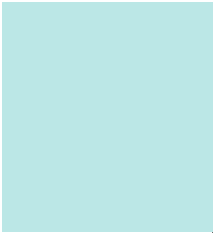


# Guide to Renting and Managing Property: The Fair Housing Way



Families

Rental  
Housing



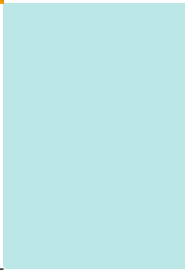
FAIR  
HOUSING



People with  
Disabilities



Safe  
Housing



Law



Inclusion



Tenants



Written and published by:  
Housing Equality Project of  
Silicon Valley  
  
The Housing Equality Project  
is a collaboration between  
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### Introduction

The Housing Equality Project, a partnership between nonprofits Project Sentinel, Inc. and Law Foundation of Silicon Valley, is pleased to present this **Guide to Renting and Managing Property the Fair Housing Way.**

**Who should use this handbook?** This book is designed specifically to help people who own and/or manage only one or very few rental properties. We know small-scale owners and managers may not have trained, professional management companies to help them or the resources to retain a lawyer, and it may be harder to access easy-to-understand information about fair housing (discrimination) laws. Therefore, the goal of this handbook is to give basic advice on how to comply with fair housing laws. The questions that follow are based on real questions about fair housing often posed by small housing providers.

Because this handbook is designed for small-scale property owners and managers, we do not discuss how the law applies to properties that receive federal funding, accept federally-subsidized rents, or operate under specific state licensing requirements. If your property receives any form of federal funding or rent subsidies, please note fair housing laws may be different for you and additional laws may apply. Be sure to ask for help from the U.S. Department of Housing and Urban Development or an attorney if you have questions about housing discrimination at a subsidized property. The laws discussed in this handbook *do* apply, however, if you rent to tenants with Section 8 Housing Choice Vouchers.

**How should you use this handbook?** This handbook is not a substitute for a lawyer's evaluation of any specific fair housing problem you may have and is not intended to provide legal advice. The specific examples given are merely illustrations to help you understand how the law works, and may or may not be the way the law would apply to your specific situation. We hope you will gain a better understanding of fair housing laws, be better able to recognize fair housing issues, and know when and where to get help.

**What is fair housing?** Fair housing laws make it illegal to discriminate against applicants for rental housing, tenants, or homebuyers based on their membership in a protected class.

**Why should you care about fair housing?** First, renting and managing your property the "Fair Housing Way" is just good business: you will have better tenants, better neighborhoods, and better protection of your investment. Second, the law says you must rent and manage your property without discriminating. If your tenant sues for discrimination and a court rules against you, you could damage your reputation as a small business owner and face significant financial liability.

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This booklet covers laws that apply nationally and in California. There may be more specific local rules in your area that are not described in this booklet. In addition, this booklet does not discuss general landlord-tenant questions, such as security deposit issues, lease terms, or notices. For help with those questions, please contact an agency listed in the resources reference in the back of this booklet. If you have more questions after reading this handbook or have a specific fair housing issue you would like some help with, you can call us with questions using the contact information in the back of this book or talk to a private lawyer.



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## Fair Housing Basics

“Fair housing” is a term for the laws that prevent discrimination in housing. Housing discrimination happens when housing providers treat applicants or tenants differently because of specific characteristics. The law calls these special traits “protected categories.” Both federal and California laws identify seven such categories: race, color, national origin, religion, sex, familial status, and disability.

Housing discrimination happens when someone is treated differently *because of* a special trait protected by the law. For example, it is illegal to refuse to rent to someone because she is disabled, because disability is a protected category. Other examples of illegal housing discrimination include:

- Not letting children play outside or having rules that unreasonably limit where children play.
- Refusing to allow a tenant in a wheelchair to have a closer parking spot when one is available and the tenant asks for it.
- Segregating tenants of one race or national origin in a particular area of a property.
- Refusing to rent to an applicant because she relies upon disability income to pay rent.

### California Law Note — Additional Protected Groups

California adds six protected categories: sexual orientation, gender identity and expression, source of income, marital status, age, and arbitrary characteristics. In addition, California law prohibits discrimination by a business accommodation (which includes housing providers) on the basis of primary language or immigration status.

Discrimination is illegal during any part of the rental or sales process, from the content of advertisements, to choosing applicants, to how tenants are treated once they live at a property, to how tenants are evicted. Fair housing laws also apply to how housing providers treat the guests or caregivers of tenants.

**Good Fair Housing Practices are Good Business Practices.** Housing providers should choose applicants based on whether they are likely to be good tenants, not based on *assumptions*. The best practice is to base decisions on neutral, individualized facts such as financial qualifications and past rental history, not stereotypes and assumptions.

### California Law Note — Which Housing Providers are Covered

In California, fair housing laws apply to all housing providers, except those who share the same home as their tenants.



## Fair Housing Basics: Frequently Asked Questions

### What can I say in a rental advertisement?

You can ask that tenants have a certain income, good credit, and a positive tenant history. However, you can't advertise that you prefer a certain group of people. This means you can't say you prefer applicants who are Chinese or have a job outside the home. Be careful about limiting the number of people in the home (i.e., advertising the maximum number of people who may live in the unit), as that may be discrimination against families with children (see below for more information). It is OK to say "no smoking" and "no pets."

Examples of discriminatory statements in advertisements include:

"I prefer tenants who speak Mandarin."

"Young professionals only."

"Not accessible for the disabled."

"Not ideal for children."

"I'm only looking to rent to one person or a couple."

"Proof of two years of steady employment required."

"Students only."

"I am a Christian and want to rent to someone with similar values. It is against my religion to rent to anyone who is gay."

Also, it is a good idea to advertise in many places and ways. If you only advertise in a foreign language, for example, or just in a specific ethnic newspaper or website, you may be showing an illegal preference for tenants who speak that language or have that ethnicity. The better practice is to advertise in as many different forums as possible to ensure your rental property is available to everyone to rent.

### How can I avoid making discriminatory advertisements?

The best thing you can do is to advertise the features of the property itself. Talk about the property's amenities, nearby services, and minimum rental qualifications in the advertisement. Don't advertise your unit by describing the type of tenant you think would be happy living there, because you may end up saying things that sound like you only want to rent to someone based on a protected characteristic – for example, someone who does not have children. If you include requirements for the kind of applicant you are looking for, be sure to use criteria that anyone with a protected characteristic can meet, such as "long-term tenant" or "tenant with a good credit history." On the other hand, saying the unit is "best for a young, working couple with steady jobs" could get you in trouble because it sounds like you do not want families with children, which is a protected category.



### **Do fair housing laws require that I rent to the first qualified applicant?**

Fair housing laws do not tell you how to pick applicants, except to say that you can't refuse to pick applicants based on a protected characteristic. The safest and best practice, however, is to decide your rental qualifications in advance, and be sure those qualifications are objective. Objective qualifications you can use include income level or ability to pay, good credit record, no previous evictions, and references from previous housing providers. You can base your final decision on time of receipt (the first application you receive from someone who meets your qualifications); credit score (qualified applicant with the highest credit score); income (qualified applicant with the highest income); or any other criteria that has no relation to a protected characteristic.

