

**Civil Rights Council
Proposed Modifications to Fair Employment and Housing Act
Fair Housing Regulations**

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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Subchapter 7. Discrimination in Housing

Article 1. General Matters

2 CCR § 12005

§ 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, falsely representing to an applicant that a property is unavailable, 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, applying inferior terms, conditions, or privileges, refusing to make necessary repairs, setting additional financial conditions not imposed on all tenants, threatening to or actually filing false reports with tenant reporting agencies, unlawfully locking an individual out of, or otherwise unlawfully 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) Refusing to complete forms, sign documents, allow inspections, comply with any public assistance, rental assistance, or housing subsidy program regulations, including refusing to make repairs to a housing accommodation to meet a governmental program’s habitability standards, or take other necessary steps to facilitate access to the housing accommodation; or

(C) 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” and “dwelling” are synonymous and 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, sexual assault, human trafficking, dating violence, stalking, or other forms of gender-based or interpersonal 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, as defined in section 22590 of the Business and Professions Code, such as a website that enables property owners to list their spare room, apartment, or home for short term rentals.
 - (4) 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
 - (5) 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.

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

(t) “Military or veteran status” includes, regardless of duty status or discharge status, a member or former member of:

(1) The United States Armed Forces pursuant to 10 U.S.C. § 101(a)(4) (including the Army, Marine Corps, Navy, Air Force, Space Force, and Coast Guard);

(2) The United States Armed Forces Reserve pursuant to 10 U.S.C. § 101(c) (including the Army National Guard and the Air National Guard);

(3) The California National Guard (including the California Air National Guard, California Army National Guard, and California State Guard);

(4) Any person determined to be on active duty or formerly on active duty status pursuant to 38 U.S.C. § 106(a)(1), including Women’s Army Auxiliary Corps and Women’s Army Corps; and

(5) Any person determined by a court to be a former or current member of active military service.

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

(v) “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, as defined in section 22590 of the Business and Professions Code, such as a website that enables property owners to list their spare room, apartment or home for short term rentals;

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

(4) 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;

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

(6) 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

(7) Governing bodies of common interest developments, and members of common interest developments as defined in Civil Code Section 4160 in regard to their separate interests.

(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.

(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.

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

(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.

(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.

(bb) "Public land use practices" include all practices by governmental entities, as those entities are defined in subsections 12005(v)(5), 12005(v)(6), 12005(w)(6), and 12005(w)(67), 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.

(cc) “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.

(dd) “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.

(ee) “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.

(ff) “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.

(gg) “Substantial interest,” for purposes of subsection 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 subsection 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, 12948, 12955, 12955.6, 12955.8, 12956.1 and 12956.2, Government Code; and *Auburn Woods I Homeowners Ass’n v. Fair Employment and Housing Com’n* (2004) 121 Cal.App.4th 1578.

Article 3. Intentional Discrimination

2 CCR § 12040

§ 12040. Definitions.

- (a) “Intentional discrimination” means “intentional violation” as defined in subsection 12955.8(a) of the Act.
- (b) “Motivating factor” means anything that moves the will and induces action.
- (c) “Facially discriminatory policy” (sometimes referred to as “express classification”) means a written policy that explicitly

conditions a housing opportunity on a protected basis, ~~takes~~ requires adverse action based on a protected basis, or directs adverse action to be taken based on a protected basis.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12948, 12955, 12955.6 and 12955.8(a), Government Code.

2 CCR § 12042

§ 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, indirect evidence (also known as circumstantial evidence) or a combination of direct and indirect 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.

(1) Direct evidence includes an express condition stated orally or in writing that either conditions a housing opportunity on a protected basis, ~~takes~~ requires an adverse action based on a protected basis, and/or directs an adverse action to be taken based on a protected basis.

(2) Direct evidence also includes an express bias stated orally or in writing that is related to a protected basis.

(d) If direct evidence, or a combination of direct and indirect 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.

(e) Once a complainant demonstrates intentional discrimination with direct evidence or a combination of direct and indirect evidence, no affirmative defense is available, except with respect to a facially discriminatory policy.

(f) To avoid liability for a facially discriminatory policy, a respondent must show that the policy fulfills the standards set forth in both subsection (1) and subsection (2):

(1) The policy e~~E~~ither:

(A) Objectively benefits a protected class; or

(B) Responds to legitimate safety concerns raised by the individuals affected by the facially discriminatory policy, rather than being based on stereotypes about them; and

(2) The policy i~~s~~s the least restrictive means of achieving the identified purpose.

