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# **Overview of Fair Housing Laws at the Federal, State and Local Level**

**City of Santa Barbara Fair Housing Program**

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**April 2013**

## **City of Santa Barbara Fair Housing Laws Overview**

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***This document is provided for informational purposes and does not constitute legal advice or legal opinion.***

There are several laws at the Federal, State and Local Level that exist to ensure Fair Housing is available to all.

## The Fair Housing Act (Federal)

### Overview

The Fair Housing Act protects individuals from housing discrimination based upon the following protected classes:

- ⇒ Race
- ⇒ Color
- ⇒ National Origin
- ⇒ Religion
- ⇒ Sex
- ⇒ Familial Status (having children under 18 in the home, or pregnant women)
- ⇒ Handicap (disability)

Protections are afforded to the buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or anyone associated with that buyer or renter.

Examples of Discriminatory Housing Practices (based solely on one or more of the above listed characteristics) are:

- Refuse to rent or sell housing;
- Refuse to negotiate for housing;
- Make housing unavailable;
- Deny a dwelling;
- Set different terms, conditions, or privileges in the sale or rental of a dwelling, or in the terms of a mortgage loan;
- Provide different housing services or facilities;
- Falsely state that housing is unavailable for inspections, sale, or rental;
- For profit, persuade owners to sell or rent (blockbusting);
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing;
- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right; and
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to the sale of single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act (see exemptions next page).

### Mortgage Lending

It is illegal to take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap (disability):

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan
- Set different terms or conditions for purchasing a loan.

### Exemptions

The Fair Housing Act contains several exemptions.

1) Religious organizations can show preference to members of the same religion when offering non-commercial (free) housing, such as shelters or nursing homes. However, current law forbids faith-based organizations receiving federal grants from discriminating among recipients or applicants for services on religious grounds. Private clubs may show preference to club members under similar circumstances;

2) The act does not prohibit a private club, from limiting the rental or occupancy of noncommercial lodgings to members only. (This does not address the issue of whether a private club may discriminate when admitting members based on race. Such claims are covered by the Civil Rights Act.);

3) Discrimination based on familial status will not apply to housing qualifying for exempted status as housing for older people. Housing for older persons is defined as housing that:

- The U.S. Department of Housing and Urban Development (HUD) Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program; or
- It is occupied solely by persons who are 62 or older; or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.

4) The sale or rental of a single-family house by the owner will be exempt from coverage, providing the following conditions are met\*:

- The owner does not own or have any interest in more than three single-family houses at any one time, **and**
- The house is sold or rented without the services of a real estate licensee or the facilities of any person in the business of selling or renting dwellings (if the owner does not use discriminatory advertising).

\*The exemption will apply to one sale within a two-year period unless the owner was the most recent resident. (The Civil Rights Act still applies.)

The Fair Housing Act does not protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others.

### Persons with Disabilities

#### Person with Disability Defined

The terms "handicap" or "disability", with respect to a person, means:

- Have a physical or mental disability that substantially limits one or more major life activities (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation);
- Have a record of such a disability; or
- Are regarded as having such a disability.

The term “major life activity” means those activities that are of central importance to daily life, including, but not limited to, seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking.

Housing need not be made available to a person who is a direct threat to the health or safety of others, or whose tenancy would result in substantial physical damage to the property of others, or who currently uses illegal drugs. However, landlords must base their decisions on recent objective evidence of behavior that will put others at risk of harm.

### **Reasonable Accommodation/Modification**

The Fair Housing Act gives additional protections to people with disabilities in order to ensure full enjoyment of a unit or living space. The protections are called Reasonable Accommodations/Modifications.

A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common-use spaces, such as community or laundry rooms.

### **Accommodation**

A reasonable *accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service. Accommodations are considered "reasonable" when they are practical and feasible. Landlords do not have to grant an accommodation request if it would pose an undue burden (financial or administrative) on the landlord or require a fundamental alteration of the property. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation.

Examples of Reasonable Accommodations:

- Providing an assigned parking space to a disabled person when parking normally is unassigned
- Allowing a disabled person to mail their rent check rather than delivering it in person
- Allowing a disabled person to have an assistance animal when normally no pets are allowed

### **Modification**

A reasonable *modification* is a structural change made to the premises. The landlord must allow a tenant to make a reasonable modification if the modifications are reasonable and necessary for the tenant to use the dwelling. There must be an identifiable relationship, or nexus, between the requested modification and the individual’s disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

In many instances, the tenant/buyer is responsible for the cost of these changes or modifications, and, if the landlord's request is reasonable, the tenant may also be required to return the unit to its original condition.