### **What factors are NOT OK to consider in deciding who to rent to?**

You can't ask applicants whether they are citizens, legal residents, or undocumented immigrants. The law also provides that you can't refuse to rent to an applicant because of his criminal history, unless you can demonstrate that he was convicted of a crime that would pose a direct threat to the safety of other people or property. You also can't ask questions about protected characteristics – for example, you can't ask applicants about their disabilities. California law says you can't ask whether an applicant is married or gay. You should not make assumptions about applicants based on race, religion, or other protected characteristic. For example, you can't refuse to rent to an Indian family because you think they will cook with curry and cause strong cooking smells that will bother other tenants, or refuse to rent to a Mexican family because of a stereotype that they will move in their relatives without your permission.

### **How do I respond if applicants ask me what kinds of people live on my property?**

You should simply respond that you can't answer the question because it could be considered discriminatory. You can encourage interested applicants to visit the apartment and see the property and neighborhood for themselves, of course, but trying to describe the kind of people that live on the property is a dangerous practice. For example, if you volunteer that no families with children live on your property, applicants might think you are saying this to discourage families with children from applying to rent an apartment. It may also be considered discriminatory to say that your current tenants are mostly Mexican.

### **I hire a property manager to take care of my property. Why do I need to know about fair housing laws?**

You are responsible for actions taken by your property manager or any other employees, including maintenance staff. If your employees break the law, treat tenants unfairly, or discriminate, you could be liable, regardless of whether you approved or knew of the discrimination. You should make sure your property manager and staff are properly trained, especially about fair housing laws. Understanding the law and your responsibilities towards tenants will help you make good decisions and give instructions about renting and managing the property that follow the law.

### **What should I do if I discover that one tenant harassed another tenant because of a protected characteristic?**

Tenants sometimes have disagreements with one another, and you may feel like those disagreements are not your concern. As a housing provider, however, you must step into a disagreement if one tenant is harassing another tenant because of a protected characteristic. This could happen if certain tenants bother their neighbors because they don't like being around children, or because they don't like other tenants' religion or race. This is discrimination and you must take action as soon as you know there is a problem.

When your tenant tells you she is being discriminated against by another tenant, you should do what you can to investigate the complaint. One way to investigate is by talking to anyone who may have seen what happened to the complaining tenant or to the neighbors of the tenants involved. You can also ask to see any notes, text messages or other documents that might verify what happened. If you determine the complaint is valid, you must take some action. An action may include warning the tenants who is harassing or discriminating against other tenants, giving that tenant a notice, or even evicting the harassing tenant. It is always a good idea to let your tenants know upfront that you will not put up with any discriminatory behavior. However, you shouldn't just evict all of the tenants involved in the disagreement without trying to investigate the discrimination complaint.

You should be especially careful in dealing with noise complaints about families with children or people with mental disabilities. When you receive these complaints, make sure the tenant who is complaining is being reasonable. Try to determine whether other tenants corroborate complaints of excessive noise. If the tenant who is complaining just doesn't like children or feels uncomfortable being around someone with mental disabilities who may act and sound differently, then he or she could be discriminating against those tenants by complaining. Moreover, if you take action against the tenants who are being complained about without seeing for yourself whether the complaint is valid, you could get in trouble for discriminating too.

### **What else can I do make sure that I am complying with fair housing laws?**

There are several things that you can do to make sure you and your staff are obeying the law. These include:

- Educate yourself and your staff. You and your staff should attend a fair housing training at least once a year. The law changes from time to time and you should stay updated.
- Join a professional association of other housing providers like you. There are several in the area, including the California Apartment Association, the Rental Housing Network, the Rental Housing Association, and the National Association of Rental Property Managers. These organizations often provide free or low-cost training and technical assistance.
- Have written lease agreements, rental policies, and house rules that have been reviewed by a lawyer with experience in fair housing laws. Make sure you follow those rules.
- Keep good written records for at least five years. You should have written records of rent receipts, written notices, rules, lease agreements, rent increases, and repair requests.





- If you find yourself in a situation that poses a fair housing question, you are welcome to call Project Sentinel for a free consultation. Although we can't provide you with legal advice, we may be able to point you in the right direction. Contact us at (888) 324-7468 or [info@housing.org](mailto:info@housing.org).

### **What should I expect if I have been served with a complaint of housing discrimination by HUD or DFEH?**

The U.S. Department of Housing and Urban Development (HUD) and/or the California Department of Fair Employment and Housing (DFEH) will investigate the complaint. HUD and DFEH investigators are not on the side of either the tenant or the housing provider. Their job is to simply investigate to see whether the facts show that fair housing laws were followed.

The way that HUD and/or DFEH investigate complaints includes talking to you and the tenant, reviewing documents, and talking to witnesses. You will have a chance to tell the investigator your side of the story, and to give him or her any documents you have that support your case.

Most discrimination complaints are settled through negotiation. Both agencies offer a confidential process for both parties to resolve the case before determining whether the law has been broken. You are not required to hire a lawyer to help you in the investigation or negotiation phases of the complaint process, but it is often a good idea to have one.

Cases that do not settle through negotiation go through a full investigation. At the end of the investigation, HUD or DFEH will either find that there was discrimination, or find that there was not enough evidence to support the tenant's discrimination claim. If there is not enough evidence, the agency will close the case. If there is enough evidence, the agency may file a lawsuit against you or request that you try to settle the case.

While it can be upsetting to be accused of discriminating, try to respond to a complaint in a professional, calm way. Be careful how you treat your tenant after he or she makes a complaint. It is illegal for you to retaliate, punish, or take any negative action, such as eviction or a rent increase, against your tenant for filing a claim for discrimination.



## Race, Color, and National Origin Discrimination

Race discrimination happens when housing providers treat tenants differently because of their race. Race refers to whether a person is White, Black or African-American, Asian, American Indian or Alaskan Native, Native Hawaiian or Pacific Islander, or some combination of these races. Race is closely linked with color, which refers to the color of a person's skin.

National origin, in comparison, refers to a person's place of birth, ancestry, or ethnicity. For example, a person's national origin could be Hispanic/Latino, Mexican, Chinese, Indian, or Filipino. Housing providers can't treat people differently because of where they come from, or the customs, culture, dress, and food of their country of origin. They also can't treat people differently based on their language, whether they speak English, or whether they have an accent. National origin discrimination does not just happen to people who are recent immigrants to this country; it can also happen to people who were born and raised in the United States, but have parents or grandparents who were born in another country or are otherwise identified as belonging to a family or culture from another country.

