

CHAPTER THREE	III-1
<u>California State Housing Discrimination Laws</u>	III-1
CALIFORNIA FAIR HOUSING LAWS	III-1
A. California Fair Employment & Housing Act (FEHA)	III-1
B. Unruh Civil Rights Act	III-4
C. Ralph Civil Rights Act	III-5
D. Bane Civil Rights Act	III-5
E. Government Code Section 11135	III-6
F. Government Code Sections 65008 and 65589.5	III-7
MAJOR FAIR HOUSING COURT DECISIONS	III-7
ENFORCEMENT MECHANISMS AND REMEDIES	III-10
A. Department of Housing and Urban Development (HUD)	III-10
B. Department of Fair Employment and Housing (DFEH)	III-10
1. The Complaint	III-10
2. The Investigation	III-11
3. Prosecution	III-12
4. Relief	III-12
C. Civil Lawsuits	III-13
D. California Attorney General	III-14

CHAPTER THREE

California State Housing Discrimination Laws

Chapter Three provides an overview of some of the most significant housing discrimination laws in California, along with a discussion on enforcement and remedies under California law. These laws often overlap with and complement federal fair housing laws. This chapter will both generally discuss the application of California fair housing laws and focus on discrimination against families with children.

CALIFORNIA FAIR HOUSING LAWS

A. California Fair Employment & Housing Act (FEHA)

Enacted in 1963, the Fair Employment & Housing Act (FEHA -- California Government Code Sections 12900 et seq.) contains the California Fair Housing Law (Rumford Housing Act). The California Fair Housing Act of 1992 brought FEHA into conformity with the Federal Fair Housing Amendments Act of 1988. In many aspects, FEHA resembles the federal Fair Housing Act, but exceeds it in others.

California's FEHA is the primary state law which prohibits discrimination in the sale, rental, lease negotiation, or financing of housing based on a person's race, religion, national origin, color, sex, marital status, ancestry, family status, disability, sexual orientation, and source of income. Under this law, illegal discrimination includes the following activities when based on any of the above "protected classes":

- 🏠 Refusal to sell, rent, or lease housing.
- 🏠 Refusal to negotiate for the sale, rental, or lease of housing.
- 🏠 Representation that housing is not available for inspection, sale, or rental when that housing is in fact available.
- 🏠 The provision of inferior terms, conditions, privileges, facilities or services in connection with the housing.
- 🏠 The cancellation or termination of a sale or rental agreement.
- 🏠 The provision of segregated or separated housing.
- 🏠 Making any written or oral inquiry regarding the race, religion, or national origin of any person seeking to purchase, rent or lease housing.
- 🏠 Making any statement or printing any notice or advertisement that indicates any preference, limitation or discrimination or indicates an intention to make such preference, limitation or discrimination.
- 🏠 Discriminating in the terms, conditions, or privileges in providing financial assistance for the purchase, organization or construction of housing.
- 🏠 Harassing, evicting, or otherwise discriminating against a person who has exercised or helped another person exercise rights under this law.
- 🏠 For profit, inducing a person to sell or rent housing by representing the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion or national origin ("blockbusting").
- 🏠 Discriminating in making available real estate-related transactions.
- 🏠 Denying a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization or other service.
- 🏠 Discriminating through public or private land use practices, decisions, and

authorizations including but not limited to: restrictive covenants, zoning laws, denials of use permits and other actions under planning or zoning laws that make housing opportunities unavailable.

- ⌠ Using a financial or income standard that fails to take into account the aggregate income of persons residing together or proposing to reside together.
- ⌠ When a tenant has a government rent subsidy (e.g., Section 8), using a financial or income standard for eligibility that is not based on the tenant's share of rent.
- ⌠ Any other denial or withholding of housing.

FEHA covers all housing except the renting of an owner-occupied single-family house to one boarder. Even rentals of owner-occupied houses are covered by the law if the owner makes a discriminatory statement or advertisement. FEHA's coverage exceeds the coverage of federal law.

FEHA exempts religious organizations to the extent that they give preferences or limit the sale, rental or occupancy of housing to individuals of the same religion. However, membership in such religion may not be restricted on account of race, color, or national origin and the housing must be owned or operated for a non-commercial purpose.

