

# Current Housing Rights and Protections for Immigrant Tenants in California



# Objectives

- Obtain a general overview of California fair housing laws as they relate to national origin/immigration status discrimination
- Learn about the anti-immigrant practices that are barred under the Immigrant Tenant Protection Act of 2017
- Identify the legal remedies that immigrant tenants have at their disposal to enforce their rights under California law

# Brief Overview of Federal Nondiscrimination Protections

- The Fair Housing Act - 42 USC 3604 - prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability
- The Fair Housing Act does not expressly protect non-citizens. However, a person's immigration status does not affect their federal fair housing rights
- Differential treatment based on immigration status may constitute **national origin discrimination**, which the Fair Housing Act expressly prohibits

# California State Nondiscrimination Protections for Immigrants

- Like federal law, the CA Fair Employment and Housing Act (Cal Govt. Code 12955 et seq.) and UNRUH Civil Rights Act (Cal Civ. Code 51 et seq.) prohibit housing discrimination based on race, color, national origin, religion, sex, familial status, and disability
- Additional protected classes under CA fair housing law include: marital status, sexual orientation, gender identity, source of income, and age
- Unlike the federal Fair Housing Act, California laws explicitly enumerate protections against discrimination based on immigration status.

# Prohibited Activities under Fair Housing Law

## California Fair Housing Laws prohibit:

- Advertising the sale or rental of a dwelling in a way that indicates a preference based on an applicant's national origin or immigration status
- Refusing to sell or rent a dwelling to any person because of their national origin or immigration status
- Imposing different selection criteria on housing applicants based on their actual or perceived national origin/ immigration status
- Enforcing tenancy policies in a discriminatory manner based on a tenant's national origin or immigration status
- Coercing, threatening, intimidating, or interfering with a person's enjoyment or exercise of housing rights based on discriminatory reasons, or retaliating against a person or organization that aids or encourages the exercise or enjoyment of fair housing rights.

# Remedies for Fair Housing Law Violations

- Tenants subject to unlawful discrimination have the option of filing an administrative fair housing complaint with either HUD (federal agency) or with DFEH (CA state agency)
- If discriminatory practice violates federal law, but involves a CA private housing provider, HUD will generally refer the administrative complaint to DFEH
- Complainants must file their complaints with either HUD or DFEH not later than one year after the occurrence or the termination of the alleged discriminatory housing practice

# Remedies for Fair Housing Law Violations

- Aggrieved tenants can also file a private lawsuit in court, but must do so within the applicable statute of limitations:
  1. Claims under the US Fair Housing Act must be filed within 1 year of the last discriminatory act/ fair housing violation
  2. Claims under CA FEHA must be filed within 2 years of the last discriminatory act/ fair housing violation
  3. Claims under CA Unruh Civil Rights Act must be filed within 1 year of the alleged violation

# Remedies for Fair Housing Law Violations

HUD Complaint Overview and Online Forms:

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint)

DFEH Complaint Overview and Online Forms:

<https://www.dfeh.ca.gov/complaintprocess/>



# Hypothetical I

Ahmed and his three children are asylees from Somalia. Ahmed responded to a rental ad for a vacant, three-bedroom single family home that is on the same street as where his other family members live. After exchanging emails with the owner, Ahmed and the owner agreed to meet for a viewing. The owner greeted Ahmed when he arrived but then began asking him a series of questions regarding where Ahmed was born and whether Ahmed had legal status. Ahmed explained that he was Somali and that he was granted asylum here. When Ahmed contacted the owner the following day to arrange for the rental application drop-off, the owner replied with a short email apologizing but letting him know that the unit has been rented. The following week, Ahmed notes that the rental is still being advertised as available. Ahmed's relatives also let him know that the house is still sitting vacant.

# Poll 1

**Has Ahmed been subjected to unlawful discrimination under California's fair housing laws?**

- A. No, the landlord is an individual owner renting a single-family home. He has the absolute right to refuse to rent it to someone for any reason
- B. No, the decision to rent to Ahmed was not based on his membership in a protected class
- C. No, the owner did not say anything overtly discriminatory against Ahmed
- D. Possibly. The facts indicate that Ahmed may have a claim for unlawful housing discrimination

## Poll 2

**What possible legal recourse under applicable fair housing laws does Ahmed Have to address any discrimination that might have occurred?**

- A. He can file an administrative complaint with the California Department of Fair Employment and Housing
- B. He can file an administrative complaint with the US Department of Housing and Urban Development
- c. He can file a private discrimination lawsuit in civil court
- D. Ahmed may choose between any of the above options