(g) A facially discriminatory policy or express statement will also violate subsection 12955(c) of the Act and Section 12050 of these regulations.

(h) Indirect evidence, or circumstantial evidence, is evidence that relies on an inference to connect it to a conclusion of fact. By contrast, direct evidence supports the truth of an assertion directly without need for any additional evidence or inference. Indirect evidence includes comparative evidence, statistical evidence, anecdotal evidence, and historical evidence.

(i) Evidence that is relevant to either a prima facie case or to rebut an affirmative defense includes evidence related to the historic background of the decision, the specific sequence of events leading up to the challenged decision, departures from the normal procedural sequence or criteria for the decision, evidence that the housing opportunity remained available or was rented or sold to a person who is not a member of the complainant's protected class, statements by decision makers, or evidence that the respondent's treatment of others who are not members of the relevant protected class is different than treatment of the

complainant.

(j) 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 subsection 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 subsection 12042(j)(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 subsection 12042(j)(2), the complainant must show that the non-discriminatory reason asserted by the respondent is pretextual, false, or not the only reason. For example, persuasive evidence of a discriminatory reason in addition to, or other than, the non-discriminatory reason asserted by the respondent would defeat or bar the defense. 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.

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

(l) 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, 12926.1, 12927, 12948, 12955, 12955.6 and 12955.8, Government Code.

Article 6. Discriminatory Notices, Statements, and Advertisements

2 CCR § 12050

§ 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 housing accommodation which indicates any preference, limitation or discrimination, or an intention to make that preference, limitation or discrimination, because of any protected basis under the Act.

(b) A notice, statement or advertisement is discriminatory under subsection 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, or with respect to the housing accommodations of current or former ~~home~~ owners or renters; 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 subsection 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 subsection 12050(a).

(d) Except as specified in section 12051, it shall be unlawful for any owner to make or to cause to be made any written or oral inquiry concerning any protected basis under the Act of any individual 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 housing accommodation. 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 housing accommodation, 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, subsection 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 housing accommodations are available or not available to a particular group of persons because of any protected basis under the Act.

(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” (except to state an age-based preference or requirement for housing for older persons in relation to a housing accommodation meeting the requisite criteria of Government Code section 12955.9 pursuant to subsection 12051(e)), “No Section 8 allowed,” “No Vouchers or Government Assistance accepted,” or “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 if the housing accommodation is not housing for older persons under subsection 12051(e), “For tech workers” or “For working professionals” 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, or employees; prospective sellers, buyers, or renters; current or former owners, buyers, or renters; or any other persons a preference for or limitation related to any protected basis under the Act.

(3) Selecting media or locations for advertising the sale or rental of housing accommodations which deny particular segments of the housing market information about housing opportunities because of any protected basis under the Act.

(4) Refusing to publish advertising for the sale or rental of housing accommodations or requiring different charges or terms for such advertising because of any protected basis under the Act.

(5) Adding or including language in any declaration, governing document, deed, lease, rental policy, tenant policy or rule, homeowner association policy or rule, or similar document, that expresses a preference, limitation, discrimination or prohibition based on any protected basis under the Act, 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.

2 CCR § 12051

§ 12051. Exceptions.

It shall not constitute unlawful discrimination under this section:

- (a) For a person to make a written or oral inquiry concerning the level or source of income as specified in section 12141(b);
- (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, disability, or military or veteran status, 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, where “noncommercial personal roommate arrangement” means an arrangement “in which no monetary or other consideration is exchanged for the housing opportunity.” Traditional residential rental agreements, leases, subleases, and short-term rentals; as ~~covered~~ defined by section 22590 of the Business and Professions Code ~~12927(d) of the Act~~, are not included in this definition; or
- (e) For a person to state an age-based preference or requirement 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.

Article 13. Consideration of Income
2 CCR § 12140

§ 12140. Definitions.