### Race, Color, and National Origin: Frequently Asked Questions

#### What is considered discrimination based on race, color, or national origin?

Discrimination based on race, color, or national origin includes:

- Refusing to rent to someone because of their race, color, or national origin.
- Limiting where people can live on the property based on their race, color, or national origin. For example, only allowing Indian tenants to live on certain floors because of assuming their cooking will smell or assuming tenants will be more comfortable together.
- Preferring a certain racial or national origin group. For example, only renting to Asian families because of a belief that they are quiet or manage their money well, or because the housing provider is Asian and likes to rent to tenants from the same place he or she is from.
- Charging people different rents or security deposits based on their race, color or national origin. For example, charging Black tenants higher security deposits because of stereotypes about bad credit.
- Applying different rules to different tenants because of race, color, or national origin. For example, evicting Hispanic tenants the first time they are late with rent when non-Hispanic tenants are allowed to be late several times before being evicted.
- Harassing a tenant because of race, color, or national origin, or allowing other tenants to harass a tenant for those reasons.
- Treating tenants differently in any way because of race, color, or national origin. For example, making repairs in units of White tenants but not African-American tenants.



**Do rules prohibiting race, color, and national origin discrimination apply to guests?**

Your tenants should feel comfortable in their homes and have the chance to spend time with their friends or family. You can't treat your tenants' guests differently based on race, color, national origin, or any other protected characteristic. You also can't require that your tenants limit their guests to persons of certain races. Additionally, you should be sure to treat all guests the same. For example, one property manager got in trouble because he stopped and questioned his tenant's African-American guests, but not Asian or White guests. This kind of different treatment is likely based on stereotypes, and could lead to your tenant making a complaint about discrimination.

**What if most of the tenants who live on my property are of the same race or national origin? Am I violating fair housing laws?**

If the demographics of tenants living on your property reflect the demographics of people in the local community, then it is unlikely to be a violation of fair housing law. However, if almost all of the tenants living on a property are White but the property is located in a diverse neighborhood, this might signal a problem. Similarly, if the community is quite diverse but only Latino households live at a complex, this might also signal a problem. If this has happened at your property, you should review how you advertise for and choose applicants to be sure you are not discriminating against some applicants. Sometimes you may have policies or rental qualifications that have the effect of unintentionally causing discrimination, and this can violate the law. In addition, if you are not the one who is making rental decisions, make sure your manager knows about fair housing laws and is not picking applicants based on a protected characteristic. Sometimes housing providers prefer to rent to applicants who share their race or national origin, and this is also unlawful.

**What if I am worried applicants from a specific culture will cook foods that will damage my property or do things that will bother other tenants?**

While it is understandable that you want to rent your property to tenants that will take care of it, you should never assume someone will be a bad tenant just because he or she comes from a specific culture or country. People from all places and cultures can be responsible and considerate tenants, just as people from all places and cultures can be terrible tenants. You can't tell whether someone will be a good tenant because of where they come from; you can only tell that based on a specific applicant's history and character. A better way of protecting your property is to make sure you have an applicant screening process that checks whether applicants have ever been evicted or charged for excessive damage to their unit by a previous housing provider. Another way to protect your property is to charge a security deposit, so that you can subtract the cost of any damage from that deposit if you later discover that your tenants have damaged your property. However, be sure you are charging the same security deposit for all tenants and not a higher deposit for tenants from a particular country or ethnic group. You can't always tell who will take care of your property and who will not, so charging an adequate security deposit for all tenants will legally protect you.

If, after renting to certain tenants, it becomes clear cooking smells are really bothering others, you should deal with the smells the same way that you would deal with any other smell causing a problem on your property. Just be sure the complaints are genuine and reasonable, and not the result of prejudice or stereotyping.

**If my tenants speak a different language, do I have to translate the lease into their language?**

Failure to provide meaningful access for persons with Limited English Proficiency (LEP) to federally-funded housing programs is discrimination on the basis of national origin. Federally-funded housing providers are required to have a language access plan for oral and written communication to ensure meaningful access for applicants and tenants with LEP.

**California Law Note — Translation**

California law only requires that you translate the lease if you negotiate the lease with your tenants in a specific language. For example, if you negotiate the terms of the lease in Mandarin, then you must translate the lease into Mandarin. In other cases, if you have the ability to translate the lease, you should do so because tenants who understand their lease are more likely to comply with its terms. The same idea applies for notices. While the law may not require you to give notices to tenants in the language they speak, it is a good idea to do so if you can. Tenants are much more likely to comply with lease terms when they can easily understand those terms.

**Do I have to provide a translator to talk with tenants who do not speak my language, or can I just choose to rent to people who speak my language because it is easier?**

You are not required to provide a translator. However, you are required to allow your tenants to use translators, even if the translator is a friend or child. If you have a property manager who speaks your tenants' language, you should permit the manager to speak with tenants in that language and to otherwise work to find ways to make communication easier. In the end, better communication builds a stronger relationship with your tenants.

While working with tenants who do not speak your language may sometimes require more effort, you can't decide to only rent to tenants who speak your language because it's easier or because you believe everyone living in America should speak English. Renting **only** to people who speak the same language as you is likely to be considered national origin discrimination because it shows a preference for tenants from a certain race or national origin.

Recipients of federal funding are required to have a language access plan, which outlines procedures for providing oral interpretation and written translation of documents for persons with LEP. Applicants and tenants with LEP shall not be required to bring their own oral interpreters.

**Can I require that applicants provide a driver’s license or Social Security number?**

As a housing provider, you may verify the identity of applicants to whom you are renting, verify their credit, check for evictions, or check for criminal convictions. In general, you are allowed to ask for some verifying documents to check this information. However, you can’t require documents that applicants would only have if they are legally in the country or that would be harder for applicants who are not from the United States to give you. Because of this, you can ask for a driver’s license and social security card, but if applicants do not have either of these, you should be willing to accept foreign ID documents like passports and Consular IDs, or taxpayer ID numbers. These documents will do what you need: verify that applicants are who they say they are, and allow you do background checks. You do not need a Social Security number to check applicants’ credit or to do a criminal conviction check. Many online companies allow you to do these checks with just applicants’ names and their current or last address.

**California Law Note — Inquiring About Citizenship**

**Can I ask applicants whether they are in this country legally or ask them to show me proof of citizenship?**

In California, you can’t ask tenants whether they are in this country legally or require proof of citizenship or legal status. You can still ask them to provide proof of income, identification, or other information you need to run a credit check.



## Familial Status Discrimination

Familial status discrimination means treating tenants differently because they have children under 18 in their home. This also applies to pregnant women and families who have foster or adopted children, or who plan on adopting or fostering children. Put another way, familial status discrimination is really discrimination against children. Familial status discrimination is one of the most common fair housing complaints that tenants have against housing providers. Examples include:

- Refusing to rent to families with children.
- Only letting families with children live in certain parts of the property or on certain floors.
- Limiting children’s access to parts of the property, such as a grassy play area or a recreational room.
- Not letting children play or make noise outside.
- Requiring that children be watched by an adult at all times.
- Refusing to rent to families because they have too many children.

### Familial Status: Frequently Asked Questions

#### **Can I have an “adults only” policy?**

You may not refuse to rent to applicants with children because you want an “adults only” unit or even an “adults only” property. Sometimes, as a housing provider, you may think a unit or a property is not a good place for children to live, but this is not your decision to make. You are also not allowed to only rent to adults because you want to create a certain kind of community or attract certain kinds of applicants.

