

ATTACHMENT D

Fair Employment & Housing Council Housing Regulations Regarding Definitions; Intentional Discrimination; Discriminatory Notices, Statements, and Advertisements; Consideration of Income; Residential Real Estate-Related Practices; and Disability

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 7. Discrimination in Housing

TEXT

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Article 1. General Matters

§ 12005. Definitions.

As used in this subchapter, the following definitions shall apply:

(a) “Act” or “the Act” means the California Fair Employment and Housing Act, created by Government Code section 12900 et seq.

(b) “Adverse action” means action that harms or has a negative effect on an aggrieved person. The adverse action need not be related directly to the dwelling or housing opportunity forming the basis for the lawsuit or administrative complaint; for example, filing false allegations about a tenant with a tenant’s employer may constitute adverse action. Adverse action includes:

(1) In dwellings that are rented, leased, or otherwise made available for occupancy whether or not for a fee, adverse actions include:

(A) Failing or refusing to rent or lease real property, failing or refusing to continue to rent or lease real property, failing or refusing to add a household member to an existing lease, reducing any tenant subsidy, increasing the rent, reducing services, changing the terms, conditions, or privileges, threatening to or actually filing false reports with tenant reporting agencies, unlawfully locking an individual out of, or otherwise restricting, access to all or part of the premises, harassment, termination, or threatened termination of tenancy, serving a notice to quit, filing an eviction action, evicting a tenant, refusing to provide a reasonable accommodation or reasonable modification, or engaging in any other discriminatory housing practice; or

(B) Taking any action prohibited by California Civil Code sections 1940.2(a), 1940.3(b), 1940.35, or 1942.5(c) or (e), or Code of Civil Procedure 1161.4(a);

(2) Taking any action prohibited by Article 24 regarding the consideration of criminal history information;

(3) Refusing to sell a dwelling or residential real estate or otherwise failing or refusing to enter into a residential real estate related transaction;

(4) Refusing to provide financial assistance related to a dwelling or residential real estate; or

(5) Taking other action that has an adverse effect on an aggrieved person.

(c) “Aggrieved person” includes any person who:

(1) Believes they have been injured by a discriminatory housing practice; or

(2) Believes that they will be injured by a discriminatory housing practice that is about to occur.

(d) “Assistance animals” include service animals and support animals, as described in subsections (1) and (2) below. An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional, cognitive, or similar support that alleviates one or more identified symptoms or effects of an individual’s disability. See also, section 12185.

(1) “Service animals” are animals that are trained to perform specific tasks to assist individuals with disabilities, including individuals with mental health disabilities. Service animals do not need to be professionally trained or certified, but may be trained by the individual with a disability or another individual. Specific examples include, but are not limited to:

(A) “Guide dog,” as defined at Civil Code section 54.1, or other animal trained to guide a blind individual or individual with low vision.

(B) “Signal dog,” as defined at Civil Code section 54.1, or other animal trained to alert a deaf or hard-of-hearing individual to sounds.

(C) “Service dog,” as defined at Civil Code section 54.1, or other animal individually trained to the requirements of an individual with a disability.

(D) “Miniature horses” meeting the requirements of 28 CFR 35.136(i) (March 15, 2011) hereby incorporated by reference and 28 CFR 36.302(c)(9) (October 11, 2016) hereby incorporated by reference.

(E) “Service animals in training,” including guide, signal, and service dogs being trained by individuals with disabilities, persons assisting individuals with disabilities, or authorized trainers under Civil Code sections 54.1(c) and 54.2(b).

(2) “Support animals” are animals that provide emotional, cognitive, or other similar support to an individual with a disability. A support animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals.

(e) “Building” means a structure, facility, or portion thereof that contains or serves one or more dwelling units.

(f) “Business establishment” shall have the same meaning as in Section 51 of the Civil Code. Business establishments include persons engaged in the operation of a business covered by Section 51 of the Civil Code, insofar as the business is related to dwellings, housing opportunities, financial assistance, land use, or residential real estate-related activities. The term business establishment shall be broadly interpreted. For example:

(1) Entities engaged in the rental, sale, management or operation of residential real estate, including common interest developments and mobilehome parks, constitute business establishments;

(2) Government bodies engaged in enacting legislation to implement governmental functions may not constitute business establishments; and

(3) Both nonprofit and for-profit organizations can constitute business establishments depending on the facts, but truly private social clubs not engaged in business activity are not business establishments.

(g) “Common use areas” means rooms, spaces, or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. Examples of common use areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, elevators, parking areas, garages, pools, clubhouses, dining areas, physical fitness areas or gyms, play areas, recreational areas, and passageways among and between buildings.

(h) “Complainant” means a person who files a complaint with the department alleging that the person has been aggrieved by a practice made unlawful by any law the department enforces and/or a person who files a civil action or counterclaim or raises an affirmative defense alleging that the person has been aggrieved by a practice made unlawful by any law the department enforces.

(i) “Criminal conviction” means a record from any jurisdiction that includes information indicating an individual has been convicted of a felony or misdemeanor.

(j) “Department” means the Department of Fair Employment and Housing.

(k) “Directly-related conviction” means a criminal conviction that has a direct and specific negative bearing on the identified interest or purpose supporting the practice.

(l) “Discriminatory housing practice” means an act that is unlawful under federal or state fair housing law, including housing-related violations of the Fair Employment and Housing Act, the federal Fair Housing Act, the Unruh Civil Rights Act, the Ralph Civil Rights Act, the Disabled Persons Act, and the Americans with Disabilities Act.

(m) “Dwelling unit” means a single unit of a housing accommodation for a family or one or more individuals.

(n) “Financial assistance” includes the making or purchasing of loans, grants, securities, or other debts; the pooling or packaging of loans or other debts or securities, which are secured by residential real estate; or the provision of other financial assistance relating to the purchase, organization, development, construction, improvement, repair, maintenance, rental, leasing, occupancy, or insurance of dwellings, including:

(1) Mortgages, reverse mortgages, home equity loans, and other loans secured by residential real estate;

(2) Insurance and underwriting related to residential real estate, including construction insurance, property insurance, liability insurance, homeowner’s insurance, and renter’s insurance; and

(3) Loan modifications, foreclosures, and the implementation of the foreclosure process.

(o) “Housing accommodation” or “dwelling” includes:

(1) One or more dwelling units;

(2) Any building, structure, or portion thereof that is used or occupied as, or designed, arranged, or intended to be used or occupied as, a home, residence, or sleeping place by one individual who maintains a household or by two or more individuals who maintain a common household, and includes all public and common use areas associated with it, if any, including single family homes; multi-family housing; apartments; community associations, condominiums, townhomes, planned developments, community apartment projects, and other common interest developments as defined in the Davis-Stirling Common Interest Development Act (known colloquially as homeowner associations (HOAs)); housing cooperatives, including those defined under Civil Code 4100(d); rooms used for sleeping purposes; single room occupancy hotel rooms and rooms in which people sleep within other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling; bunkhouses; dormitories, sober living homes; transitional housing; supportive housing; licensed and unlicensed group living arrangements; residential motels or hotels; boardinghouses; emergency shelters; homeless

shelters; shelters for individuals surviving domestic violence; cabins and other structures housing farmworkers; hospices; manufactured homes; mobilehomes and mobilehome sites or spaces; modular homes, factory built houses, multi-family manufactured homes, floating homes and floating home marinas, berths, and spaces; communities and live aboard marinas; and recreational vehicles used as a home or residence.

(3) Any building, structure, or portion thereof that is occupied, or intended to be occupied, pursuant to a transaction facilitated by a hosting platform, a website that enables property owners to list their spare room, apartment or home for short term rentals as defined in section 22590 of the Business and Professions Code;

(34) Any vacant land that is offered for sale or lease for the construction of any housing accommodation, dwelling, or portion thereof as defined in subdivision (2); or

(45) All dwellings as defined in and covered by the federal Fair Housing Act (42 U.S.C. § 3602(b)).