Landlords may not require an increased security deposit from a tenant making a physical modification to the dwelling, however, housing providers, when necessary, may require the tenant to pay into an escrow account to cover the costs of returning the place to its original condition.

### Examples of Reasonable Modifications:

- Installing an automatic water faucet shut-off for a disabled person who cannot remember to turn off the water
- Installing a ramp for a disabled person who could not otherwise access her home
- Installing pictures or color-coded signs for people whose cognitive disabilities make written signs impossible to use
- Disconnecting a stove and installing a microwave for a disabled person unable to operate a stove safely

### Requirements for New Buildings

For buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units, the following standards apply to all units:

- Public and common areas must be accessible to persons with disabilities;
- Doors and hallways must be wide enough for wheelchairs; and
- All units must have:
  - An accessible route into and through the unit;
  - Accessible light switches, electrical outlets, thermostats and other environmental controls;
  - Reinforced bathroom walls to allow later installation of grab bars; and
  - Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and was ready for first occupancy after March 13, 1991, these standards apply only to ground floor units.

These requirements for new buildings do not replace any more stringent standards in State or local law.

### Service Animals

Under the Reasonable Accommodations provision of the Fair Housing Act, persons with disabilities are allowed to keep a service or companion (emotional support) animal, even in housing where pets are not normally allowed.

Service or companion animals are not considered to be pets, but rather as assistive aids such as wheelchairs or crutches. A service animal may be any type of animal, breed, size or weight, or could be more than one animal. Service or companion animals are not required to have special training or visible identification, nor can a landlord mandate that the service or companion animal have special training. A disabled tenant who requires a service animal is not required to make a pet deposit nor be subject to a pet-related cleaning fee, other than general cleaning deposits as permitted by law.

Tenants requesting to have a service or companion animal as a reasonable accommodation should submit a written request to their landlord. The letter should explain that the tenant has a disability and explain how the requested accommodation will be helpful to the tenant. The tenant should include a note from his or her health service provider, such as a doctor, therapist or nurse, confirming the need for the service or companion animal. The tenant does not have to disclose the details of the disability, nor provide a medical history, only enough information to establish a relationship between the need for the service animal and the disability.

Landlords are not required to accommodate any animal that is, or becomes, unruly, disruptive, unclean or unhealthy to the extent that the animal poses a direct threat to the health or safety of others. In addition, the tenant is required to keep control of the animal at all times. Landlords may also require that the service animal be in good health, free of parasites, and be fully vaccinated against common diseases.

### Familial Status

It is illegal to discriminate based on familial status. That is, one may not discriminate against families in which one or more children under the age of 18 live with:

- ⇒ A parent;
- ⇒ A person who has legal custody of the child or children; or
- ⇒ The designee of the parent or legal custodian, with the parent or custodian's written permission.

Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Common ways in which families with children are discriminated against:

- Refuse to rent to families with children, or no-children policy;
- Requiring families to live in specific buildings of an apartment complex, in specific sections of a building, or on the first floor of a building;
- Requiring that children of opposite sex have separate bedrooms;
- Refusing to rent based on perceived risks and dangers of the property (such as lead paint, steep steps, located near train tracks);
- Inquiring about pregnancy;
- Inquiring about childcare arrangements; inquiring about the ages of the occupants &/or how many will be children;
- Charging extra for children.

### Exemption

Housing for older persons is exempt from the prohibition against discrimination based on familial status if:

- The HUD Secretary has determined that the home is specifically designed for and occupied by elderly persons under a Federal, State or local government program; or
- It is occupied solely by persons who are 62 or older; or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.

### Lesbian, Gay, Bisexual and Transgender Persons

According to the HUD's Office of Fair Housing and Equal Opportunity (FHEO), the Fair Housing Act does not specifically include sexual orientation and gender identity as protected classes. However, a lesbian, gay, bisexual, or transgender (LGBT) person's experience with housing discrimination based on sexual orientation or gender identity may still be covered by the Fair Housing Act. **Note:** California laws specifically prohibit discrimination on the basis of sexual orientation.