#### **Can I charge a higher rent or higher security deposit for families with children? I am concerned about the damage children could cause to my property.**

You may not charge a higher rent or security deposit simply because you are renting the unit to families with children. This is treating families with children differently than other tenants, and makes it more expensive for families to obtain the same kind of housing that people without children could get. A better practice is to charge all tenants a uniform security deposit large enough to cover any damage your tenants cause and provide them with an incentive to take care of your property while they are living there. Remember, a good applicant screening process will ensure you don’t rent to any applicants, regardless of family status, who have not been responsible tenants in the past and caused excessive damage to their previous homes.

#### **Can I decide that only certain units are good for families with children or put all of the families with children in a specific area of the property?**

Only allowing families with children to live in certain units or certain areas of a property is called “steering” and is not allowed. A family may choose a unit near the playground or on the first floor, but it must be their choice, not yours.

### Can I limit how many people can live in a unit?

In general, you are allowed to limit how many people will live in a house or apartment, but this limit must be *reasonable*. Trying to restrict the number of people beyond what is reasonable can mean that families with children will be unfairly denied the chance to rent a home they can safely and comfortably live in. This may be discrimination even if you didn't mean to exclude families, because the result of this policy is that families with children will not be able to rent the unit simply because of the number of people in their family. To be sure your limits are reasonable, you should not count infants towards the maximum number of people in the home.

#### California Law Note — Occupancy

In California, as a general rule for most apartments and houses, you can use the “2 plus 1” guideline to figure out a reasonable number of occupants to allow in a house or apartment. The “2 plus 1” guideline says that you should ordinarily allow at least two people per bedroom plus one other person. For example, you should allow at least three people to live in a one-bedroom unit (two people for the one bedroom, plus one additional person), and five to live in a two-bedroom unit (two people for each bedroom plus one).

### What if I don't think the unit or a part of the property is safe for children?

First, it is your duty as the housing provider to ensure that the unit and the common areas of the property are safe and in good repair. If part of the property is unsafe, you should fix it.

However, your concerns may come from something you can't control, like a busy street or a parking lot. Under narrow circumstances, it may be OK for you to make reasonable rules to protect the health and safety of all tenants, but these rules must apply to all tenants, not just children. For example, if there is a decorative fish pond on your property, you could have a “No Swimming” rule. However, keep in mind that it is not up to you to decide how a child may safely live on the property. For example, it is not for you to decide a second floor unit is not safe for a toddler or the street in front of the property is too busy for small children to live on the property. If you have concerns, make sure all prospective tenants see the property's location and features so they can decide whether it is a good place for their family to live. In the end, though, it is the parents' duty to ensure their children's safety, not yours, and to decide whether and when their children need supervision.

### **Can I have rules limiting where children play, how loud they are, or where they can leave their toys?**

Remember that children are tenants too, and they have the same right to use and enjoy the property as adults. If your rules do not allow children to use the property the same way that adults do or do not allow children to do things children normally do, you may be violating the law.

Here are some general guidelines:

- Rules that only apply to children are generally illegal. For example, you can't have rules like, "No kids in the common area" or "Children are not allowed in the recreation room." Instead, your rules should apply to all tenants the same way. For example, you can have a rule that tenants can't loiter in the parking lot. This rule applies to all tenants and relates to a safety concern, as standing around in a busy parking lot can be unsafe for anyone. You may also have a rule that requires all tenants to bring all personal belongings--not just toys--inside when they are not using them.
- On the other hand, you can't have a rule that says, "No playing on the grass or bouncing balls." These kind of rules single out children and common children's behaviors, even if they don't specifically say children can't do these things.
- You also may not have "adult only" and "children only" areas of the property. All tenants should have access to the entire property.

### **What should I do if my tenant complains that another tenant's children are making too much noise?**

In general, children must be allowed to make a reasonable amount of noise for their age. Children should not be penalized for being children: babies cry and kids yell when playing outside, and children must be allowed to do these things within reason. However, you *may* have a noise rule that applies to all tenants, such as instituting quiet hours. Make sure you apply any noise rules equally and reasonably to all tenants, not just to children.

When one tenant complains about noise from another tenant's children, you should find out whether the children were making a reasonable amount of noise for their age, activity, and the time of day. Ask the tenant who is complaining what the children were doing and when they made the noise. Were the children playing in the afternoon after school? Or was it at midnight? Was it one child or many? Did someone get hurt and start crying? Was it a baby or teenagers?

You should also consider whether the tenant who is complaining dislikes living near children and is less tolerant of the normal noise than a reasonable person. If he or she is the only tenant complaining about the noise while other neighboring tenants do not seem to be bothered, the problem may be with the person complaining and not with the family.

If you determine the amount of noise was reasonable, you should explain that children are allowed to make a reasonable amount of noise. You can also explain that taking action against the kids would break the law. You may also explore other ways to solve the problem. Can you offer to move the tenant who is complaining to another unit? Are there soundproofing options you can use to help reduce the noise? The worst thing you can do in this situation is to give the family a notice or decide to evict them without first figuring out what is going on. You may well find yourself facing a complaint of familial status discrimination.



**Can I require that parents watch over their children at all times?**

Requiring parents to supervise their children while on the property is generally not allowed except in very limited circumstances. Having child supervision rules may mean that families with children are not allowed to use and enjoy the property in the same way as tenants without children. You may be asking families to comply with different terms and conditions than families without children and preventing parents from deciding what kind of oversight their children require. However, under California law, you may require all tenants under the age of 14 to be supervised by an adult at the pool.

**If a tenant’s child repeatedly vandalized the property despite warnings, can I evict that family without being accused of discrimination?**

You do not have to allow vandalism or property damage by anyone, adult or child. The key is to treat property damage caused by a child the same way as property damage caused by an adult. As long as you treat all acts of vandalism the same no matter what the age of the person who did, you probably won’t be breaking the law. Be sure, however, you are not assuming it was a child who caused the damage because “that’s what kids do.” Also, if a child *does* damage the property, do not react by making a rule that punishes all children. For example, if one child breaks a sprinkler, do not make a rule that no children may play on the grass because you are worried about more broken sprinklers. Instead, work with that child’s family to try and correct the problem.

**Can I decide to rent only to seniors? I wouldn’t have to allow children then, right?**

While it is true properly certified senior properties do not have to rent to families with children, those properties must follow specific laws found in the federal Housing for Older Persons Act. You should work with a lawyer to understand these laws before you try to make your property into senior housing.

**California Law Note — In-Home Day Cares**

**Can I refuse to rent to applicants who want to open an in-home daycare?** California law protects licensed home daycare providers from housing discrimination. You can’t refuse to rent to applicants or evict tenants who run daycares from their homes. Any lease provisions that prohibit tenants from running businesses do not apply to daycares. You can require that daycares be licensed by the state and that tenants add you to any insurance policy. Daycare providers who do not have insurance must get waivers from all of their clients. These provisions protect housing providers from being liable for any injuries to children attending the daycare. All in-home daycares must be licensed by the California Department of Social Services Community Care Licensing Division (CCLD). Tenants who wish to operate a licensed in-home daycare are required to comply with specific notice requirements to their housing providers. However, be aware that babysitting a couple of children may not be considered providing daycare; more information about this distinction can be found at the CCLD website.