(p) “Housing opportunity” includes the opportunity to obtain, use or enjoy a dwelling, a residential real estate-related transaction, financial assistance in relation to dwellings or residential real estate, public or private land use practices in relation to dwellings or residential real estate, or other housing related privileges, services and facilities, including infrastructure or governmental services.

(q) “Includes” or “including” has the same meaning as “includes, but not limited to” or “including, but is not limited to.”

(r) “Interior” means the spaces, parts, components or elements of an individual dwelling unit.

(rs) “Legitimate” means that a justification is genuine and not false or pretextual.

(t) “Military or veteran status” includes a member or former member of the United States Armed Forces (including the Army, Marine Corps, Navy, Air Force, Coast Guard, United States Public Health Service Commissioned Corps., National Oceanic and Atmospheric Administration Commissioned Officer Corps., Women Airforce Service Pilots, and designated members of the Merchant Marines), the United States Armed Forces Reserve, the United States National Guard (including the Army National Guard and the Air National Guard), and the California National Guard (including the California Air National Guard, California Army National Guard, and California State Guard), regardless of duty status or discharge status.

(su) “Nondiscriminatory” means that the justification for a challenged practice does not itself discriminate based on a protected basis.

(tv) “Owner” means any person having any legal or equitable right of ownership, possession or the right to rent or lease housing accommodations, including the following if they hold such rights:

(1) A lessee, sublessee, assignee, managing agent, real estate broker or salesperson;

(2) An offeror of a housing accommodation pursuant to a transaction facilitated by a hosting platform, a website that enables property owners to list their spare room, apartment or home for short term rentals as defined in section 22590 of the Business and Professions Code;

(23) A trustee, trustee in bankruptcy proceedings, receiver, or fiduciary;

(34) Any person that is defined as a “housing provider” in a statute, regulation or government program or that is commonly referred to as a “housing provider” in the housing industry;

(45) The state and any of its political subdivisions and any agency thereof;

(56) Agencies, districts and entities organized under state or federal law, and cities, counties, and cities and counties (whether charter or not), and all political subdivisions and agencies thereof; and

(67) Governing bodies of common interest developments.

(w) “Person” or “persons” include:

(1) An individual or individuals;

(2) All individuals and entities that are included in the definition of “owner”;

(3) All individuals and entities that are described in 42 U.S.C. § 3602(d) and 24 C.F.R. 100.20, including one or more individuals, corporations, partnerships, limited liability companies, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy proceedings, receivers, and fiduciaries;

(4) All institutional third parties, including the Federal Home Loan Mortgage Corporation, Fannie Mae, and any other entities that comprise the secondary loan market;

(5) Community associations, condominiums, planned developments, and other common interest developments, including those defined in the Davis-Stirling Common Interest Development Act (Civil Code section 4000 et seq.) (known colloquially as homeowner associations (HOAs));

(6) The state and any of its political subdivisions and any agency thereof; agencies, districts, and entities organized under state or federal law; and cities, counties, and cities and counties (whether charter or not), and all political subdivisions and agencies thereof;

(7) Any entity that has the power to make housing unavailable or infeasible through its practices, including government entities and agencies, insurance companies, real estate brokers and agents, and entities that provide funding for housing; and

(8) “Person” shall be interpreted broadly.

(~~v~~x) “Practice” or “practices” includes the following, whether written or unwritten or singular or multiple: an action, failure to act, rule, law, ordinance, regulation, decision, standard, policy, procedure, and common interest development governing documents pursuant to Civil Code sections 4205, 4340-4370. Practice also includes “practices” as used in 24 C.F.R. Part 100.

(~~w~~y) “Premises” means the interior or exterior spaces, parts, components, or elements of a ~~building~~housing accommodation, including individual dwelling units and the public and common use areas of a ~~building~~housing accommodation.

(~~x~~z) “Private land use practices” include all non-governmental practices in connection with development and land use that are related to or have an effect on existing or proposed dwellings or housing opportunities including:

(1) Rehabilitation, transfer, conversion, demolition and development;

(2) Regulations and rules governing use of property and the conduct or characteristics of its occupants;

(3) Provision, denial of, or failure to provide infrastructure, services or facilities and land use that affect the feasibility, use or enjoyment of housing opportunities and existing and proposed dwellings;

(4) Covenants, deed restrictions, and other conditions or constraints on transfer or use of property, whether or not recorded with a county; and

(5) Other actions that make housing unavailable.

(~~y~~aa) “Protected bases” or “protected classes” include race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, military or veteran status, age, medical condition, genetic information, citizenship, primary language, immigration status, arbitrary characteristics as protected by the Unruh Civil Rights Act, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes.

(~~z~~bb) “Public land use practices” include all practices by governmental entities, as those entities are defined in sections 12005(t)(4), 12005(t)(5), and 12005(u)(6), in connection with development and land use that are related to or have an effect on existing or proposed dwellings or housing opportunities including:

(1) Adoption, modification, implementation or rescission of ordinances, resolutions, actions, policies, permits, or decisions, including authorizations, denials, and approvals of zoning, land use permits, variances, and allocations, or provision or denial of facilities or services;

(2) Other actions authorized under the California Planning and Zoning Law (Title 7 (commencing with section 65000)), California Redevelopment Law (Health & Safety Code section 33320 et seq.), “Redevelopment Dissolution Law” (Division 24, Parts 1.8, 1.85 and 1.87), the Ellis Act (Government Code section 7060), the Mobilehome Parks Act (Health and Safety Code section 18200 et seq.), the Special Occupancy Parks Act (Health & Safety Code section 18860 et seq.), the California Relocation Assistance Act (Government Code section 7260 et seq.), the Surplus Lands Act (Government Code section 54220 et seq.), State Housing Law (Health and Safety Code section 17910 et seq., Government Code section 65580 et seq.) and other federal and state laws regulating the development, transfer, disposition, demolition, and regulation of residential real estate or existing or proposed dwellings, and the provision of public facilities and services and other practices that affect infrastructure, municipal services and community amenities in connection with housing opportunities;

(3) All practices that could affect the availability, feasibility, use, or enjoyment of housing opportunities;

(4) Allocation, provision, denial of or failure to provide municipal infrastructure or services, such as water, sewer, and emergency services, and other services, in connection with housing opportunities;

(5) Permitting of facilities or services that affect housing opportunities;

(6) Adoption, modification or implementation of housing-related programs, which include activities where a governmental entity, in whole or in part, owns, finances, develops, constructs, alters, operates, or demolishes a dwelling, or where such activities are done in connection with a program administered by, or on behalf of, a governmental entity, directly or through contractual, licensing, or other arrangements; and

(7) Other legislative, quasi-judicial, administrative, or other practices related to land use.

~~(aacc)~~ “Public use areas” means interior or exterior rooms or spaces of a building that are made available to the general public. Public use areas may be provided at a building that is privately or publicly owned.

~~(bbdd)~~ “Residential real estate” means all real property, whether improved or unimproved, that includes or is planned to include dwellings, or is zoned or otherwise designated or available for the construction or placement of dwellings.

~~(eeee)~~ “Residential real estate-related transaction” includes:

- (1) Providing financial assistance;
- (2) Buying, selling, brokering or appraising of residential real estate; or
- (3) The use of territorial underwriting requirements, for the purpose of requiring a borrower in a specific geographic area to obtain earthquake insurance, required by an institutional third party on a loan secured by residential real property.

(deff) “Respondent” means a person alleged to have committed a practice made unlawful by a law the department enforces and against whom a complaint has been filed with the department, against whom a civil action or counterclaim has been filed, or against whom an affirmative defense has been raised.

(eegg) “Substantial interest,” for purposes of section 12062(a)(1), means a core interest of the entity or organization that has a direct relationship to the function of that entity or organization.

(hh) “Substantial purpose,” for purposes of section 12062(b)(1), means the purpose is integral to the non-business establishment’s institutional mission.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, 12955.8, 12956.1, and 12956.2, Government Code; *Auburn Woods I Homeowners Ass’n v. Fair Employment and Housing Com’n* (2004) 121 Cal.App.4th 1578.