FEHA specifically provides that a victim of housing discrimination may sue a housing provider solely on the basis of evidence of discriminatory effect. For example, if a person can show that a housing provider's otherwise neutral policy has the effect of excluding families with children, then there may be evidence of a fair housing violation. Once a person provides such evidence, a business establishment must show that the neutral policy with discriminatory effect "is necessary to the operation of the business and effectively carries out [a]

significant business need" to avoid liability. For other non-business entities, the housing provider must prove that the discriminatory policy "is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve." (Govt. Code § 12955.8(b)).

Under both standards, the policy may be considered illegal if any realistic alternatives exist that would accomplish the purpose of the policy without discriminating against families with children. In addition, any discriminatory motive suffices to establish the housing provider's liability, even if the housing provider had some non-discriminatory reasons for the policy ("mixed motive" cases).

B. Unruh Civil Rights Act

The Unruh Act is California's oldest anti-discrimination law (California Government Code section 51). The Unruh Act provides for the right to be free from discrimination in public accommodations regardless of familial status and age as well as race, sex, color, religion, ancestry, national origin, disability, or medical condition. It requires equal access to the accommodations, advantages, facilities, and privileges or services of all business establishments, including those engaged in the sale or rental of real property.

The protection included in the Unruh Act covers a broader base of people than California's FEHA because Unruh has been held by the courts to prohibit any arbitrary discrimination on the basis of personal characteristics or traits. Like FEHA, Unruh applies to more types of housing than the federal Fair Housing Act.

C. Ralph Civil Rights Act

California's Ralph Act (Civil Code Section 51.7) provides freedom for all people within the jurisdiction of California from violence, intimidation by threat of violence, and other hate crimes committed against their persons or property because of their protected status. The Act prohibits violence or threats of violence in rental housing situations, including houses, apartments, hotels, boarding housing and condominiums.

Any person who denies the rights provided by the Ralph Act, or aids, incites or conspires in that denial is liable for each and every offense. Violators of the Ralph Act can be sued for:

- (1) Actual damages suffered by any person denied that right;
- (2) Exemplary damages;
- (3) Up to \$150,000 in emotional distress damages;
- (4) Civil penalties of up to \$25,000 to be awarded to the individuals whose rights had been denied; and
- (4) Attorney's fees as determined by the court.

D. Bane Civil Rights Act

The Bane Act (Civil Code, section 52.1), in many ways exceeds the scope of the Ralph Civil Rights Act. The Act protects all the people of California and forbids interference by force or threat of force with an individual's constitutional or statutory rights. Since it prohibits interference with rights guaranteed by California laws, many Ralph Act violations are also violations of the Bane Act. "Secured rights" protection include places of worship, housing, public and

private property.

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

Convictions under the Bane Act are not allowed for speech alone unless the speech itself threatened violence against a specific person or group of persons and the defendant had the apparent ability to carry out the threat. The penalties for conviction under this statute are imprisonment for not more than one (1) year or a fine not to exceed \$5,000, or both.

E. Government Code Section 11135

Government Code section 11135 prohibits discrimination on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability in any program, including housing, operated by or funded by the State of California. Examples of such housing include the Rental Housing Construction Program funded by the California Department of Housing and Community Development and housing funded by the California Housing Finance Agency.

Complaints for violation of Government Code Section 11135 can be filed with either DFEH or in California state court.

F. Government Code Sections 65008 and 65589.5

Government Code section 65008 prohibits adverse discrimination in land use decisions for residential developments on the basis of race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, age, the method of financing for the development, or intended occupancy of the development by persons of lower incomes. Government Code section 65589.5 similarly prohibits discrimination in land use decisions and policies against affordable housing developments.

MAJOR FAIR HOUSING COURT DECISIONS

The following is a brief description of a few important court decisions relating to California fair housing laws that protect families with children.

Marina Point, Ltd. v. Wolfson (1982) 30 Cal. 3d 721

In this 1982 case the Supreme Court of California ruled that the Unruh Civil Rights Act should be construed broadly to prohibit *all arbitrary discrimination*, including discrimination based on familial status.