## Disability Discrimination

Disability discrimination happens when housing providers treat people with disabilities differently.

In California, someone is considered disabled if they have a physical or mental impairment that limits a major life activity.

This broad definition of disability means people do not have to be in a wheelchair to be disabled; “disability” includes mental illness, severe asthma, dementia, and many other conditions that may not be visible. Discrimination may occur when housing providers make assumptions about people with disabilities, such as assuming people with disabilities can’t care for themselves, are dangerous, or will not be able to safely live on the property.

Disability discrimination also happens when housing providers deny a disabled tenant’s request for a “reasonable accommodation” or “reasonable modification” without a good reason. A “reasonable accommodation” is a change in a rule or a policy that is necessary to provide a disabled person with equal use and enjoyment of their home. For example, a tenant in a wheelchair might ask to be assigned a closer parking space to make it easier to get to her home. Other common requests for reasonable accommodation include requests to transfer to a different unit, permission for an emotional support animal, early release from a lease agreement without penalty, a “second chance” after a tenant violates a rule or lease provision because of a disability, or permission for a live-in caretaker.

A “reasonable modification” is a physical change to the interior property that is necessary to help a disabled person use and enjoy their home. For example, an elderly disabled tenant who has difficulty standing might ask if he can install a grab bar in the shower. Other common requests for reasonable modification include removing carpet, widening a doorway, or lowering the kitchen counter to make it usable for someone in a wheelchair.

Once a tenant makes a request, whether in person or writing, a housing provider must answer the request in a timely and meaningful way. This means a housing provider can’t ignore the request or wait too long to respond. It also means a housing provider can’t simply say “no” without explaining why or discussing a different possible solution to the problem. Many housing providers get sued for discrimination simply because they did not respond to a reasonable accommodation or modification request within a reasonable period of time.



## Disability: Frequently Asked Questions

### **How do I know that my tenant needs a reasonable accommodation?**

First, your tenant must *ask* for a reasonable accommodation. You do not have to do anything until your tenant asks you to do something. However, there are no special words your tenant must use to ask for a reasonable accommodation. If your tenant asks you to do something differently than the way you usually do it or to make an exception to one of your rules or lease terms *because of* a disability, then that is a reasonable accommodation request. Your tenant can ask for a reasonable accommodation either verbally or in writing.

Though you may find a form helpful, you may not require tenants to make the request in any particular format. To protect yourself from liability, you should keep careful written records of your interactions with your tenants regarding reasonable accommodation requests so that you will be able to show what requests were made, when you received the requests, how you responded, and when you responded.

### **Can I ask my tenant for proof that she really needs what she asks for as a reasonable accommodation or modification request?**

You can ask your tenant to give you a note from someone who can verify she is disabled and confirm she needs the accommodation she requested to help with her disability. The note can be written by any knowledgeable third party, which might be a doctor, therapist, psychologist, nurse practitioner, or even a social worker.

The note does not have to explain details about your tenant's medical history or exact diagnosis, and you can't ask to see the tenant's medical records or talk to her knowledgeable third party directly. As long as the note explains that she is disabled and that the accommodation she's requesting may be necessary because of her disability, you have all of the information you should need. If you do not understand what your tenant is asking for or why, you should talk to her about your questions, or if necessary, ask her to get more specific information from her health care provider.

If your tenant's disability is apparent or known, you should not ask her for additional proof of her need for the accommodation. For example, if your tenant is in a wheelchair, you can observe that she needs a closer parking spot without needing additional verification from a knowledgeable third party.

**What should I do if my tenant makes a reasonable accommodation or modification request?**

The first step is to let your tenant know you have the request and are taking it under consideration. If the tenant's need for the requested accommodation isn't obvious, you can ask for a note from a knowledgeable third party. If the tenant gave you a note but the request isn't clear, you can ask for clarification. Remember, though, that the note only has to confirm the tenant is disabled and explain why the tenant needs the policy change or exception she is asking for. The note does not need to provide detailed information and you must respect your tenant's right to privacy.

Once your tenant makes a request, you have a duty to respond promptly. Don't just ignore the request. Even if you have a good reason for refusing the specific requested accommodation, you must work with the tenant to find another way to solve her disability-related problem. If you do not respond in a reasonable time or refuse to work with your tenant to solve her problem, you might be failing to meet your obligations under the law. This is true even if the tenant's request is unreasonable and you have a good reason to say no. Rather than ignoring an unreasonable request or refusing to discuss it with your tenant, you should explain why you believe the requested accommodation is unreasonable and propose another solution, if possible.

**When can I deny a reasonable accommodation or reasonable modification request?**

You may only deny requests that are "unreasonable." A request is unreasonable if granting it: 1) poses an undue financial and administrative burden; 2) would be a fundamental alteration of the nature of the services you provide; or 3) pose a credible, verifiable, direct threat to the health, safety, or quiet enjoyment of others. Whether a request is unreasonable depends on how much it will cost to grant the request, how much time it will take to do what your tenant asks, and how much the accommodation will benefit the tenant. Keep in mind there may be some costs you will have to absorb in granting a request for reasonable accommodation because you can only deny an accommodation based on undue financial burden when the cost is objectively *unreasonable*.

If your tenant asked for a unit transfer, you do not have to make another tenant move out to accommodate the disabled tenant making the request. In this situation, you may want to ask other tenants to trade units voluntarily or put the disabled tenant making the request on the top of a waiting list if there are no other units available that would meet their needs. If you are considering denying a request, consult an attorney first, particularly if you have never handled a request before and need guidance.



**What if I'm concerned my tenant is lying about needing an accommodation?**

Some housing providers worry tenants will try to “scam” them with false reasonable accommodation requests. Remember, you can ask your tenants for verification from a knowledgeable third party to confirm they are disabled and need what they are asking for, and you can ask that the letter be on professional letterhead and signed.

You do not have to grant a reasonable accommodation or modification request that cannot be verified. However, be careful that you are not substituting your own opinion for that of a health care professional about whether the tenant is really disabled or whether she really needs the accommodation she's requested. Housing providers have gotten in trouble for refusing to accept a tenant's note because they don't think the note is from the “right kind” of doctor, or they don't believe the tenant is disabled or needs the accommodation. If your tenant provides you with verification from a knowledgeable third party that the tenant is disabled, and further, that in the knowledgeable third party's opinion, the requested accommodation is necessary, you should not try to second-guess your tenant's medical provider's opinion.

Sometimes, tenants who request permission for an assistance animal as a reasonable accommodation may provide you with a “service animal certification” or “service animal registry” card to support their request. These cards or certificates may or may not have been issued by someone who has treated your tenant or is personally familiar with their disability. However, don't assume these tenants are trying to deceive you by giving you such a card. Many tenants are led to believe these cards satisfy fair housing requirements. If your tenant gives you such a card, you may ask for verification from a knowledgeable third party who is personally familiar with the tenant's disability-related need for an assistance animal.

**Can I raise the rent of tenants who ask for reasonable accommodations, given that it costs me money to comply with accommodations?**

Even though there may be some small cost to you in granting the request, this is a cost of doing business that you may not pass on to your tenants. Remember that you will not have to grant the request if the cost is unreasonable. You may not charge fees to your disabled tenants because you are concerned their disability may cause damage to your property or cost you money. You also can't refuse to rent to applicants with disabilities because you are afraid they will ask you for reasonable accommodations or modifications.