Article 3. Intentional Discrimination

§ 12040. Definitions.

(a) “Intentional discrimination” means “intentional violation” as defined in section 12955.8(a) of the Act.

(b) “Motivating factor” means something that moves the will and induces action.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8(a), Government Code.

§ 12041. Intentional Discrimination Practices.

(a) The Act imposes liability for practices that are motivated by discriminatory intent as defined in paragraph (b) of this section.

(b) A practice is motivated by discriminatory intent where any protected basis is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. Proving that discriminatory intent is a motivating factor does not require proof of personal prejudice or animus, only that consideration of any protected basis is a

motivating factor in committing a discriminatory housing practice.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8(a), Government Code.

§ 12042. Burdens of Proof and Types of Evidence in Intentional Discrimination Cases.

(a) A complainant must show that the practice they are challenging is motivated by discriminatory intent. This means that, in a legal proceeding, the complainant has the burden of proving that a challenged practice is motivated by discriminatory intent.

(b) An intent to discriminate may be established by direct evidence or indirect evidence, also known as circumstantial evidence.

(c) Direct evidence means evidence that, if believed, proves that discriminatory intent was a factor motivating the respondent's challenged practice without inference or presumption. If evidence shows a person explicitly conditions a housing opportunity on a protected basis, takes adverse action based on a protected basis, or directs adverse action to be taken based on a protected basis, such a practice demonstrates intentional discrimination as a matter of law.

(d) Burdens of proof in cases involving indirect evidence of discrimination.

(1) A complainant first has the burden of establishing a prima facie case of discrimination. To do so, a complainant must raise an inference that the challenged practice is motivated by discriminatory intent. The specific elements of a prima facie case vary depending upon the particular facts, but include the following:

(A) An individual is a member, or individuals are members, of a protected class, including under section 12955(m) of the Act;

(B) The individual was, or individuals were, subject to adverse action regarding a housing opportunity or may be subject to such adverse action; and

(C) The member's or members' status as protected class members was or is a motivating factor for the adverse action.

(2) If the complainant meets its burden under section 12042(d)(1), then the burden shifts to the respondent to produce evidence that the challenged practice was solely motivated by a legitimate, non-discriminatory reason.

(3) If the respondent meets the burden under section 12042(d)(2), the complainant must show that the non-discriminatory reason asserted by the respondent is pretextual or false. For example, evidence that the respondent's treatment of others who are not members of the relevant protected class is different than treatment of the complainant is relevant to show pretext. Evidence that the reason a respondent proffers for a defense under this

section did not exist or was not known to the respondent at the time of the alleged violation is relevant to show that the proffered reason is false.

(4) A complainant does not need to prove that every individual who participated in a challenged practice was motivated by discriminatory intent in order to establish liability. It is sufficient for the complainant to prove that a person performed an act motivated by discriminatory intent, that the act was intended to cause an adverse action, and that the ultimate decision maker relied on the act in making the final decision to take an adverse action against the complainant.

(e) In cases involving either direct or indirect evidence, a complainant does not need to prove that the challenged practice was motivated solely by discriminatory intent. The respondent is liable if complainant proves that discriminatory intent was a factor motivating the respondent's challenged practice.

(f) The complainant retains the ultimate burden of persuasion on the discriminatory motivation throughout the case.

(g) If a respondent demonstrates that a practice challenged as causing a discriminatory effect in Article 7 is supported by a legally sufficient justification, as defined in section 12062, such a demonstration does not constitute a defense against a claim of intentional discrimination under this Article.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

Article 6. Discriminatory Notices, Statements, and Advertisements

§ 12050. Discriminatory Practices Regarding Notices, Statements, and Advertisements.

(a) Except as specified in section 12051, it shall be unlawful for a person to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information, or an intention to make any such preference, limitation or discrimination.

(b) A notice, statement or advertisement is discriminatory under section 12050(a) if complainant shows that:

(1) the respondent made a notice, statement or advertisement;

(2) the statement was made with respect to the sale or rental of a housing accommodation; and

(3) the notice, statement or advertisement indicated a preference, limitation, or discrimination on the basis of a protected status.

(c) A notice, statement or advertisement is discriminatory under section 12050(a) if it would suggest such a preference to an ordinary reader or listener. Proof of discriminatory intent under Article 3 is not required to establish liability under section 12050(a).

(d) It shall be unlawful for any owner to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, military or veteran status, or genetic information of any person seeking to purchase, rent, or lease any housing accommodation.

(e) Except as specified in section 12051, the prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling, including electronic notices, statements or advertisements on housing platforms, websites, listservs, social media, or any other electronic media.

(f) Except as specified in section 12051, section 12050(a) applies to notices, statements, and advertisements for any housing even if the housing accommodation itself is exempt under the Act.

(g) Discriminatory notices, statements, and advertisements include:

(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information.

(A) It is unlawful to use words or phrases that explicitly express a preference or limitation based upon a protected class, e.g. “No Blacks allowed,” “No children permitted,” “No Section 8 allowed” “No Vouchers or Government Assistance accepted,” “No wheelchairs allowed.”

(B) It is unlawful to use words or phrases that suggest a preference or limitation to an ordinary reader or listener. Depending upon the context in which they are used, the following words and phrases used in real estate advertising may convey either overt or tacit discriminatory intent: “Jewish housing” which may indicate discrimination based upon religion, “English speakers” which may indicate discrimination based upon national origin, “Not suitable for children” which may indicate discrimination based upon familial status, “For tech workers” which may indicate discrimination based upon source of income, and “Ability to live independently” and “Active living” which may indicate

discrimination based upon disability.

(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of such persons.

(3) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information.

(5) Adding or including language in any declaration, governing document, deed or similar document, that expresses a preference, limitation, discrimination or prohibition based on a protective class, including any conduct in violation of section 12956.1 of the Act regarding discriminatory restrictive covenants.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

§ 12051. Exceptions.

It shall not constitute discrimination under this section:

(a) For a person to make a written or oral inquiry concerning the level or source of income in order to verify the amount and source of income stated in an application for a housing opportunity;

(b) For a person sharing the living areas in a single dwelling unit to use words stating or tending to imply that the housing being advertised is available only to persons of one sex;

(c) For a person to refer to a protected basis, such as age or disability, where eligibility for a government subsidized housing opportunity requires the person to consider the protected basis;

(d) For a person to refer to a protected basis when seeking to establish a noncommercial personal roommate arrangement; or

(e) For a person to state an age-based preference for housing for older persons in relation to

housing meeting the requisite criteria of Government Code section 12955.9. For purposes of this subsection, the burden of proof shall be on the respondent to prove that the housing qualifies as housing for older persons.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, 12955.8, 12955.9 and 65008, Government Code.

§ 12052. Qualifying for Exemption.

Under section 12927 (c)(2)(A) of the Act, an owner-occupied single-family home with a single roomer or boarder is exempt from discrimination liability. In order to qualify for this exemption from discrimination liability, the person must comply with subdivision (c) of section 12955 and this Article.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

Article 12. Harassment and Retaliation

§ 12120. Harassment.

(a) General. The Act prohibits harassment because of membership in a protected class as a discriminatory housing practice. Harassment can take two forms: quid pro quo harassment, and hostile environment harassment. It is possible for the same conduct to be both quid pro quo harassment and hostile environment harassment.

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to any of the following: the sale, rental, or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; the availability, terms, conditions, or privileges of a housing opportunity; or the avoidance of an adverse action. An unwelcome request or demand may constitute quid pro quo harassment even if an individual acquiesces in the unwelcome request or demand.

(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with any of the following: the availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental; the provision or enjoyment of services or facilities in connection therewith; the availability, terms, conditions, or privileges of a housing opportunity; or constitute any kind of adverse action. Hostile environment harassment does not require a change in the terms, conditions, or privileges of the dwelling, housing opportunity, or housing-related services or facilities.

