



HOUSING DISCRIMINATION BASED ON FAMILIAL STATUS

What are fair housing laws?

In 1968, the federal government passed a law called the Fair Housing Act which prohibits landlords, real estate agents, home sellers, and banks from discriminating against people based on certain characteristics.

California has a very similar law, the Fair Employment and Housing Act (FEHA).

In the years before 1988, studies showed that 25% of all rental units excluded families with children and that 50% of all units had policies that treated families with children differently than other tenants. Many families were unable to live in the housing of their choice. In 1988, both the federal government and California changed the fair housing laws to prohibit discrimination on the basis of familial status.

What is “familial status”?

“Familial status” is whether or not a household has one or more children under age 18. Families with children are protected from discrimination under the fair housing laws. The children must be residing in the household either with a parent or guardian or with the written permission of a parent or guardian. The law also covers people waiting to adopt or give birth to a child.

What is considered discrimination?

Discrimination includes both refusing to rent or sell a residence to families with children and treating families with children differently than other residents. Landlords cannot charge higher security deposits, require different lease terms or house rules, or restrict children from access to common spaces. It is also illegal for landlords to limit families with children to certain buildings or floors.

What if a landlord refuses to rent to families with children or imposes different rules on children because he or she wants to protect their safety?

Landlords can make reasonable safety rules that apply to everyone, but the rules cannot apply only to children. Landlords must comply with general safety laws, such as lead paint removal, and cannot refuse to rent to families with children because of the cost of such safety measures.

Can a landlord decide which buildings or floors are appropriate for children?

No. The landlord cannot require all families with children to live on a certain floor or in a “kids building.” Segregating families with children is called “steering” and is illegal.

Can a landlord limit the number of people living in the residence?

The landlord may follow reasonable occupancy limitations. In San Jose, the building code minimum is 70 square feet for each room used as a sleeping room for two persons and 50 more square feet for every additional person. In addition, one room in the home must be at least 150 square feet. The federal government has a rough guideline that a reasonable occupancy standard could be two persons per bedroom. However, that guideline may not be appropriate if your apartment is bigger or smaller than average. California's Department of Fair Employment and Housing will investigate any limit more restrictive than two persons per bedroom plus an additional person. If your landlord appears to be unreasonably limiting the number of people allowed to live in your residence, it may be discrimination, because it might have an undue impact on families with children.

Do these rules apply to all housing?

The federal fair housing protections for families with children apply to all housing EXCEPT:

- (1) a home in which the landlord lives and rents out only one room;
- (2) senior citizen housing where all the residents are 62 years or older;
- (3) federal or state programs specifically designed only for seniors; OR
- (4) senior citizen housing designed and intended for older persons and in which 80% of the units have one person over 55 years old. The complex must be a certain size to qualify for this exception.

Some examples of discrimination to watch out for:

"This is an adult building."

"Maybe you'd be more comfortable somewhere there are more other children."

"I'm sorry, you and your daughter need a two-bedroom apartment."

"We don't have any facilities for children."

"Our insurance doesn't cover renting to children."

"The security deposit is \$800, plus an additional \$100 per child."

"I wouldn't feel comfortable renting to a toddler on the third floor."

"Children cannot be in the common areas or use the club house."

What should someone do if they feel they have been discriminated against?

Call Project Sentinel at (408) 287-HOME (4663). Project Sentinel will investigate your complaint. After the investigation, the case may be referred to the lawyers at Fair Housing Law Project or Asian Law Alliance for assistance with an administrative complaint to the Department of Fair Employment and Housing, mediation, or litigation. You may also ask one of these three agencies to conciliate your complaint by reaching a settlement agreement with the housing provider.