The Marina Point manager refused to renew a married couple's lease after he learned that they had recently given birth to a child. When they refused to vacate, he sought to evict them. The municipal court granted judgment for the landlord because it determined that families with children were not a protected class under the explicit terms of the statute. The Supreme Court of California reversed the lower court. Relying on its previous decision in *In*

re Cox (1970) 3 Cal. 3d 205, it held that the classes listed in the statute were merely illustrative and that familial status was protected.

The municipal court had also found that the exclusion of children was not arbitrary, but reasonable, because children "as a class" are "noisier, rowdier, more mischievous and more boisterous" than adults. The Supreme Court rejected this ground as well. It found that an eviction could only be based on an individual determination of the conduct of the tenant's child, not a blanket determination that all children were more likely to be rowdy, mischievous, and boisterous.

The Supreme Court also rejected the landlord's claimed right to develop an "adults only" business that excluded children. The landlord had analogized the apartment complex to a bar, an adult bookstore, or a convalescent home, all of which may lawfully exclude children. The Court pointed out that state law prohibits providing alcohol or adult reading material to children for their protection, and that convalescent homes may contain "particular appurtenances and exceptional arrangements for their specified purposes." On the other hand, nothing about the complex would justify excluding children. Moreover, the complex was open to the general public (except families with children) and did not meet the statutory criteria for senior housing.

Harris v. Capital Growth Investors XIV (1991) 52 Cal. 3d 1142

The Supreme Court of California later retreated from its prior decisions by deciding that the Unruh Act only protects against arbitrary discrimination based on personal characteristics or traits, such as a person's geographical origin, physical attributes, or personal beliefs. The Court held that discrimination based on level of income did not violate the Act, despite the disparate impact

of such a policy on women. (Nonetheless, disparate impact on a protected class may still violate the FHA or FEHA.) The Court did recognize that protected classifications under the Unruh Act were not limited to those found in the text of the statute, but set out a test for determining when a “new” classification would be protected: The court must consider 1) the language of the Unruh Act, 2) the defendant’s legitimate business interests, and 3) the consequences of allowing the new discrimination claim.

Konig v. FEHC (2002) 28 Cal.4th 743

In this recent case the Supreme Court of California ruled that compensatory damages for emotional distress are available in administrative proceedings before the Fair Employment and Housing Commission. Previously, the Court had determined that such damages violated separation of powers doctrine under the California Constitution. The Court reached an opposite result in this case because the Legislature amended the statutes to permit either the complainant or respondent to remove the dispute from the Commission to the courts. Therefore, because the defendant could have removed the case to the courts, if it wished, the Commission may award a plaintiff money damages for the emotional harm that he or she suffered.

Smith v. FEHC (1996) 12 Cal.4th 1143

In this case, the California Supreme Court ruled that a housing provider cannot discriminate against tenants even if the provider’s reason for the discrimination is religious. The case involved a private landlord who refused to rent to an unmarried couple because renting to the unmarried couple violated her religious beliefs. The Court held that the landlord’s religious beliefs did not

justify discrimination on the basis of marital status in violation of FEHA.

Brown v. Smith (1997) 55 Cal.App.4th 767

This case held that housing providers who sexually harass tenants violate FEHA.

ENFORCEMENT MECHANISMS AND REMEDIES

A. Department of Housing and Urban Development (HUD)

HUD must refer complaints to the enforcement agency of the state where the discriminatory housing practice occurred if HUD has certified that the agency has substantially equivalent laws, procedures, remedies and judicial review as federal law. Under a 1994 agreement reached with the California Department of Fair Housing and Employment (DFEH), the majority of discrimination complaints that HUD receives in California are referred to DFEH. Chapter Two covers the process for filing a complaint with HUD.

B. Department of Fair Employment and Housing (DFEH)

The Department of Fair Employment and Housing (DFEH) investigates discrimination complaints. It also assists parties in voluntary resolution procedures and pursues violations of the law in a public hearing or in court.

1. The Complaint

A person may file a complaint with DFEH within one (1) year of the discriminatory act. This one-year period starts after discriminatory act ends. In cases in which the discrimination is a continuing "pattern or practice," a person can argue that the statute of limitations does not apply until such practice

ends.