**Do I have the right to know if my tenants have a communicable disease or some other disability?**

Unless your tenants have asked you for a reasonable accommodation or modification, you have no right to know whether they have a disability. Your tenants are entitled to privacy about their medical conditions. Therefore, you may not ask whether they have a disability, or if they do, details about their conditions. On the hand, you do not have to make any sort of accommodation for disabled tenants *until and unless* they ask for it.

**What if I have concerns about whether applicants with disabilities can live on the property safely?**

You can't refuse to rent to applicants with disabilities because you are worried they might injure themselves and sue you. Applicants with disabilities are entitled to choose to live in diverse communities with non-disabled tenants. Statements such as, "I don't think you can live independently" or "The second floor isn't safe for someone with a walker" are discriminatory because you're denying disabled applicants that choice. Let applicants decide what is safe for them. They know better than you do what they are capable of doing. Your job is to maintain your property in a safe condition; of course, you should have good general liability insurance for your property.

**What if an applicant tells me she has an emotional support animal and I don't allow pets?**


This is a request for a reasonable accommodation, and you should treat it like any other request for a reasonable accommodation. In these scenarios, disabled applicants are asking you to make an exception to your no pet policy so they can have an emotional support animal that a health care professional thinks will help their disability. Like other reasonable accommodations, you may ask applicants to provide verification from a knowledgeable third party that they are disabled and that living with the animal is helpful in treating a disability, like depression. While the animal might look like a pet to you, an emotional support animal can be as important to the mental and physical health of a disabled person as a prescription for a drug. Any kind of animal--a dog, a cat, a bird--can qualify as an emotional support animal. Emotional support animals are not required to have any special training. Sometimes their value is just in providing companionship and love.

**Can I change a pet deposit or pet rent for a service animal or emotional support animal?**

While you can charge a disabled tenant with an assistance animal the same standard security deposit you charge all tenants, you can't charge an additional deposit or "pet rent" for the animal. Even if you allow pets on your property and ordinarily charge nondisabled tenants pet deposits and pet rent if they have animals, you may not charge disabled tenants those fees for their assistance animals. You can't charge those fees because you would be charging disabled tenants an extra amount to have the same use and enjoyment of the property as nondisabled tenants. The whole point of making a reasonable accommodation, remember, is to give disabled tenants the *same* use and enjoyment of their homes. One way to think about this is to remember that assistance animals really are NOT pets, but a necessary part of your tenants' medical treatment. However, if the animal damages the property, you can deduct the cost of any repairs you need to make from the security deposit after your tenants move out or when the damage occurs, depending on your policy.

**Can I require that my tenants only have assistance animals that are less than 25 pounds or ban specific breeds, such as pit bulls?**

Rules that limit the size and breed of pets do not apply to service or emotional support animals because these requirements have nothing to do with the individual animal's ability to provide a necessary benefit to disabled tenants. Certain breeds may have a reputation as being more aggressive than others, but a breed's general reputation has nothing to do with the character and temperament of a specific animal. There are many gentle pit bulls and vicious Chihuahuas. Each animal is different, and its behavior has as much to do with its training as with its breed. If you have reason to know



that a particular animal has bitten or threatened to bite someone or damaged property, you may be able to keep that animal off of your property. However, you can't reject the animal simply because it is a "dangerous" breed. As for size limitations, you should allow your tenants to decide whether the unit is appropriate for the size dog they have and give them an opportunity to show the animal can live in the unit responsibly and without disturbing other tenants.

**Can I require my tenants to neuter or spay their assistance animals or to keep current on vaccinations?**

You probably can't require your tenants to spay or neuter their assistance animals, unless it's required by your local government. Spaying or neutering a dog or cat might be a financial hardship for many disabled tenants and there is some debate about whether these procedures are beneficial for all animals. However, you can require that your tenants vaccinate their assistance animals, as vaccinations are a health and safety issue and are required by law in most places. You may also require your tenants to license the animal if your city or county requires that pets be licensed.

**Do I have to allow a tenant to have more than one assistance animal?**

This issue usually comes up when a tenant originally acquired animals as pets, but later developed a disability-related need for an assistance animal. It's also possible the animals provide different necessary services.

If your tenant has one animal and asks to have a second or third animal, she should provide verification of why the additional animal is necessary. In other words, the tenant should explain why her current assistance animal does not meet her needs. For example, a tenant with severe PTSD may have an emotional support cat; several years later, her doctor may recommend obtaining a diabetic alert dog that provides an additional service the first dog does not. In that case, you would likely have to permit the second animal.

**What should I do if my tenant's assistance dog barks all night and other tenants complain?**

You never have to allow an assistance animal to disrupt the ability of other tenants to live peacefully and safely in their own homes. You should notify the disabled tenant that the assistance animal is bothering other tenants by barking throughout the night and provide a chance to fix the problem. If, after a reasonable period of time, your tenant is unable to stop the dog from barking all night, you would likely be able to ask your tenant to take the dog off the property.

**Do I have to allow visitors with companion or service animals on the grounds to visit tenants if I have a no pet policy?**

You must permit tenants' guests to bring their service animals onto the property.

**What should I tell my other tenants when they want to know why I allowed a disabled tenant to have a dog or cat when I have a “no pet” policy?**

This is a tricky situation for you, because you must be careful not to tell other people that a tenant with a companion or service animal is disabled or disclose any details about their disability. Unauthorized disclosure of your tenant’s disability to other tenants is a violation of the law. You may want to respond to this kind of question by simply saying you comply with the law and can’t discuss the details. Another option is to ask the tenant whether she is comfortable with you disclosing to other tenants that the animal is an assistance animal.

**Can I evict a tenant for having a messy unit or too much junk in their unit?**

Outside of a few select cities, California allows housing providers to evict tenants for any reason, as long as the reason is not illegal discrimination or retaliation. Ordinarily, then, you could evict tenants who do not take care of the unit, live in unhealthy or unsafe conditions, or are just too messy. Tenants with excessively messy homes or who have a lot of junk may be hoarders. Hoarding can often be the result of a mental disability, and that may mean you have to treat these situations a little differently. It’s best to first issue a notice requiring your tenant to clean up their home. If your tenant then comes to you and explains that a disability is the cause of their hoarding, you should work with them to accommodate the disability. This may include asking the tenant to contact local organizations to help clean the unit or remove junk, or providing a structured plan for cleaning the home room-by-room over a period of time. Your tenant may never be able to fully clean the home, so focus on getting it cleaned up to where it is healthy and safe to live in.

**Do I have to allow my tenant to have a live-in caregiver? If so, can I run a credit check and criminal history check on the caregiver?**

If your tenant needs a live-in caregiver because of her disability, then you must allow your tenant to have one. Your tenant can choose her own live-in caregiver, who sometimes may be a relative. The caregiver is not a tenant, though, and is not responsible for paying rent and does not have the same rights as a tenant. Because a caregiver is not a tenant, you may not screen the caregiver for credit or demand that the caregiver be added to the lease agreement. However, you may run a criminal conviction check on the caregiver if you run such checks on all applicants. Note, though, that you may not arbitrarily refuse permission for a caregiver because he or she has a criminal record; as with tenants, you must demonstrate that the specific criminal conviction poses an ongoing threat to the health or safety of residents. Caregivers must follow any rules you have on the property, such as those restricting parking and limiting noise.