(A) Whether hostile environment harassment existed or exists depends upon the totality of the circumstances.

(i) Factors to be considered in determining whether hostile environment harassment existed or exist include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.

(ii) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment existed or exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment exists or existed, as well as the amount of damages to which an aggrieved person may be entitled.

(iii) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is viewed from the perspective of a reasonable person in the aggrieved person's position.

(b) Title VII Affirmative Defenses Not Available. Under Title VII of the Civil Rights Act of 1964, employers have an affirmative defense to vicarious liability for hostile environment harassment by a supervisor. That defense is not available in housing cases.

(c) Type of Conduct. Quid pro quo and hostile environment harassment in housing can be written, verbal, or other conduct and do not require physical contact. Quid pro quo and hostile environment harassment in housing include:

(1) Verbal harassment, including epithets, derogatory comments, or slurs;

(2) Physical harassment directed at an individual, including leering; winking; looking a person up and down, throwing kisses; sexual gestures; deliberate touching; pinching; patting; leaning over; intentional rubbing or brushing against another individual's body; grabbing; fondling; kissing; following a person, cornering a person, blocking a person's way, or otherwise deliberately interfering with or impeding a person's movements; attempted or actual rape or sexual assault; or sexual intercourse.

(3) Visual forms of harassment, including derogatory posters, cartoons, drawings, writings, or other documents. Nothing herein shall be construed to contravene the protections provided by Civil Code sections 1940.4 and 4710;

(4) Unwelcome sexual conduct, or other unwelcome conduct, linked to an individual's sex, gender, gender identity, gender expression, or sexual orientation;

(5) Any coercion, intimidation, threats, or interference with a person's exercise or enjoyment of a housing opportunity;

(6) Taking any adverse action against a person in a manner that constitutes quid pro quo or hostile environment harassment, such as representing to an applicant that a dwelling or housing opportunity is unavailable because of the applicant's response to a request for a sexual

favor or other harassment;

(7) Revealing private information to a third party about a person, without their consent, in a manner that constitutes quid pro quo or hostile environment harassment, unless such disclosure is required by federal or state law or permitted by an exception set forth in section 12176(d**b**);

(8) Conduct that is a discriminatory housing practice may also be quid pro quo or hostile environment harassment. For instance, a landlord repeatedly failing to make repairs to the apartments of non-English speakers while making repairs to the apartments of all other individuals could be found liable for both discrimination on the basis of primary language and hostile environment harassment.

(d) Number of Incidents. A single incident of harassment because an individual is a member of a protected class may constitute a discriminatory housing practice, where the incident is sufficiently severe to constitute hostile environment harassment, or evidences quid pro quo harassment.

(e) Persons Protected. The prohibition on harassment extends to conduct that is based on an individual's membership in a protected class, being perceived as a member of a protected class, or on account of having aided or encouraged any person in the exercise of the rights protected by the Act.

(f) Nothing herein is designed to contravene a person's right to petition the government or exercise their rights under the First Amendment to the United States Constitution.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926.05, 12927, 12948, 12955, and 12955.7, Government Code.

Article 13. Consideration of Income

§ 12140. Definitions.

(a) “Lawful, verifiable income” includes income from wages, interest payments and distributions from investments, payments from employers subsidizing housing, payments from trust accounts, Social Security benefits, Supplemental Security Income, Social Security Disability Insurance, Community Development Block Grant housing assistance, General Assistance, General Relief, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), a Housing Opportunities for People with AIDS voucher, Emergency Solutions Grants Program housing assistance, Supervised Independent Living Placement housing assistance for current or former foster youth, Housing Support Program assistance, rapid re-housing assistance for homeless individuals, alimony, child support, payments from parents, guardians or other third parties, pensions, veteran benefits, and insurance payments for long term health care which includes a housing benefit.

(b) “Source of income” means:

(1) Lawful, verifiable income paid directly to a tenant.

(2) Lawful, verifiable income paid to a representative of a tenant. A representative of a tenant is an individual or entity acting as the agent of the tenant for purposes of the tenant's obligation to pay rent. A housing owner or landlord is not considered a representative of a tenant unless the source of income is a federal Department of Housing and Urban Development Veterans Affairs Supportive Housing voucher.

(3) Lawful, verifiable income paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies. Income paid "on behalf of" a tenant includes payments to owners or landlords by public housing authorities under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), payments by a parent or guardian on behalf of a child, and payments by a rent guarantor or co-signer based upon a rental guarantor or co-signer agreement. Income paid on behalf of a tenant includes third-party payments made in any form consistent with section 1947.3 of the Civil Code.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

§ 12141. Source of Income in Rental Housing and Examples

(a) It is unlawful for a landlord or a landlord's agent to discriminate on the basis of the source of income by which a tenant pays part or all of their rent.

(b) For the purposes of this section, it shall not constitute discrimination based on source of income for a landlord or landlord's agent to make a written or oral inquiry concerning the level or source of income for the purpose of verifying the level or source of income stated in an application by a prospective tenant.

(c) Affordable housing developments receiving governmental assistance or subsidies are subject to the prohibition on source of income discrimination, including discrimination against voucher holders under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), unless the terms of the governmental assistance prohibit or restrict the use of a voucher in a particular unit. Where such restrictions are in place in a housing development, it is unlawful to discriminate against voucher holders in any units not subject to such restrictions.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

§ 12142. Aggregate Income.

It is unlawful for a housing provider to fail to account for the aggregate income of persons residing together or proposing to reside together, whether or not they are married, in applying a financial or income standard in the rental of housing.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920,

12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

§ 12143. Financial and Income Standards Where There is a Government Rent Subsidy.

Where a tenant or applicant is using a housing subsidy, including a voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), a housing provider is only permitted to consider the tenant's portion of the rent when considering whether the tenant or applicant meets financial or income eligibility standards. In these circumstances, it is unlawful for a housing provider to use a financial or income standard that is not solely based on the portion of the rent to be paid by the tenant.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

Article 14. ~~Practices Related to Residential Real Estate-Related~~ Practices Transactions

§ 12155. Residential Real Estate-Related Practices with Discriminatory Effect.

(a) Residential real estate-related practices may have a discriminatory effect. A residential real estate-related practice that has a discriminatory effect is prohibited unless there is a legally sufficient justification for the practice. Residential real estate-related practices that are prohibited absent a legally sufficient justification include:

- (1) Making available, or making unavailable, a residential real estate-related transaction in a manner that results in a discriminatory effect based on membership in a protected class;
- (2) Establishing the terms or conditions of a residential real estate-related transaction in a manner that results in a discriminatory effect based on membership in a protected class;
- (3) Failing or refusing to provide information regarding a residential real estate-related transaction; failing or refusing to provide information regarding application requirements, procedures, or standards for the review and approval of the residential real estate-related transaction; or providing information which is inaccurate or different from that provided others in a manner that that results in a discriminatory effect based on membership in a protected class;
- (4) Imposing different terms or conditions on the availability of a residential real estate-related transaction in a manner that results in a discriminatory effect based on membership in a protected class;
- (5) Determining the price or other terms or conditions in connection with a residential real estate-related transaction in a manner that results in a discriminatory effect based on membership in a protected class;

(6) Subjecting a person to harassment that affects a residential real estate-related transaction, in a manner that results in a discriminatory effect based on membership in a protected class; and

(7) Conditioning the availability of a residential real estate-related transaction, or the terms or conditions thereof, on a person's response to harassment in a manner that results in a discriminatory effect based on membership in a protected class.

(8) Using different policies, practices, or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of financial assistance in a manner that results in a discriminatory impact based on membership in a protected class.

(b) Residential real estate-related practices are also prohibited if they intentionally discriminate on the basis of membership in a protected class.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

Article 18. Disability

§ 12176. Reasonable Accommodations and Reasonable Modifications.

(a) A reasonable accommodation is an exception, change, or adjustment in rules, policies, practices, or services when such an accommodation may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling unit and public and common use areas, or an equal opportunity to obtain, use, or enjoy a housing opportunity.