# The Immigrant Tenant Protection Act of 2017

- Previous CA tenant protections only addressed front-end discrimination in that they: a) primarily prohibited landlords from inquiring into a rental applicant's immigration status, and b) prohibited municipalities within the state from passing laws requiring prospective tenants to disclose their immigration status in rental applications.
- Laws did not directly address specific discriminatory acts and retaliation based on immigration status after commencement of a tenancy

# The Immigrant Tenant Protection Act of 2017 (cont'd)

The 2017 Act incorporates more expansive protections for existing tenants. The Act:

- prohibits landlords from serving an eviction notice against an existing tenant because of that tenant's perceived or suspected immigration status. Cal. Code Civ. Proc. 1161.4 (a)
- prohibits landlords from threatening to disclose an existing tenant's immigration or citizenship status to immigration authorities, unless so required or directed under federal law or court order. Cal Civ. Code 1940.2 (a)(5); Cal Civ. Code 1940.3(c)(1)

# The Immigrant Tenant Protection Act of 2017 (cont'd)

- prohibits landlords from retaliating by reporting tenants to immigration authorities who have validly asserted their tenancy rights or who have made a habitability-related complaint to an appropriate agency. Cal. Civ. Code 1942.5 (c)
- Attorneys practicing in CA are subject to formal discipline, suspension, or disbarment if they report or threaten to report a tenant's or a tenant's family member's suspected immigration status to the authorities in response to a tenant's valid exercise of tenancy-related rights. Bus. and Prof. Code 6103.7

# The Immigrant Tenant Protection Act of 2017 (cont'd)

- For purposes of the Immigrant Tenant Protection Act, immigration or citizenship status "includes a perception that the person has a particular immigration status or citizenship status, or that the person is associated with a person who has, or is perceived to have, a particular immigration status or citizenship status." Cal. Civ Code 1940.5
- Thus – a tenant need not actually be an immigrant to access these legal protections. California law prohibits the above actions even if landlords are mistaken in their perception of the tenant's immigration status.

# The Immigrant Tenant Protection Act of 2017 (cont'd)

- Landlords who unlawfully disclose an immigrant tenant's immigration status may be subject to a civil action for injunctive and monetary relief
- For any person whose status was unlawfully disclosed, a court may order the landlord to pay statutory damages in an amount to be determined in the court's discretion that is between 6 and 12 times the monthly rent charged for the dwelling in which the tenant or occupant resides or resided. Cal Civ. Code 1940.35
- If the tenant is being impermissibly evicted due to their immigration status, the tenant may also invoke the above state law protections as part of their affirmative defense to the eviction lawsuit



## Hypothetical II

Juana, a US Citizen, has lived in a rent-controlled unit located in a rapidly gentrifying neighborhood with her partner, Marisol, who is undocumented. Juana communicates with Marisol in Spanish. The landlord, who is routinely in the building for maintenance, has had occasion to overhear Juana's and Marisol's conversations while in the common area. The landlord has made occasional comments to them about how they don't pay him what the unit is worth. Last week, the landlord intercepted Juana and told her that he had strong suspicions that she and her partner were "illegally" in the country. The landlord stated that he was inclined to report them to ICE, but that he would refrain from doing so if they moved out. Juana and Marisol were very afraid and did not reply to the landlord. The landlord subsequently issued them a 60-day eviction notice.

## Poll 3

**What legal recourse is available to Juana and Marisol to address their landlord's actions?**

- A. Marisol can file an affirmative lawsuit for violation of her rights under the Immigrant Tenant Protection Act
- B. Juana can file an affirmative lawsuit for violation of her rights under the Immigrant tenant protection Act
- C. Both Marisol and Juana can Invoke the Immigrant Tenant Protection Act as an affirmative defense to any eviction suit resulting from the 60-day notice
- D. Both Juana and Marisol can file an administrative discrimination complaint with the CA Department of Fair Employment and Housing
- E. All of the above

# Bay Area Legal Aid's Services

- The Alameda County office assists over 1,500 clients per year with housing related issues – by phone or in person.
- **FREE Legal Assistance and Representation:** BayLegal can help eligible individuals with housing related legal issues, e.g., evictions, subsidy terminations, housing denials, reasonable accommodation and fair housing issues.
- **Tenant Rights Line: (888) 382-3405** – for Alameda County Residents currently experiencing housing-related legal issue.
- Also, BayLegal has a general **Legal Advice Line – (800) 551-5554** – for low-income Bay Area residents in need of legal advice or assistance with Housing, DV, Public Benefits, Health Access, Re-entry, Consumer or Youth Justice



# Wrap-up

- Questions?
- Thanks again for your vital support!