Examples:

- A gay man is evicted because his landlord believes he will infect other tenants with HIV/AIDS. That situation may constitute illegal disability discrimination under the Fair Housing Act because the man is

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perceived to have a disability, HIV/AIDS.

- A property manager refuses to rent an apartment to a prospective tenant who is transgender. If the housing denial is because of the prospective tenant's non-conformity with gender stereotypes, it may constitute illegal discrimination on the basis of sex under the Fair Housing Act.

In addition, housing providers that receive HUD funding, have loans insured by the Federal Housing Administration (FHA), as well as lenders insured by FHA, may be subject to HUD program regulations that are intended to ensure equal access of LGBT persons.

Example:

- An underwriter for an FHA-insured loan reviews an application where two male incomes are used to evaluate the applicants' credit worthiness. The underwriter assumes the applicants are a gay couple and denies the application as a result despite the applicants' excellent credit history.

### Miscellaneous Protections/Prohibitions

The Fair Housing Act prohibits coercion, intimidation, threats, harassment or interference with a person on account of that person having exercised or enjoyed, or because he aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act.

### Advertising

Discrimination in advertising is prohibited under the Fair Housing Act. Statements made indicating a preference or limitation, or discrimination of the protected classes listed above are a violation of the Fair Housing Act. Advertising includes television; radio; newspaper ads; fliers; emails; websites; statements made over the phone or in person, or to another person aside from the home seeker.

Examples of Discriminatory Advertising:

- Ads stating a preference for the race of a desired applicant (i.e. "no blacks," "whites only," etc.)
- Ads describing the religion of current occupants of the complex or neighborhood (i.e. "nice, Christian neighborhood," "Jewish family seeks roommate," etc.)
- Ads posted only in a language other than English
- Ads describing the complex as unable to accommodate people with disabilities (i.e. "units are not accessible", "no pets, even seeing eye dogs", etc.)
- Ads that could discourage families with children (i.e., "ideal for working professionals," "perfect for singles or couples," "nice, quiet, mature, neighborhood," etc.)

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## California

There are two laws in California that provide additional protections afforded by the Fair Housing Act: the Fair Employment and Housing Act and the Unruh Civil Rights Act.

### Fair Employment and Housing Act (FEHA)

#### FEHA Overview

FEHA prohibits housing discrimination on the following bases, referred to as "protected classes":

- ⇒ Race
- ⇒ Color
- ⇒ Religion



- ⇒ Sex
- ⇒ Gender/ Gender Identity/ Gender Expression
- ⇒ Sexual orientation (heterosexual, bisexual, lesbian, gay, etc.)
- ⇒ Marital status
- ⇒ National origin
- ⇒ Ancestry
- ⇒ Familial status (having children under 18 in the home, guardians, pregnant women, or in the process of adopting)
- ⇒ Source of income (lawful, verifiable income paid directly to the tenant or a representative of the tenant)
- ⇒ Disability (disease, disorder, or condition that limits a major life activity. The definition of disability under FEHA includes having a disability, having a record or history of such a disability, or being regarded or treated as having such a disability. Disability includes both physical and mental disabilities.)

FEHA prohibits the following practices against one or more of the above listed protected classes by housing owners:

- Discriminate or harass any person because of one or more of their characteristics listed above;
- Make any written or oral inquiry concerning the protected class characteristic of any person seeking to purchase, rent or lease housing; or
- Retaliate by harassing, evicting, or otherwise discriminating against, a person who has opposed discriminatory housing practices, informed law enforcement of such practices, testified or assisted in a discrimination case, or aided or encouraged a person to exercise their fair housing rights.

Owners include lessees, sub-lessees, assignees, managing agents, real estate brokers or salespersons, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations, and include the state and any of its political subdivisions and any agency thereof.

FEHA prohibits the following by anyone:

- Make, or intend to make, print or publish any notice, statement, or advertisement with respect to the sale or rental of a housing accommodation that indicates any preference, limitation or discrimination against a protected class;
- Otherwise make unavailable or deny a dwelling based on discrimination because of a person's protected class; or
- Aid, abet, incite, compel, or coerce any person to do any of the acts prohibited by FEHA.