- (a) “Lawful, verifiable income” means income that is:
 - (1) authorized or sanctioned by law, or not forbidden by law, and
 - (2) reasonably able to be checked or demonstrated to be true or accurate.
- (b) Provided it meets the requirement of subsection 12140(a)(2), “lawful, verifiable income” includes:
 - (1) Employment-related income, income from wages, interest payments and distributions from investments, payments from employers subsidizing housing, pensions, alimony, child support, payments from trust accounts, and any other payments recognized as “income” for federal or state tax purposes that are also lawful;
 - (2) Payments from family members, guardians, conservators, representative payees or others legally empowered to make payments on a tenant’s behalf, and insurance payments for long term health care which includes a housing benefit;
 - (3) All federal, state, and local government assistance that is available for the payment of rent, including Social Security benefits; Supplemental Security Income; Social Security Disability Insurance; veterans benefits (including federal Veterans Benefits, Special Veterans Benefits (SVB), and California Veterans Cash Benefits (CVCG)); Cal-WORKS (TANF) benefits; Tribal Temporary Assistance for Needy Families (Tribal TANF); Cash Assistance Program for Immigrants (CAPI); Refugee Cash Assistance (RCA); General Assistance and General Relief; pursuant to Welfare & Institutions Code Sections 17000 -17000.5 et seq, and similar programs; rental assistance; and foster care benefits, including benefits for youth up to age 26;
 - (4) All federal, state, and local government housing voucher and certificate programs, including federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f) (including special forms of Section 8 vouchers such as tenant protection vouchers, project based vouchers, and Section 811 mainstream vouchers), United States Department of Agriculture Section 521 rural housing vouchers, Housing Opportunities for People with AIDS (HOPWA) vouchers, tenant based rental assistance funded through the federal HOME program, Department of Housing and Urban Development Veterans Affairs Supportive Housing vouchers, and other governmental voucher programs;

(5) All federal, state, and local government housing subsidies that provide rental assistance to tenants and other individuals for rent, including Emergency Solutions Grants Program housing assistance; Supervised Independent Living Placement housing assistance for current or former foster youth; rapid re-housing or other similar assistance for homeless individuals; the federal Emergency Assistance Rental Program (ERAP) and similar programs; COVID-19 rent relief programs, state and local rental assistance programs, including programs identified in Health & Safety Code 50897.1, the California Rental Assistance Program, and similar programs; and

(6) All housing subsidies, housing vouchers, and rental assistance from nonprofit and charitable organizations.

(c) “Source of income” ~~means~~ includes:

(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 and rental assistance. 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. § 1437f) and income identified in subsections 12140(b)(4)-(6). 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, 12926.1, 12927, 12948, 12955, 12955.6 and 12955.8, Government Code.

2 CCR § 12140.1

§ 12140.1 Source of Income Discrimination in Housing Other Than Rental Housing Covered by Section §12141

It is an unlawful practice:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of source of income;

(b) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale of a housing accommodation that indicates any preference, limitation, or discrimination because of source of income;

(c) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person because of source of income;

(d) For any person, bank, mortgage company, or other financial institution that provides financial assistance for the purchase, refinance, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of source of income;

(e) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale of housing accommodations when the owner's dominant purpose is retaliation against a person because of source of income;

(f) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so because of source of income;

(g) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons because of source of income;

(h) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of source of income;

(i) For any person or other entity whose business includes performing appraisals, as defined in subdivision (b) of Section 11302 of the Business and Professions Code, of residential real property to discriminate against any person in making available those services, or in the performance of those services, because of source of income;

(j) For any person to deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of source of income;

(k) For any person to discriminate through public or private land use practices, decisions, and authorizations because of source of income. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

(l) For any person to otherwise make unavailable or deny a dwelling based on discrimination because of source of income.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12927, 12955, 12955.8, Government Code; and *Sisemore v. Master Fin., Inc.*, (2007) 151 Cal.App.4th 1386.

2 CCR § 12141

§ 12141. Source of Income Discrimination in Rental Housing.

(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 or applicant for tenancy pays part or all of their rent by taking an "adverse action" as defined in section 12005(b). For purposes of this section, additional examples of "adverse action" include:

- (1) A refusal to negotiate in good faith with the provider of any public assistance, rental assistance, or housing subsidy program;
- (2) Imposing different procedures for the consideration of any public assistance, rental assistance, or housing subsidy program as payment for rent, unless in response to a request for a reasonable accommodation;
- (3) A refusal to comply with the requirements of any public assistance, rental assistance, or housing subsidy program;
- (4) Applying inferior terms, conditions, or privileges in connection with the rental of a housing accommodation, including, but not limited to, setting rates for rental or lease, establishing damage deposits or other financial conditions, or refusing or limiting access to common areas or facilities based upon an individual's source of income. This includes imposing less favorable rental terms as a condition of accepting a rental subsidy, rental assistance or a housing voucher;
- (5) A refusal to make repairs to a housing accommodation where the individual's source of income requires the housing accommodation to meet a governmental program's habitability standards;
- (6) Representing to any individual based upon the individual's source of income that a housing accommodation is unavailable for potential rental when such housing accommodation is, in fact, available;
- (7) Terminating or threatening to terminate participation in a rental assistance program;
- (78) To make, print, or publish, or cause to be made, printed, or published through any medium, electronic, print, broadcast

or other method, any notice, statement, sign, advertisement, application or contract, with regard to a housing accommodation offered for rent, including, but not limited to, accepted forms of payment for the housing accommodation, which indicates a preference, limitation, or discrimination based on an individual's source of income; or

(89) To otherwise make unavailable or deny a dwelling based on a person's source of income.

(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:

(1) For the purpose of verifying the level or source of income stated in an application by a prospective tenant;

(2) For the purpose of verifying the level or source of income to confirm eligibility for subsidized housing;

(3) For the purpose of verifying the level or source of income to confirm eligibility for rental assistance or other tenancy protections, including those related to a public health emergency or natural disaster, and only if verification of such income is legally required to qualify for the rental assistance or tenancy protections; or

(4) If required by law.

(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. § 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, 12926.1, 12927, 12948, 12955, 12955.6 and 12955.8, Government Code.

2 CCR § 12179

§ 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;
or

(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).

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

(1) The requested accommodation would constitute a fundamental alteration of the services or operations of the person who is asked to provide the accommodation;

(2) The requested accommodation would impose an undue financial and administrative burden on the person who is asked to provide the accommodation;

(3) 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

(4) 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 subsection 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 obligated to pay for the modification pursuant to section 12181(h);

(2) The proposed modification is not reasonable;

(i) A modification is reasonable if it does not involve a fundamental alteration in the services or operations of the person who is asked to provide the modification or an undue financial and administrative burden on the person or persons paying for the modification under section 12181(h).

(3) 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;

(4) 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. Whether a requirement for restoration of an interior modification is reasonable is a case-by-case determination. The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where it is reasonable to do so and where the housing provider has requested the restoration obligation as part of the finalization of the modification arrangements. The tenant is not responsible for expenses associated with reasonable wear and tear. In general, if the modifications do not affect the housing provider’s or a subsequent tenant’s use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. Another factor for determination of whether restoration is reasonable is if the next tenant may need the modification. A housing provider may choose to keep the modifications in place at the end of the tenancy.

~~(i) This provision does not apply to modifications to the exterior or common or public use portions of the housing accommodation, or to non-rental situations, because restorations are not required in those situations.~~

~~(ii) This provision does not apply to modifications covered by subsections 12179(d)(6) (repairs required by codes or legal obligations); 12181(e) (common interest developments), 12181(h) (certain subsidized housing), or 12181(m) (purchase of a for-sale housing accommodation).~~

(5) 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.

(i) This provision does not apply to modifications to the exterior or common or public use portions of the housing accommodation or non-rental situations.

(ii) 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 poses an undue financial and administrative burden under subsection 12179(b)(2), or whether a modification poses an undue financial and administrative burden under subsection 12179(c)(2)(i), must be made on a case-by-case basis and must consider various factors including:

(1) The cost of the requested accommodation or the cost of a requested modification if the person considering the request is paying for the modification pursuant to section 12181(h);

(2) The financial resources of the person or persons who have a duty under the Act to provide the accommodation or the financial resources of that person or persons if they are the persons obligated to pay for the modification pursuant to section 12181(h);

(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 the entity being asked to pay for the modification under section 12181(h) 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 develop, maintain or repair the property as required by law or contract, or to otherwise comply with related legal obligations such as circumstances covered by California building codes or state or federal accessibility design and construction standards, in which case the defenses of fundamental alteration and undue financial and administrative burden do not apply. For example:

(i) Example of circumstance where modification is a repair required by building codes or standards: Bruce is a person with a mobility disability who requires the use of a handrail on the stairs in his dwelling unit but the existing handrail is broken. Bruce requests, as a reasonable modification, that the handrail be repaired or replaced. The owner must consider the request under these regulations, including sections 12176 through 12181, and specifically subsection 12179(d)(6). Because the California housing codes generally require proper maintenance of accessibility and structural features, the modification is reasonable because failing to repair the railing also violates the duty to maintain the property. Therefore, the owner is responsible for repairing or replacing the handrail at the owner's expense.