(b) A reasonable modification is a change, alteration or addition to the physical premises of an existing housing accommodation, at the expense of the person with a disability or their designee, when such a modification may be necessary to afford the individual with a disability an equal opportunity to use and enjoy a dwelling unit and public and common use areas, or an equal opportunity to obtain, use, or enjoy a housing opportunity.

~~(c)~~ It is a discriminatory housing practice for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling unit and public and common use areas, or an equal opportunity to obtain, use, or enjoy a housing opportunity unless providing the requested accommodation would constitute an undue financial and administrative burden and a fundamental alteration of its program, or if allowing an accommodation would constitute a direct threat to the health and safety of others (i.e. a significant risk of bodily harm) or would cause substantial physical damage to the property of others, as defined in ~~§~~section 12179(a)(5) or 12185(d)(9).

(d) It is a discriminatory housing practice for any person to refuse to allow an individual with a disability the opportunity to make reasonable modifications to the premises of an existing

housing accommodation that is occupied by or will be occupied by an individual with a disability, pursuant to section 12181, unless providing the requested modification would constitute an undue financial and administrative burden or a fundamental alteration of its program, or constitute another basis for denial under section 12181.

(e~~b~~) Confidentiality Regarding Reasonable Accommodations and Modifications.

(1) All information concerning an individual's disability, request for an accommodation or modification, or medical verification or information must be kept confidential and must not be shared with other persons who are not directly involved in the interactive process or decision making about the requested accommodation or modification unless disclosure is:

(A) Required to make or assess the decision to grant or deny the request for accommodation or modification;

(B) Required to administer or implement the requested accommodation or modification;

(C) Authorized by the individual with the disability in writing; or

(D) Required by law.

(e~~f~~) Requests for Reasonable Accommodations and Modifications.

(1) The individual with a disability seeking a reasonable accommodation or modification must make a request for such accommodation or modification.

(2) The request for a reasonable accommodation or modification may be made by the individual with a disability, a family member, or someone authorized by the individual with a disability to act on their behalf ("representative").

(3) A request for a reasonable accommodation or modification need not be made in a particular manner or at a particular time. An individual makes a reasonable accommodation or modification request at the time they request orally or in writing, or through a representative, an exception, change, or adjustment to a practice, or a modification to an existing housing accommodation, because of a disability, regardless of whether the phrase "reasonable accommodation" or "reasonable modification" is used as part of the request. A request for a reasonable accommodation may be made at any time, including during the inquiry or application process, while seeking or enjoying a housing opportunity, during the tenancy or occupancy of an accommodation, during litigation, or at or after trial. A request for a reasonable modification may be made during the inquiry or application process, while seeking or enjoying a housing opportunity, during the tenancy or occupancy of a housing accommodation, or during litigation.

(4) The duty to provide reasonable accommodations and modifications is an ongoing one. Some individuals with disabilities require only one reasonable accommodation or

modification, while others may need more than one. Still others may need one reasonable accommodation or modification for a period of time, and then at a later date, require another type of reasonable accommodation or modification. Another individual may need both a reasonable accommodation and a reasonable modification. Each request must be considered separately under the standards in this Article.

(5) Adopting a formal procedure may aid individuals with disabilities in making requests for reasonable accommodations and modifications and may make it easier to assess those requests and keep records of the considerations given the requests. An individual requesting an accommodation or modification may be asked to use a form or follow a particular procedure. However, a person may not refuse a request or refuse to engage in the interactive process because the individual with a disability or their representative did not use the preferred forms or procedures. The forms and procedures used may not seek information that is not necessary to evaluate if a reasonable accommodation or modification may be needed to afford an individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity, such as the information prohibited in section 12178.

(6) A person responsible for responding to accommodation and modification requests must treat a request by an individual with a disability for assistance in completing forms or in following procedures, or a request for alternative methods of communication during the reasonable accommodation or modification process, as a request for a reasonable accommodations that must be responded to in the same manner as any other request. In many circumstances, such requests, or the person considering the request, may also be covered by the American with Disabilities Act (ADA) and the provisions in the ADA and its accompanying regulations requiring the provision of auxiliary aids and services and alternative methods of communication.

(7) An individual with a disability may request a reasonable accommodation in financial policies or policies that impose a financial burden when such accommodations may be necessary to afford an individual with a disability an equal opportunity under subsection (a) of this section, subject to the defenses in section 12179. Examples of such economic accommodations may include: waiving guest fees or other fees; waiving fees or providing additional time to pay fees for city clean-up of a property; and allowing a prospective tenant to use a co-signer when their limited income, so limited because of a disability, does not qualify them for the unit.

(8) Reasonable Accommodation and Modification Requests in Unlawful Detainer Actions.

(A) An individual with a disability may raise a failure to provide a reasonable accommodation or modification as an affirmative defense to an unlawful detainer action.

(B) A request for a reasonable accommodation in unlawful detainer actions can be made at any time during the eviction process, including at or after trial, and in certain circumstances after eviction. A request for a reasonable modification in unlawful detainer

actions can be made at any time during the eviction process up to and including during the trial. A reasonable accommodation request that is made during a pending unlawful detainer action is subject to the same regulations that govern reasonable accommodation requests at any other time. For example:

(i) Rowan is an individual with a disability who receives Social Security Disability on the sixth day of each month. He is served a three-day notice to pay rent or quit on the second day of the month, but is unable to pay until after the notice expires. As a result, the owner files an unlawful detainer action. At trial, Rowan requests an accommodation to pay his rent on the sixth instead of the first, including allowing a late payment for the month at issue in the trial. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed.

(ii) Chelsea is an individual with a physical disability. The owner filed a successful unlawful detainer action unrelated to her disability. Chelsea partially moved out the day after the trial, but was unable, without help, to move some larger items (e.g. her couch, bed and dresser) to her new apartment. Because of the disability, she could not lift or carry anything heavy. She requested some additional time as a reasonable accommodation to arrange for help to move her furniture. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179 (for example if the owner has the capacity to leave the items in the unit for a period of time or if the unit is not re-rented), and engaging in the interactive process under section 12177 as needed.

(iii) Angelique is an individual with a mobility disability. The owner has filed an unlawful detainer action, alleging that she has violated the lease because her wheelchair is damaging the carpets and door frames in her unit. Angelique requests both an accommodation denying her eviction, since the damage was unavoidable as a result of her disability, and a reasonable modification allowing her, at her own expense, to widen the door frames in her unit and put in a hard-surface floor covering. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179 or is otherwise outside the scope of section 12181, and engaging in the interactive process under section 12177 as needed.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12177. The Interactive Process.

(a) Whenever a person who receives a request for a reasonable accommodation or modification cannot immediately grant the requested accommodation or modification, the Act requires the person considering the request to engage in an interactive process with the individual with a

disability or the individual's representative. The purpose of the interactive process is to exchange information to identify, evaluate, and implement a reasonable accommodation or modification that allows the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity. The Act does not predetermine the outcome of any interactive process. However, the Act requires that the interactive process be timely (pursuant to subsection (d)) and that it be conducted in good faith. Good faith means the person considering the request must make a fair and honest effort to engage in the interactive process and to consider the request.

(b) If the person considering the request for accommodation or modification believes they do not have sufficient information to establish either that a disability exists or the nature of the disability-related need for the accommodation or modification, or if the nexus between the disability and the requested accommodation or modification is not clear to the person considering the request for accommodation or modification, the person considering the request for accommodation must seek clarification or additional information pursuant to section 12178 from the individual with a disability or the individual's representative. The person considering the request must not deny it for lack of information without first requesting the clarification or additional information and providing a reasonable opportunity for the individual requesting the accommodation to provide it.