Once a person files a complaint with DFEH against a housing provider, the Department has sixty (60) days to notify the housing provider about the filed complaint and to advise him/her of the procedural rights and obligations under the law. The housing provider then has ten (10) days to file an answer to the complaint after receipt of the notice. This time presents an opportunity to voluntarily resolve the issue in a no-fault settlement. All offers and counter-offers made in an effort to settle the case are kept confidential by DFEH.

2. The Investigation

DFEH has a responsibility to complete its investigation within 100 days after the complaint is filed. If the controversy is not resolved within 100 days, the person who filed the complaint (the "complainant") will be advised of the reason for the delay, and DFEH must remind the complainant of her right to file a lawsuit. The DFEH may dismiss a complaint if a party withdraws the complaint or if no reasonable cause exists to believe that there was a fair housing violation.

The investigation by DFEH may include: interviews with both parties and other witnesses, review of pertinent documents and records, on-site inspection of the facility and its operations, and use of subpoenas or depositions. The investigation by DFEH may include: interviews with both parties and other witnesses, review of pertinent documents and records, on-site inspection of the facility and its operations, and use of subpoenas or depositions. Subpenas can include requests for documents from the housing provider, including documents about other tenants of or applicants for an apartment complex. (*Department of Fair Employment and Housing v. Superior Court*, 99 Cal.App.4th 896 (2002).)

Once DFEH makes a decision, it must issue notice to the parties within

thirty (30) days of that decision and again inform the complainant of his or her right to file a lawsuit. If DFEH substantiates the complaint, the Department may schedule a formal conciliation conference. If the complainant can reach an agreement with the housing provider, the terms will be formalized in a written settlement.

3. Prosecution

If DFEH determines that the law has been violated, and cannot resolve the issues through conciliation or mediation (for more information about DFEH's conciliation and mediation processes and programs, visit its website at www.dfeh.ca.gov), it will issue an accusation. The parties must then decide whether to have the issues heard by the Fair Employment and Housing Commission ("Commission") or to remove the matter to court.

If neither party elects to have the matter removed to court, the commission will hear it. The Commission is empowered to issue a legally enforceable order. This order may be appealed to, or enforced by, a state superior court.

If the housing provider decides to have the matter heard in court, DFEH must file a suit on behalf of the complainant within thirty (30) days of that decision.

The complainant can choose to go to court at any time during the administrative process. If the complainant decides to go to court, DFEH's involvement in the case ends.

4. Relief

If the Commission finds that the housing provider has engaged in an unlawful practice, the Commission may order injunctive relief, actual damages,

and damages for emotional distress. Additionally, the Commission may order a civil penalty against the housing provider not to exceed \$10,000. This civil penalty may be increased to \$25,000 or \$50,000 for repeated findings of unlawful practices by the same housing provider. The Commission can also ask the court for preliminary injunctive relief to stop an eviction in a fair housing case.

If either the tenant or the housing provider disagrees with the Commission's decision, either party can ask the Commission to reconsider its decision within 30 days of the date the decision is issued. Either party can also appeal the decision to Superior Court by filing a Petition for Writ of Mandate within 30 days of the last day to request reconsideration of the Commission's decision. (*Fair Employment and Housing Commission v. Superior Court*, 115 Cal.App.4th 629 (2004).)

C. Civil Lawsuits

Any person who has been discriminated against may file a civil state or federal court suit within two (2) years of the discriminatory act or the breach of a conciliation agreement facilitated by HUD or DFEH. This two (2) year period does not include any time that a HUD or DFEH complaint was open.

The plaintiff in a civil suit need not file an administrative complaint with HUD or DFEH. However, attorneys and complainants may make use of the investigatory powers of DFEH by filing an administrative complaint and monitoring the process. All information discovered by DFEH in the process of its investigations becomes public record and may be helpful in a civil action. However, if the complaining party intends to file a court action, he/she should avoid any determination by DFEH that no discrimination occurred and should withdraw the complaint if such a determination appears likely.

D. California Attorney General

The California Attorney General may commence an action in state court if there is reasonable cause to believe that (1) any person or group of persons is engaged in a pattern or practice of unlawful acts, or (2) the denial of rights under federal or state law raises an issue of "general public importance." Such an action must be brought within eighteen (18) months of the discriminatory practice. In such an action, the aggrieved party's interests are represented by the Attorney General and an attorney-client relationship exists.