(ii) Example of circumstance where modification involves accessible feature required at time of construction or alteration: Ang is a tenant with a disability who uses a wheelchair and resides in a ground floor apartment in a non-elevator multi-family building that was built in 1998. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Under the Fair Housing Act, all ground floor units in this building at the time it was built must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair, in violation of the statutory design and construction requirements, but can be made compliant through retrofitting. Ang requests a reasonable modification to widen the doors in the apartment. The owner must consider the request under these regulations, including sections 12176 through 12181, and specifically subsection 12179(d)(6). ~~Assuming the request is reasonable~~ Because the codes required these features at the time of construction, the owner would be responsible for paying for the cost of the modifications due to the building's failure to comply with the statutory requirements that applied to it when it was constructed.

(iii) Example of circumstance where modification is not otherwise covered by building codes or standards: Han is a person with a disability who uses a wheelchair and lives in a building built in 1990. There were no applicable statutory accessible design and construction standards that applied to the building at the time of its construction. The doors in Han's apartment are not wide enough for passage using a wheelchair, but can be made so through retrofitting. Han requests a reasonable modification to widen the doors. The owner must consider the request under these regulations, including sections 12176 through 12181. Assuming the request is reasonable, the owner can require Han to pay for the cost of the reasonable modifications, but does not have to do so.

(e) A fundamental alteration under subsections 12179(b)(1) or (e)(2) 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 or modification. For example, if a landlord does not normally provide shopping for residents, a reasonable accommodation request to shop for an individual with a disability could constitute a fundamental alteration.

(f) 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; and *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

2 CCR § 12181

§ 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 usability 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 require 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 owners (members of the common interest development) may:

(1) Pursuant to Civil Code section 4760, 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, including Civil Code section 4760, or the common interest development's governing documents require or permit 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, including modifications of the route from the public way to the door of the separate interest, subject to a request for reasonable modifications under this Article. To the extent the Davis-Stirling Common Interest Development Act, including Civil Code section 4760, or the common interest development's governing documents require or permit 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 the interiors of tenancies.

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

(g) This Article 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, or part of a government entity's program or activities to provide housing. In those instances, requests for reasonable modifications shall be handled as requests for a reasonable accommodation. For example:

(1) Example of circumstances where reasonable modification required to be paid for by subsidized housing owner : Santiago uses a wheelchair and lives in federally subsidized housing. He needs a roll-in shower in order to bathe independently, and requests an alteration to his shower. The owner must consider the request under these regulations, including sections 12176 through 12181, and specifically including subsection 12181(h). Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program. Modifying a shower in an apartment would not be a fundamental alteration. Therefore, the owner of Santiago's building is obligated to pay for and install the roll-in shower unless doing so is an undue financial and administrative burden.

(2) Example of circumstances where a reasonable modification is required to be paid for by tenant: Ariz uses a wheelchair and lives in privately owned housing. He needs a roll-in shower in order to bathe independently, and requests a reasonable modification to his shower. The owner must consider the request under these regulations sections 12176 through 12181, and specifically including subsection 12180(b). If the request is granted, Ariz is responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

(i) Tenants are responsible for upkeep and maintenance of a modification that is used exclusively by the tenant household. If a modification is made to a common area that is normally maintained by the owner, then the owner is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by the owner, then the housing provider is not responsible for maintaining the modification. For example:

(1) Example of circumstances where maintenance of a reasonable modification is required to be paid for by owner: Because of a mobility disability, Bashir requests and receives a reasonable modification and installs a ramp in the lobby

of a multifamily building at his own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The owner must consider the request under these regulations, including sections 12176 through 12181, and specifically including subsection 12181(i). The owner of the property is responsible for maintaining the ramp.

(2) Example of factors regarding whether maintenance of a reasonable modification is required to be paid for by owner or tenant: Jade leases a detached, single-family home. Because of a mobility disability, Jade requests and receives a reasonable modification and installs a ramp at the outside entrance to the home. The owner provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. The owner must consider the request under these regulations, including sections 12176 through 12181, and specifically including subsection 12181(i). Under these circumstances, the owner has no duty to remove snow on the tenant's ramp. However, if the owner normally provides snow removal for the outside of the building and the common areas, the owner is responsible for removing the snow from the ramp as well.

(j) The owner cannot require that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications.