**Must I allow a disabled tenant to have a co-signer?**

While you can decide that as a general policy, you do not accept co-signers, you may be required to waive that policy for disabled tenants as a reasonable accommodation. If your tenant can show her income is limited due to having a disability and she asks you to accept a co-signer in order to qualify to rent the unit, then you must permit one. You can require the applicant and co-signer meet your minimum income and credit requirements.





**My tenant receives a monthly disability check, but it doesn't arrive until the third of the month. Do I have to move her rent due date?**

Disability checks often don't arrive by the first of the month. Some persons with disabilities also have their checks issued to a person known as a representative payee, who is responsible for ensuring their rent gets paid. If your tenants or payees ask, you may be required to move the rent due date to coincide with the date your tenants receive the disability check or the date the payee can issue the rent check as a reasonable accommodation. You can't charge tenants late fees in these circumstances.

**If I gave my tenant a valid termination of tenancy notice, can she ask to stay longer as a reasonable accommodation?**

Your tenant's disability may make it difficult to relocate within the usual 30, 60, or 90 days provided by a termination notice. For instance, a tenant with a mobility impairment may have difficulty packing belongings or finding a new unit with an elevator or on the first floor.

As with any reasonable accommodation, you may ask the tenant making this request to provide a note from a knowledgeable third party verifying that the disability means she needs more time to move. There is no set time for how much longer you must allow your tenant to remain. It depends on the tenant's specific disability, the amount of time in the original notice, and why you are asking your tenant to leave. You and your tenant should work together to come up with an appropriate timeframe.

**What should I do if a disabled tenant asks for help in taking out the trash once a week?**

You do not have to remove the trash from your tenant's home if it is not something you normally do for other tenants at the property. This request would be considered a fundamental alteration of your services. However, there may be other things you can do to accommodate your tenant's disability besides physically removing trash from the unit. For example, if physical barriers make it hard for a tenant to remove her own trash, you may be required to remove those barriers.

**What if my tenant asks me to install grab rails in the bathroom or make other changes to the unit because of a disability?**

Tenants who ask you to do these things have asked you for a reasonable modification. Like a reasonable accommodation, you can ask your tenant for a supporting note from a knowledgeable third party if her need for these changes is not obvious. If your tenant provides you with a note, you are probably required to allow your tenant to make these changes. One important difference between reasonable accommodations and reasonable modifications is that your tenant is responsible for the cost of making these modifications. If your tenant assumes the cost, you must permit her to make the change. You may also require that your tenant makes any modifications in compliance with local building codes and uses a person who is competent to do the work. You may not charge an extra security deposit or require your tenant to obtain any liability insurance related to the proposed modification, and you can't refuse to continue to rent to her because you do not want her to make modifications to your unit.



Note: Housing providers who receive federal funding are required to bear the cost of making reasonable modifications for tenants. Recipients of federal funding do not include housing providers who accept Section 8 Housing Choice Vouchers issued by public housing authorities.

**If my tenant installed grab bars in the bathroom when she moved in, can I require that the grab bars be removed upon move-out?**

Tenants only have to remove modifications when they move out if the modifications would affect the ability of the next tenant who moves in to use or enjoy the home. If there is no reason to believe the modifications would negatively affect a future tenant's use of the unit, then you can't make the disabled tenant remove the modifications. For example, a tenant who lowers the kitchen counters might need to restore the counters to the original height, as counters that are a good height for someone in a wheelchair would be too low for someone who is not in a wheelchair. In contrast, a disabled tenant would not have to remove a grab bar installed in the bathroom because it would not make the bathroom more difficult to use for the next tenant.



## Religious Discrimination

Religious discrimination is illegal. While fair housing laws do not require housing providers to change rules or structures because of tenants' religious belief or practices, housing providers are not allowed to express preferences for one religious group over another. The laws prohibiting religious discrimination do not apply to not-for-profit religious organizations that own or operate housing for non-commercial purposes.

### Religion: Frequently Asked Questions

**For religious reasons, one of my tenants asked my maintenance person to take off his shoes when doing work in his unit. Does the maintenance man have to do what my tenant asks?**

You do not have to change the way you normally do things to accommodate the religious beliefs of your tenants. The key is to be sure that you do not treat tenants differently based on their religious beliefs and customs. If your maintenance man does not take off his shoes when he does work in the homes of other tenants, he does not have to do it for this tenant either.

**Can I put holiday decorations in the lobby of my property?**

Some court cases say that as long as the decorations are not religious in nature, property owners can place them in common areas. For example, court cases generally say nativity scenes, crucifixes, and Stars of David are religious symbols and you should avoid them. In contrast, court cases say Christmas trees, Santa Claus, Easter eggs, rabbits, and Valentine's Day hearts are generally considered non-religious symbols. However, when decorating your lobby or other common areas during various holidays, be thoughtful. You don't want any of your tenants who may have a different religion from you or other tenants to feel unwelcome.

**My tenants want to decorate their doors and windows for the holiday. Should I let them?**

You can have rules that prohibit any and all decorations, but you can't single out religious decorations. For example, a rule can say that tenants are not allowed to place any items on their doors, such as welcome signs. In that case, you do not have to allow tenants to place a wreath on their door during the holidays. However, you can't have rules saying that only religious decorations are not allowed. Your policy must be neutral and apply to all decorations throughout the entire year.

**I am a Christian. I hope that my rental property can be a place where people of faith come together and share their love of God. Can I hold bible studies on the property or request that my tenants participate in faith-based activities?**

While you might have strong religious beliefs that you want to share with your tenants, you can't prefer tenants who share your same faith or only rent to people with the same religion as you. While you could host a religious study on your property, be careful not to force tenants to participate or favor tenants who participate over tenants who do not.

## Sex Discrimination

Sex discrimination means many things. It means that housing providers can't prefer men over women or vice versa. It is also illegal for housing providers or their employees to sexually harass tenants, or allow one tenant to sexually harass another. Sex discrimination also includes discrimination against victims of domestic violence.

### Sex Discrimination: Frequently Asked Questions

#### What is sexual harassment?

Sexual harassment can occur when a housing provider or an employee of the housing provider requires a tenant to provide sex in exchange for renting to a tenant, or instead of rent. Sexual harassment also occurs when a housing provider makes unwelcome sexual advances toward a tenant, including lewd or sexist comments and unwanted touching. It is illegal for property owners, managers, and maintenance staff to sexually harass a tenant. Sexual harassment can happen when a man harasses a woman, a woman harasses a man, or a man or woman harasses someone of the same gender.