Examples of discriminatory housing practices (based solely on one or more of the above listed characteristics) are:

- Refuse to sell, rent or lease a housing unit;
- Refuse to negotiate for the sale, rental, or lease of housing;
- State that a housing unit is not available for inspection, sale or rental when that housing unit is actually available;

- Deny or provide inferior terms, conditions, privileges, facilities, or services in connection with the housing unit;
- Cancel or terminate a sale or rental agreement;
- Provide separated or segregated housing accommodations;
- Refuse to permit reasonable modifications to the property by a disabled person (see reasonable modification section under the Fair Housing Act);
- Refuse to make reasonable accommodations in rules, policies, practices, or services (see reasonable accommodation section under the Fair Housing Act);
- Blockbusting - attempts by sellers or landlords to encourage persons to leave an area. Also prohibited by the federal Fair Housing Act;
- Redlining - practices by banks that limit lending in particular areas because of the demographic character of the area; or
- Any other denial or withholding of housing accommodations.

### Exemptions

Under FEHA, discrimination does not include:

- Refusing to rent or lease a portion of an owner-occupied single-family house to a person as a roommate or boarder living in the same household, provided that no more than one roommate or boarder is to live in the household, and the owner does not make discriminatory notices, statements, and advertisements;
- Stating or implying that the housing being advertised is limited to only persons of one sex, but only where the sharing of living areas in a single dwelling unit is involved; or
- Senior housing as defined in the federal Fair Housing Act (for Familial Status).

**Note:** \*\*While many of the state’s provisions regarding access to fair housing are very similar to federal law, specifically regarding protections for families and persons with disabilities, state law is stricter in other respects. For example, the Fair Housing Act’s exemption for housing owners as described in page 2 of this document regarding the sale or rental of a single-family house by the owner does not apply. So while an owner may be exempt by the Fair Housing Act, he/she is not exempt by FEHA. \*\*

## Unruh Civil Rights Act (Unruh Act)

### Unruh Act Overview

The Unruh Act states that all persons are free and equal, and are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all **business establishments, including housing providers**. The Unruh Act protects all persons against arbitrary and unreasonable discrimination by business establishments.

This law prohibits discrimination by all business establishments (including housing providers) in California because of:

- ⇒ Age
- ⇒ Ancestry
- ⇒ Color
- ⇒ Disability
- ⇒ Genetic Information
- ⇒ Medical Condition (cancer and genetic characteristics)

- ⇒ Marital Status
- ⇒ National Origin
- ⇒ Race
- ⇒ Religion
- ⇒ Sex (which includes pregnancy, childbirth, medical conditions related to pregnancy or childbirth, gender, gender identity and gender expression)
- ⇒ Sexual Orientation

The California Supreme Court has held that protections under the Unruh Act are not necessarily restricted to these characteristics. The Unruh Act is meant to cover all *arbitrary and intentional* discrimination by a business establishment on the bases of personal characteristics similar to those listed above.

### Exemptions

Senior housing as defined in California Civil Code Section 51.3 (for Familial Status only).

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## Local

The City of Santa Barbara established its own Fair Housing laws consistent with the Housing Element of the General Plan to promote and ensure open and free choice of housing without discrimination to its residents.

## City of Santa Barbara Fair Housing Ordinance

### Overview

Santa Barbara Municipal Code 26.30 makes it unlawful for a person to do or attempt to do any of the following acts, where the act constitutes discrimination on a basis prohibited by the Unruh Act:

- Refuse to rent or lease a rental unit;
- Refuse to negotiate for the rental or lease of a rental unit (includes acceptance of applications);
- Otherwise deny to or withhold from any person or persons a rental unit;
- Discriminate against any person in the terms, conditions, or privileges of the rental or lease of a rental unit, or in the provision of services, facilities or benefits in connection with the rental unit;
- Refuse to show a rental unit;
- Advertise in any manner which indicates any preferences, limitations or discrimination;
- Require tenants to remain childless or otherwise limit families with children under 18 years of age;
- Refuse to rent after making a bona fide offer, or refuse to negotiate for the rental of, or otherwise make unavailable or deny, rental unit to any person;
- Charge additional rent for persons living in rental unit;
- Discriminate by means of arbitrary income restrictions (refuse to rent to a person who can demonstrate, by prior rental history or by other means, that he or she is able to pay the required rent); or
- Discriminate by means of arbitrary occupancy standards.

### Exemptions

- Senior Facilities: Housing for senior adults or state-licensed residential care facilities for the elderly.
- Nursing homes: A state licensed nursing home, convalescent home, or community care facility.
- Owner-occupied unit: A rental unit occupied by the owner.