(c) If the person considering the request believes that the initially requested accommodation or modification cannot be granted for a reason permitted under section 12179(a)(3)-(6) or section 12181, the person considering the request must try to identify if there is another accommodation or modification that is equally effective and must discuss with the individual with the disability or the individual's representative whether other alternative accommodations or modifications would be equally effective in meeting the needs of the individual with a disability. Equally effective means that the alternative accommodation or modification will allow the person with the disability to use and enjoy a dwelling or housing opportunity as well as the requested accommodation or modification would have. If an alternative accommodation or modification would effectively meet the disability-related needs of the individual and could not be lawfully denied for a reason permitted under section 12179(a)(3)-(6), the person considering the request must grant it. The individual requesting the accommodation or modification is not obligated to accept an alternative accommodation or modification if the alternative accommodation or modification will not meet the needs of the individual with the disability and the initially requested accommodation or modification could not be lawfully denied for a reason permitted under section 12179. In many cases, the individual with the disability has the most accurate knowledge about the functional limitations posed by their disability, and therefore the individual's preferences should be given significant weight.

(d) Requests for reasonable accommodations or modifications must be promptly considered as determined on a case-by-case basis. The time necessary to respond to a request depends on many factors, including:

- (1) The nature of the accommodation or modification under consideration;

(2) Whether it is necessary to obtain supporting information because the disability or the need for the accommodation or modification is not obvious or known to the person considering the request;

(3) Whether the accommodation or modification is needed on an urgent basis; and

(4) Whether it is necessary to engage in the interactive process to resolve the request.

(e) An undue delay by the person considering the request, for example, when there is a failure to act promptly on the need to acquire additional information pursuant to section 12178 or when there is no response to the request in a reasonable time, may constitute a denial of a reasonable accommodation or modification. Whether a request has been promptly considered is a case-by-case factual determination.

(f) A failure to reach an agreement on an accommodation or modification request after a reasonable attempt to do so is in effect a decision not to grant the requested accommodation or modification. If the individual requesting the accommodation or modification or their representative has, after a reasonable opportunity, unreasonably failed to provide relevant information that was requested consistent with the regulations, the person considering the request may find this failure to be grounds for determining that the accommodation or modification could not be granted. What will constitute a reasonable attempt, a reasonable opportunity, or an unreasonable failure to provide relevant information will depend on the individual facts of every case, but can include factors such as the length of time spent in discussions or taken to provide information; whether the parties have acted in good faith; and whether there were clear efforts to communicate what information was required to evaluate the accommodation or modification.

(g) If after a denial of an initial request for an accommodation modification, the individual with a disability or their representative makes a later request for the same or similar accommodation or modification, the latter request must be considered pursuant to these regulations independently of the initial request.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12178. Establishing that a Requested Accommodation or Modification is Necessary.

(a) If an individual with a disability or their representative makes a request for an accommodation or modification that provides reliable information about the disability and how the requested accommodation or modification is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity, then the person considering the request may not request any additional information about the individual's disability or the disability-related need for the accommodation or modification.

(b) If the disability of the individual requesting an accommodation or modification is apparent or known by the person considering the request, and it is also apparent or known how the requested accommodation or modification is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity, then the person considering the request may not request any additional information about the requestor's disability or the disability-related need for the accommodation or modification. Known means that the person considering the request is personally aware of the disability or the need for the accommodation or modification. Apparent means that either the disability or the need for the accommodation or modification is obvious, although the person considering it did not know about it before the request was made. For example, if a tenant with quadriplegia who uses a power wheelchair goes in person to the off-site management office for their apartment building and requests an accommodation in the form of moving to a first-floor apartment and a modification in the form of a ramp at the entry to the first floor apartment, and the management office knows that the apartment building does not have a functional elevator and that the front entry to the first floor apartment is not wheelchair-accessible, the management office may not request further information about the disability before evaluating the requests for an accommodation and modification.

(c) If the disability of the individual requesting an accommodation or modification is apparent or known by the person considering the request, but the need for the requested accommodation or modification is not readily apparent or known, then in order to evaluate the disability-related need for the accommodation or modification, the person considering the request may request only information that:

- (1) Describes the needed accommodation or modification; and
- (2) Shows the relationship between the individual's disability and how the requested accommodation or modification is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity.

(d) If the disability of the individual requesting an accommodation or modification is not readily apparent to the person considering the request, the person may request only information that:

- (1) Is necessary to establish that the individual has a disability;
- (2) Describes the needed accommodation or modification; and
- (3) Shows the relationship between the individual's disability and how the requested accommodation or modification is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity.

(e) A person considering a request for an accommodation may not seek information about:

- (1) The individual with a disability's particular diagnosis or medical condition, the severity of the disability, medical records, medical history, other disability or medical

issues unrelated to the request, or other disability or health related information beyond the information identified in subdivision (d) above.

(2) Information unrelated to the inquiry in subdivision (d) above.

(f) Depending on the individual's circumstances, information establishing that the individual has a disability can usually be provided directly by the individual with a disability through a variety of self-certification methods, including documentation of receipt of disability benefits or a credible statement by the individual with a disability. A credible statement by the individual is one that a reasonable person would believe is true based on the available information.

(g) Information confirming that the individual has a disability, or confirming that there is a disability-related need for the accommodation or modification, may also be provided by any reliable third party who is in a position to know about the individual's disability or the disability-related need for the requested accommodation or modification, including:

(1) A medical professional;

(2) A health care provider, including the office of a medical practice or a nursing registry;

(3) A peer support group. Peer support groups are mutual support groups developed as alternatives to traditional medical or psychological treatments. They provide services such as education, peer mentoring, peer coaching, and peer recovery resource connections for groups of people with disabilities or people suffering from a wide range of trauma or illness;

(4) A non-medical service agency or person, including In-Home Supportive Services or Supported Living Services providers; or

(5) Any other reliable third party who is in a position to know about the individual's disability or disability-related need for the accommodation or modification. This could include a relative caring for a child with a disability, a relative caring for an elderly family member with dementia, or others in a caregiving relationship with a person with a disability.

(h) The determination of whether a third party is reliable must be determined on a case-by-case basis. A determination of reliability may take into account:

(1) Information establishing how the third party is familiar with the individual's disability or the disability-related need for the accommodation or modification;

(2) Information that specifies the functional limitations that underlie the request for an accommodation or modification, but this information need not include specific medical information or terminology; or

(3) Information providing a means to contact the third party to verify that the person identified did in fact provide the documentation and to answer any questions permitted by law.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code.

§ 12179. Denial of Reasonable Accommodation or Reasonable Modification.

(a) A requested accommodation or modification may be denied if:

- (1) The individual on whose behalf the accommodation or modification was requested is not an individual with a disability;
- (2) There is no disability-related need for the requested accommodation or modification (in other words, there is no nexus between the disability and the requested accommodation or modification);
- (3) The requested accommodation or modification would constitute a fundamental alteration of the services or operations of the person who is asked to provide the accommodation or modification; or
- (4) The requested accommodation or modification would impose an undue financial and administrative burden on the person who is asked to provide the accommodation or modification.; ~~or~~

(b) In addition, a requested accommodation may be denied if:

- ~~(15)~~ The requested accommodation would constitute a direct threat to the health or safety of others (i.e. a significant risk of bodily harm) or would cause substantial physical damage to the property of others, and such risks cannot be sufficiently mitigated or eliminated by another reasonable accommodation, pursuant to the following:
 - (A) A determination that an accommodation poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence, not on mere speculation or stereotype about the requested accommodation or a particular disability or individuals with disabilities in general;
 - (B) The assessment of whether the specific accommodation in question poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must be based on objective evidence, and not unsubstantiated inferences. The evidence must be sufficiently recent as to be credible. The assessment must consider:

(i) The nature, duration, and severity of the risk of a direct threat to the health and safety of others or of substantial physical damage to the property of others;

(ii) The likelihood that a direct threat to the health or safety of others or substantial physical damage to the property of others will actually occur; and

(iii) Whether there are any additional or alternative reasonable accommodations that will eliminate the direct threat to the health or safety of others or substantial physical damage to the property of others; or

(26) If a support animal, as defined in subsection 12005(d)(1), is requested as a reasonable accommodation, the request may be denied if it would constitute a direct threat to the health or safety of others or would cause substantial physical damage to the property of others under §section 12185(d)(9).

