEHA even if no action was taken
  - ▶ But case is stronger with adverse action



## 4. Reasonable Accommodations

- ▶ Disability corroborated?
- ▶ Accommodation to rule/practice needed to use or enjoy?
- ▶ Need for accommodation related to disability?
- ▶ Accommodation requested? (Verifiable written request preferred)
- ▶ Accommodation rejected or delayed unreasonably?

# helpful RESOURCES

- ▶ HUD-DOJ Joint Statement on reasonable accommodations
- ▶ Other HUD guidance on website
- ▶ FHA regulations, 24 CFR part 100 et seq
- ▶ FEHA regulations, 2 Cal. Code of Regs § 12005 et seq.
- ▶ Schwemm, [Housing Discrimination: Law and Litigation](#)
- ▶ [lcristoldeman@brancart.com](mailto:lcristoldeman@brancart.com)

# Strong Building blocks = Success

- ▶ **Vasona Management** (Filed by Project Sentinel with CRD; Settled 2023)
  - ▶ Allegation of **harassment of tenant** based on **familial status**
  - ▶ **Written rules** restricting children's use of common areas and requiring supervision of all minors
  - ▶ **Surveys** showed widespread use of rules at 48 complexes
  - ▶ Rules enforced against tenants located during survey
  - ▶ \$3m Settlement Fund plus rule changes and extensive requirements/monitoring
- ▶ **Komar** (Filed by Project Sentinel in U.S. District Court ED Cal; Default entered 2022)
  - ▶ Complaint alleging **race discrimination against rental applicant**
  - ▶ **Testing** showed owner/manager was screening calls based on racially-identifiable names/voices
  - ▶ Default judgment of over 90k (collected!)

# More Success

- ▶ **Torrey v. Teruel** (U.S.D.C. N.D. California, Settled 2021)
  - ▶ Complaint to PS of harassment and threatened eviction for having ESAs in building where dogs are not allowed
  - ▶ Medical providers verified **disabilities** and benefits from ESAs – and verifications provided to owner with explicit requests for **reasonable accommodations** via email
  - ▶ 225k settlement + must hire professional manager and distribute/post fair housing materials
- ▶ **Sonoma County case against large management company** (settled 2022)
  - ▶ Complaint to FHANC of refusal to rent to **applicant with § 8 voucher** because she did not meet the minimum income requirement
  - ▶ **Testing** showed they applied the requirement to the entire rent rather than the tenant's share
  - ▶ 100k settlement plus policy changes, trainings, vacancy listings on gosection8 website