- Subleases: A rental unit occupied by a tenant who subleases any portion of that accommodation to another tenant.
- Government housing: A rental unit owned, operated or managed by a governmental agency.

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## Miscellaneous

### Occupancy Standards

The Department of Housing and Urban Development (HUD) provides guidelines regarding occupancy standards that could have the effect of violating federal fair housing laws prohibiting discrimination, particularly against families with children. In general, occupancy standards that allow two persons per bedroom, regardless of the age, gender or relationship of the persons living in the unit could be considered reasonable under the Fair Housing Act. The size and number of sleeping units, the overall size of the unit, as well as the capacity of septic/sewer or other building systems can be taken into consideration when determining occupancy standards. However, HUD warns against arbitrary occupancy restrictions that are intended to, or have the effect of, discriminating against families with children.

Examples:

- An owner refused to rent a two-bedroom house to a family of five, even though the bedrooms and living area were spacious. This action could be considered housing discrimination.
- An owner refused to rent a two-bedroom house to a family of five. Even though the unit was advertised as having two bedrooms, one of the bedrooms was extremely small. It is reasonable that the unit could be considered too small for a family of five. Depending on other factors, the landlord could not face a charge of housing discrimination.

In California, the Department of Fair Employment and Housing views “two persons per bedroom plus one” as a guideline for occupancy standards, i.e. three persons in a one-bedroom home; five persons in a two-bedroom home. A more restrictive policy may be found to be discriminatory.

Note, that the word “persons” is used in the above guidelines: occupancy standards that restrict tenancy to adults only would be discriminatory against families with children.

To prevent overcrowding conditions, state and federal fair housing laws do not mandate occupancies in violation of the Uniform Housing Code, or other local occupancy codes, so long as these codes or overcrowding concerns are not used as pretexts to discriminate against persons in protected classes, such as families with children.

The City’s Fair Housing ordinance permits occupancy standards, but must satisfy the following criteria:

- It is uniformly imposed on all comparably-sized rental units on the premises;
- It is conspicuously posted on the premises or contained in a written policy, rule or notice which is given to each tenant and prospective tenant;
- Minor children (under the age of 16) are not counted in enforcing the occupancy standard\*; and
- It does not apply to infants (less than one year old).

\* The standards regarding minor children do not require a landlord to accept occupancy of a rental unit by more than 2 persons (including minor children, but not infants) per bedroom, or authorize occupancies in violation of the floor-area standards of the Uniform Housing Code.

### **Rent Based on Number of Residents**

Housing providers may generally not charge higher rents based on the number of persons, or presence or amount of children in a housing unit. A housing provider requiring additional rent for each person, without regard to age, in order to cover increased expenses, must be able to provide evidence of an objective and adequate reason for the higher rent.

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### **Where to Turn for Help**

To obtain more information on the **federal Fair Housing Act** or file a discrimination complaint you may visit the HUD Office of Fair Housing and Equal Opportunity website at [www.HUD.gov/fairhousing](http://www.HUD.gov/fairhousing) or call (800)669-9777. For the hearing impaired call TTY (800)927-9275.

To obtain more information on the **California Fair Employment and Housing Act or Unruh Civil Rights Act** or file a discrimination complaint, visit the California Department of Fair Employment and Housing website at [www.dfeh.ca.gov](http://www.dfeh.ca.gov) or call (800) 884-1684 or TDD (800) 700-2320 for the hearing impaired.

To obtain more information on the **Santa Barbara Fair Housing Ordinance**, visit the City of Santa Barbara Community Development Department's Fair Housing Program website at [www.SantaBarbaraCA.gov](http://www.SantaBarbaraCA.gov) or call (805) 564-5461. Services are provided to Santa Barbara residents only.

### **Additional Resources**

The City of Santa Barbara's **Rental Housing Mediation Task Force (RHMTF)** program provides information on California rules and regulations pertaining to landlord/tenant rights and responsibilities to persons in a rental housing situation, and offers mediation services to landlords, tenants, roommates and neighbors regarding rental housing disputes. Services are provided offered free of charge.

For additional information on the RHMTF visit <http://www.santabarbaraca.gov/Resident/Home/RHMTF/> or call (805) 564-5420. Services are provided residents of the Cities of Santa Barbara, of Goleta, Carpinteria, and unincorporated areas of Santa Barbara County.

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## Sources

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