(c) In addition, a requested modification may be denied pursuant to section 12181 if:

(1) The requestor refuses to pay for, or to arrange payment for or construction of, the modification, unless the owner is otherwise obligated to pay for the modification pursuant to section 12181(e);

(2) The requestor refuses to provide a reasonable description of the proposed modification or reasonable assurances that the work will be done in a competent (“workmanlike”) manner and that any required building permits will be obtained, so long as the assurances meet the requirements of section 12181;

(3) In the case of a rental, the requestor refuses to commit to restoring interior modifications to condition that existed before the modification, reasonable wear and tear excepted, if such a restoration is reasonable. This provision does not apply to modifications to the exterior or common or public use portions of the housing accommodation or non-rental situations; or

(4) In the case of a rental, the requestor refuses to pay reasonable amounts into an interest-bearing escrow account, when such an account is permitted to be required and complies with the terms of section 12181, to ensure with reasonable certainty that funds will be available to pay for restoration of interior modifications, when such restoration is required. This provision does not apply to modifications to the exterior or common or public use portions of the housing accommodation or non-rental situations. Any such payments must be negotiated between the owner and the requestor and must allow payment of reasonable amounts over a reasonable time period, in a total amount not to exceed the cost of the restorations.

(d) The determination of whether an accommodation or modification poses an undue financial and administrative burden under subsection 12179(a)(4) must be made on a case-by-case basis and must consider various factors including:

(1) The cost of the requested accommodation or modification unless the person making the request is paying for the modification;

(2) The financial resources of the person or persons who have a duty under the Act to provide the accommodation or modification unless the person making the request is paying for the modification;

(3) The benefits that a proposed alternative accommodation or modification would provide to the individual with a disability;

(4) The availability of alternative accommodations or modifications that would effectively meet the disability-related needs of the individual with a disability;

(5) Where the entity being asked to make the accommodation or modification is part of a larger entity, the structure and overall resources of the larger organization, as well as the financial and administrative relationship of the entity to the larger organization. In general, a larger entity with greater resources would be expected to make accommodations and modifications requiring greater effort or expense than would be required of a smaller entity with fewer resources; and

(6) Whether the need for the accommodation or modification arises from the owner's failure to maintain or repair the property as required by law or contract, or to otherwise comply with related legal obligations.

~~(ee)~~ A fundamental alteration under subsection 12179(a)(3) is a requested accommodation or modification that would change the essential nature of the services or operations of the person being asked to provide the accommodation. For example, if a landlord does not normally provide shopping for residents, a request to shop for an individual with a disability could constitute a fundamental alteration.

~~(fd)~~ A person cannot deny a request for a reasonable accommodation or modification based on the person's or another individual's fears or prejudices about the individual's disability, nor can a denial be based on the fact that provision of a reasonable accommodation or modification might be considered unfair by other individuals or might possibly become an undue burden if extended to multiple other individuals who might request accommodations or modifications.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code, *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12180. Other Requirements or Limitations in the Provision of Reasonable Accommodations and Modifications; and Examples.

(a) Other requirements or limitations in the provision of reasonable accommodations and modifications include:

(1) It is unlawful to charge a fee or require an additional deposit or financial contribution as a condition of receiving, processing, or granting a reasonable accommodation or modification, except as set forth in section 12181.

(2) The fact that an accommodation may impose some cost on the person providing the accommodation or modification is not grounds for denial of a request, so long as the cost does not constitute an undue financial and administrative burden, under section 12179.

(3) It is unlawful for a person to request or require that an individual with a disability or representative waive the right to request a future accommodation or modification.

(b) Examples of Reasonable Accommodation:

(1) Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first-come, first-served basis. John applies for housing in Progress Gardens. John has a mobility disability and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost of reserving a space is likely minimal in light of the overall budget of a 300 unit apartment complex, the accommodation does not constitute an undue burden as defined in section 12179(bd). Since providing parking spaces is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12179(ee). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(2) Miguel is an individual with cognitive impairments that limit his ability to manage his financial affairs. Miguel uses a third party representative payee. He requests that he be able to pay rent through the payee rather than pay directly from his checking account, and that any nonpayment notices be sent to his representative payee as well as himself. This accommodation is necessary because without it Miguel might not be able to pay rent in a regular and timely manner which is necessary for him to fulfill his obligation as a tenant. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost is likely minimal in light of the overall budget of most apartment complexes, the accommodation does not constitute an undue burden as defined in section 12179(bd). Since processing rent payments is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section

12179(ee). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(3) Abigail, an individual with a disability, receives only SSI (Supplemental Security Income), a government benefit based on her inability to work because of her disability. She requests that she be permitted to add a co-signer on her rental lease in order to meet the minimum income qualifications. If the combined income of Abigail and the co-signer constitutes sufficient income to meet the reasonable minimum income qualifications in light of Abigail's and the co-signer's other financial obligations, and if Abigail would not otherwise be able to rent this apartment, this accommodation may be necessary. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost is likely minimal in light of the overall budget of most apartment complexes, the accommodation does not constitute an undue burden as defined in section 12179(bd). Since making changes to application and screening criteria is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section ~~12177~~12179(ee). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(4) Tuan has quadriplegia and uses a power wheelchair, which can make it difficult for him to travel. He must make arrangements with a paratransit agency and it cannot always accommodate his requests without significant advance notice. He requests a reasonable accommodation for additional time to come into the mortgage lender's office to sign a loan modification application, even though the mortgage company's normal practice is to give little advance notice of the meeting. This accommodation may be necessary because without it Tuan may be unable to sign the loan modification application and so receive the loan. The mortgage company must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost is likely minimal in light of the overall budget, the accommodation does not constitute an undue burden as defined in section 12179(bd). Since processing loan modification applications is part of the essential operations of the mortgage company, the accommodation is not a fundamental alteration, as defined in section ~~12177~~12179(ee). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(5) Michiko requests an exception to her property's no-pets policy as a reasonable accommodation so that her friend Yoshi, who has a non-apparent disability, is able to visit with his emotional support animal. Yoshi, as an individual with a disability, is entitled to reasonable accommodations. Michiko may request such an accommodation on behalf of Yoshi. As the disability is non-apparent, the owner may request information establishing the disability and the disability-related need for the animal. Discrimination is prohibited against individuals associated with an individual with a disability. Denying Michiko the right to have visitors of her choice, like other tenants, because her visitor has a disability would constitute discrimination against Michiko because of her association

with an individual with a disability. Because without this accommodation Michiko will not be able to receive Yoshi as a visitor at her apartment, which is a standard benefit of being a leaseholder, this accommodation may be necessary to provide Michiko an equal opportunity to use and enjoy a dwelling, and is therefore a necessary accommodation. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179 and engaging in the interactive process under section 12177 as needed. Because the cost to process the request is likely minimal in light of the overall budget, the cost of providing an accommodation does not constitute an undue burden as defined in section 12179(~~bd~~). Further, since determining the appropriateness of assistance animals is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12179(~~ee~~). Therefore, in the absence of additional relevant facts or unless the animal poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others, or unless Yoshi fails to provide the necessary information, the accommodation should be granted. (Note if Yoshi has a service animal, rather than a support animal, the animal would be permitted pursuant to subsection 12185(b) without the need to request an accommodation.)