(k) In general, if a tenant requests a modification that is reasonable, the owner cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. However, if the modification is to a common area, or to an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the owner's alternative proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the owner's design. For example:

(1) Example of circumstance where owner proposes altered design for modification, where owner would be responsible for increase cost of altered design: As a result of a mobility disability, Keiko requests that she be permitted, at her expense, to install a ramp so that she can access her apartment using her motorized wheelchair. The existing entrance to her dwelling is not wheelchair accessible because the route to the front door requires going up a step. The owner must consider the request under these regulations, including sections 12176 through 12181, and specifically including subsection 12181(k). The owner proposes a design for a ramp that differs from Keiko's proposal, but the alternative design costs more and does not meet Keiko's needs. Keiko is not obligated to accept the alternative modification. If her request to modify her unit is reasonable, it must be approved.

(2) Example of circumstance where owner proposes altered design for modification, where tenant would be responsible for including altered design: As a result of a mobility disability, Azul requests a modification to widen a doorway to allow passage with their wheelchair. The owner must consider the request under these regulations, including sections 12176 through 12181, and specifically including subsection 12181(k). The owner grants the modification. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding, so the owner requests that Azul use the decorative trim molding. Because there is no extra cost, and because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, Azul must include the decorative trim when they widen the doorway.

(l) If the owner wishes a modification to be made with more costly materials or with a more costly design, in order to satisfy the owner's aesthetic standards, the tenant must agree only if the owner pays those additional costs. In addition, if the owner requires more costly materials or a more costly design be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the owner pays for those additional costs as well. In such a case, however, the owner's design must still meet the tenant's needs. If the owner does not wish to pay the additional costs, the modification must be granted without the more expensive materials or design if it otherwise meets the requirements for a reasonable modification.

(m) When an individual is purchasing a housing accommodation that has not yet been built, a purchaser can request a reasonable modification for the not-yet constructed housing accommodation. Pursuant to Health & Safety Code section 17959.6, developers of for-sale residential housing developments shall provide buyers a list of universal accessibility features prior to construction. If a purchaser with a disability needs any of these accessibility features or different or additional features to make a new unit that is not yet built meet her disability-related needs, and the features are different than those required by building codes and applicable accessibility laws, the purchaser may request additional or alternative features pursuant to Health & Safety Code section 17959.6. In addition, the developer must consider the request as one for reasonable modification under these regulations, including engaging in the interactive process under section 12177, as needed. If the purchaser decides to include the features, then the purchaser is responsible for the additional costs associated with the structural changes over and above what the original design would have cost. For example:

(1) Example of factors for determining who should pay for altered features in a not-yet constructed home: Elian has a

mobility disability and is purchasing a detached dwelling that is not yet built, and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. The owner must consider the request under these regulations, including sections 12176 through 12181, and specifically including subsection 12181(m). If the cabinet costs more than the standard vanity cabinet provided by the builder, Elian is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by Elian costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to Elian.

(2) Example of circumstances where seller should pay for altered features in a not-yet constructed home: Mariana has a mobility disability and is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. She requests that the builder grade the entrance to eliminate the need for the step. The builder must consider the request under these regulations, including sections 12176 through 12181, and specifically including subsection 12181(m). If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to Mariana.

(3) Example of circumstances where buyer should pay for altered features in a not-yet constructed home: Natalia has a mobility disability and is purchasing a condominium unit that is subject to accessibility design and construction standards. She wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder must consider the request under these regulations, including sections 12176 through 12181, and specifically including subsection 12181(m). The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the applicable accessible standards. Natalia is responsible for the costs of installing and paying for the grab bars.

(n) Examples of Reasonable Modification:

(1) Example of factors to be considered in responding to a request for reasonable modifications, including consideration of whether restoration of modifications is a reasonable requirement and whether an escrow account could be requested: 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. The owner must consider the request under these regulations, including sections 12176 through 12181. 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) Example of situation where restoration of reasonable modifications would not be required: 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. The owner must consider the request under these regulations, including sections 12176 through 12181. 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) Example of factors to be considered in responding to a request for a reasonable modification in a common interest development: Aki is a member of a homeowners' association because she owns ~~a~~ an interest in 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. The ~~home owners'~~ homeowners' association must consider the request under these regulations, including sections 12176 through 12181. 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 interior 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, 12948, 12955, 12955.3, 12955.6 and 12955.8, Government Code.