(6) Marita wants to install a ramp to enable her son, who uses a wheelchair, to enter and leave her house without assistance. Given the small lot, the ramp will extend slightly beyond the permitted set-back requirements on Marita's lot but will still be within Marita's property line and will not cross a public right of way. Marita requests a reasonable accommodation from the city to modify the city's policy or ordinance regarding set-back requirements on her property. Because without the ramp Marita's son would not be able to use the house like any other dweller (coming and going without assistance), this accommodation is necessary to afford him an equal opportunity to use and enjoy a dwelling. The city must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost of processing and permitting her request is likely minimal in light of the city's overall budget, the accommodation does not constitute an undue burden as defined in section 12179(~~bd~~). Since reviewing building alterations is part of the essential operations of the city, the accommodation is not a fundamental alteration, as defined in section 12179(~~ee~~). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted. The city must not charge Marita a fee for processing her request, whether or not it is granted, under section 12180(a)(1). (Note that reasonable accommodations may also be available to Marita if the ramp did extend beyond her property line into a public right of way, but a further interactive process might be warranted on those specific facts).

(7) Teresa lives in a second floor apartment in a medium-sized apartment building with a single elevator that was working when she moved in. Last month her leg was amputated and she now uses a wheelchair. The elevator in the building is broken. Teresa cannot leave her home without assistance on the stairs. She requests that the owner expedite repairs to the elevator and offer her the first available ground floor unit. Her request is

necessary because there is a nexus between Teresa's disability and her request; without the requested accommodations she will not be able to access her unit using the common area. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial and administrative burden as defined in section 12179 and engaging in the interactive process under section 12177 as needed. Because the repair would be required by law as part of the owner's obligation to maintain the apartment, and if the costs of the requested accommodations are not burdensome in light of the overall budget of the building, the accommodations would not constitute an undue burden as defined in section 12179(~~bd~~). Since making repairs is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12179(~~ee~~). See, section 12179(~~bd~~)(6). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted. Depending on the time it takes to repair the elevator, or particular difficulties for Teresa, additional accommodation requests may be made that would need to be considered.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12181. Other Requirements or Limitations in the Provision of Reasonable Modifications; and Examples

(a) In the case of a rental, the owner or owner representative may, only where it is reasonable to do so, condition permission for a reasonable modification on the tenant or applicant agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The owner cannot require restoration of exterior modifications or modifications to public use areas or common areas;

(b) In the case of a rental where there is an agreement for restoration, the owner or owner representative may not increase for individuals with disabilities any customarily required security deposit, nor can they automatically require that the tenant or applicant pay into an interest-bearing escrow account to pay for restorations. However, where it is necessary to ensure that funds will be available to pay for restorations at the end of the tenancy, the owner or owner representative may negotiate as part of such a restoration agreement a provision requiring that the tenant or applicant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the applicant or tenant. Owners may not require the full amount of the cost of restorations to be paid prior to permitting the modifications. Whether payment into an escrow account is necessary to ensure that funds will be available for restoration is a case-by-case factual determination. The following factors shall be considered in determining whether payment into an escrow account is necessary, the amount of any payments, and what the schedule and terms for such payments will be:

(1) The nature and extent of the proposed modifications;

(2) The expected duration of the lease;

(3) The credit and tenant history of the tenant or applicant;

(4) The amount of any existing security deposit;

(5) The impact of non-restoration on the future useability of the premises; and

(6) Other information that has bearing on the risk to the owner.

(c) An owner or owner representative may condition permission for a modification on the applicant or tenant providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a competent manner and that any required building permits will be obtained. The reasonableness of a description of the proposed modification or of assurances that the work will be done in a competent manner is a case-by-case factual determination and will vary based on the location and nature of the proposed modifications. For example, it is reasonable to accept an informal, oral description of a modification in the form of installing a grab bar or lowering closet shelves. Depending on the facts, the installation of a large exterior ramp may require more detailed descriptions and assurances. Owners shall not insist that modifications be accomplished by a particular contractor or builder. Modifications may be accomplished by any party reasonably able to complete the work in a competent manner. It is unlawful for owners to deny a particular type of modification unless it is an undue financial and administrative burden or a fundamental alteration.

(d) The prohibitions and requirements of this section apply to common interest developments, except that homeowners (members of the common interest development) may:

(1) As of right, make any improvement or alteration within the boundaries of the member's separate interest that does not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify the member's separate interest, at the member's expense, to facilitate access for people with disabilities or to alter conditions which could be hazardous to people with disabilities in accordance with the Davis-Stirling Common Interest Development Act. However, to the extent the Davis-Stirling Common Interest Development Act requires or permits any action that would be an unlawful practice under this section, it is rendered invalid by the Fair Employment and Housing Act.

(3) Modify public and common use areas at the member's expense, subject to a request for reasonable modifications under this Article. To the extent the Davis-Stirling Common Interest Development Act requires or permits any action in regard to such modifications that would be an unlawful practice under this section, it is rendered invalid by the Fair Employment and Housing Act.

(e) No restoration of either the member's separate interest or the public and common areas shall be required in common interest developments, since the obligation to restore the premises at the end of the residency is limited to tenancies.

(f) Owners may not impose other conditions on modifications, such as liability waivers or insurance requirements.

(g) This provision applies to all housing accommodations regardless of the age of the buildings. The obligation to make reasonable modifications is independent of, and not an alternative to, compliance with federal and state architectural accessibility requirements for housing accommodations, and the obligation to maintain accessible features.

(h) In some instances, owners may also be subject to contractual obligations, or federal or state laws or regulations that require the owner to install and pay for the reasonable modifications, such as when the owner is a government entity or the recipient of federal or state funding for affordable housing. In those instances, requests for reasonable modifications shall be handled as requests for a reasonable accommodation.

(i) Examples of Reasonable Modification:

(1) Juanita uses a wheelchair for her disability. She requests permission to make reasonable modifications to the interior and exterior of the apartment she is about to move into, at her own expense. The modifications include installing grab bars in the bathroom and lowering the counters in the kitchen. It is necessary to reinforce the bathroom walls with blocking to affix the grab bars. It is unlawful for the owner to refuse to permit Juanita, at her own expense, from making the modifications. However, the owner may condition permission for the modification on Juanita agreeing to remove the grab bars and restoring the counters to the condition that existed before the modification, reasonable wear and tear excepted. The owner may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the owner to require Juanita to remove the blocking in the walls for the grab bars, since the reinforced walls will not interfere in any way with the owner's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant. Juanita has just signed a one-year lease and has paid a security deposit equivalent to one month's rent. It would not normally be reasonable for the owner to require payment into an interest-bearing escrow account to ensure restoration of the grab bars, given the ease of removal, relative cost, and existence of a security deposit. However, it may be reasonable for the owner to negotiate with Juanita for a payment into an interest bearing escrow account to ensure restoration of the counters to their former height, taking into account the factors in subsection (b) above, and allowing payments over time that do not exceed the costs of the restoration. The owner can require that Juanita provide reasonable assurances that the work will be done in a competent manner and that any required building permits will be obtained.

(2) Kahlil has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass, and the door to the complex's media room has a step up into it. Kahlil asks the owner for permission to widen the doorway to his unit and add a ramp to the complex's media room door, at his own expense. It is unlawful

for the owner to refuse to permit Kahlil to make the modifications. Further, the owner may not condition permission for the modification on Kahlil paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the owner's or the next tenant's use and enjoyment of the premises. The owner also may not condition the approval of the modifications on removal of the ramp, because restorations can only be required for interiors. The owner can require that Kahlil provide reasonable assurances that the work will be done in a competent manner and that any required building permits will be obtained.

(3) Aki owns a condominium unit. Aki is deaf and would like to install a blinking doorbell to their apartment. This requires modifications to the front doorbell to the condominium complex and to the doorbell in Aki's unit. Aki has arranged for a community organization to pay for the modifications. Aki asks the homeowners' association permission to make the modifications. It is unlawful for the owners' association to refuse to permit Aki to make the modifications, regardless of any provisions in the common interest development's governing documents. The source of the funding for the modifications is irrelevant. Further, the homeowner's association may not condition the approval of the modifications by requiring restoration of the former doorbells when Aki sells the condominium unit, because restorations can only be required for rental unit modifications. The owners' association can require that Aki provide reasonable assurances that the work will be done in a competent manner and that any required building permits will be obtained.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, 12955.3, and 12955.6, Government Code.