#### California Law Note — Domestic Violence

##### **The police were called to my property. A tenant's husband was arrested for domestic violence. What should I do?**

Tenants who are the victims of domestic violence have specific rights in California that you should know. Specifically:

- You can't evict your tenant because domestic violence occurred on your property if the abuser is no longer there. If the abuser lives in the home, you may evict the abuser. You can also require that the abuser stay away from the property.
- If the victim asks to get out of her lease, you must release the victim without penalty. The victim must prove she is the victim of domestic violence (through a doctor's letter, police report, or restraining order), and the victim must give you written notice. If the abuser is also on the lease, you can continue to hold him responsible for the rent until the end of the lease.
- If asked, you must also change the locks or allow your tenant to change the locks within 24 hours. You can require that your tenant first provide you with a copy of a police report or court order showing that she was a victim of domestic violence.

## California Law Note

### Sexual Orientation and Gender Identity Discrimination

In California, it is illegal to discriminate against people because of their sexual orientation or sexual identity. This means that housing providers can't treat applicants or tenants differently because they don't look, dress or behave the way you think people of that gender should look, dress, or behave. For instance, a housing provider can't discriminate against a man because he "acts too feminine" or discriminate against a woman because she "dresses like a man." It also means that housing providers can't treat people differently because they are gay, lesbian, bisexual, or transgender.

#### Sexual Orientation and Gender Identity Discrimination: Frequently Asked Questions

**Being gay, being transgender, and same-sex marriage are against my religion. Does the law still apply to me?**

You may not discriminate on the basis of sexual orientation or gender identity even if it is against your religious beliefs. As a housing provider who rents to the general public, you are running a business and you must conduct that business according to the law.

**How should I refer to my transgender tenants?**

If you are not sure what pronoun (he or she) persons who are transgender prefer, you can simply use their name. If you deliberately refer to them by a name and gender pronoun other than what they have indicated they prefer, it could be viewed as harassment.

**What should I do if one of my tenants tells me she doesn't want to live next to a gay or transgender person?**

While other tenants may have moral or religious objections to persons who are gay or transgender, it isn't up to your tenants to decide who can live on your property – especially if those tenants object to another tenant because of a protected trait. You should inform your tenant that it is illegal to discriminate because of sexual orientation or gender identity, and that you won't tolerate such behavior on your property. If you learn your tenant is in any way harassing a gay or transgender tenant, you must take swift action to stop the harassment.

## California Law Note

### Source of Income Discrimination

In California, discrimination against applicants or tenants based on their source of income is illegal. Source of income refers to how people earn their money, including what type of job they have and/or if they receive any public benefits like welfare or disability income. Income does not include money that you reasonably believe has been obtained by illegal means, such as selling drugs. Source of income discrimination occurs when housing providers treat people differently because of where their money comes from. For example, a landlord can't refuse to rent to an applicant or treat a tenant differently because that person receives Social Security or other state benefits instead of working. A landlord can, however, decide how much income applicants must have to qualify to rent the unit - a landlord just can't demand the money the tenant uses to pay the rent comes from a job or any other specific source. As long as tenants have enough money coming in from a reliable and legal source to afford the rent, it does not matter where the money comes from.

### Source of Income: Frequently Asked Questions

#### **Can I require that applicants earn two and a half or three times the rent?**

You are allowed to have minimum income requirements as long as you apply them equally to all applicants. What you can't do is demand that the income come from a job, as opposed to some other reliable source such as a pension or Social Security benefits. You should also try to apply the same income standards consistently to all applicants, although that does not prevent you from making exceptions from time to time for special circumstances.

#### **Can I just rent to the applicant with the highest income?**

Generally, you can select the applicant with the highest income. However, it's best to look at the whole application, not just what someone earns. Someone can earn a lot of money, but have a terrible credit record or a history of poor compliance with tenant agreements.

**California Law Note**

**Source of Income: Frequently Asked Questions, Continued...**

**Can I require that an applicant have a job?**

Although you can require that your tenants receive or can access a minimum amount of money every month to be sure they can afford to pay the rent, you can't require that applicants have jobs because this would be preferring one source of income over another. An applicant may have other ways of paying the rent besides having a job. For example, a person may receive Social Security benefits or have a pension, a trust fund, or even just significant savings. All of these are verifiable sources of income that can be perfectly reliable ways of paying rent, and in some cases may actually be more secure than income from a job. Requiring applicants to have a job could also be considered discrimination against people with disabilities.

**Can I prefer applicants who have certain types of jobs or require that they be employed by the same employer for a certain period of time?**

You can't prefer one occupation over another. This means that you can't prefer to rent to technology workers or professionals instead of people with traditional blue-collar jobs. All you should be concerned about is whether the money coming in from whatever job or other source meets your minimum qualifications.

## California Law Note

### Marital Status Discrimination

Marital status refers to whether or not someone is married, in a domestic partnership, single, divorced, or separated. Put simply, in California, housing providers can't have a preference for couples who are married over other types of relationships. The law also prohibits treating groups of roommates differently from married couples.

#### Marital Status: Frequently Asked Questions

**Can I prefer to rent to married couples because they are more stable?**

Preferring married couples for any reason would be discriminatory. There are also plenty of unmarried couples and groups of roommates that are just as financially stable as married couples or unmarried co-habitants who intend to live together on a long-term basis.

**According to my religious beliefs, I do not believe that unmarried couples should live together. Don't I have a right to exercise my religious beliefs and rent only to married couples?**

You must obey fair housing laws regardless of whether you have a religious objection to the way applicants live their lives. You can't discriminate on the basis of marital status even if your religion teaches you cohabitation before marriage is wrong. Your personal religious beliefs do not exempt you from complying with the laws that apply to all businesses, including the business of renting property.

**Do I have to apply my income rules the same way to married couples and unmarried roommates? I am worried that with unmarried roommates, one person will move out and the rest of the roommates won't be able to afford the rent.**

You must treat married couples and unmarried or unrelated roommates the same way. If you ordinarily require that a married couple earn a combined three times the rent in monthly income, you can't require that each unmarried roommate separately earn three times the rent. Any income requirement should be applied to the total household, regardless of marital status or the relationship between the tenants. Although housing providers are sometimes worried that one or more roommates might move out and leave the others to pay the rent, there is no guarantee that a married couple won't divorce and create the same situation. In any event, all of the tenants on the lease, married or not, are legally responsible for the rent, and it is their problem to solve if it should ever arise.





**California Law Note**

**Marital Status: Frequently Asked Questions, Continued...**

**Can I terminate a lease because my tenants are divorcing and I don't think the remaining tenant can afford the rent?**

If you would terminate the tenancy of a group of roommates or unmarried couple when one person moves out, you may do the same to the remaining spouse. If you have a policy that requires the remaining tenants to prove they still meet your financial criteria, you can also require the remaining spouse to show that he or she meets your financial criteria. The key is to treat all households equally regardless of whether the occupants of the household are married or are just unrelated roommates.

## California Law Note

### Age Discrimination

California's ban on age discrimination in housing applies to persons of *all* ages, not just those over a certain age. It is illegal to discriminate against persons because they are young, old or middle aged. Housing providers can't prefer younger tenants, or older tenants, or tenants of a certain age group. Landlords also can't treat tenants differently or make assumptions about their ability to pay or be good tenants because of their age.

### Age: Frequently Asked Questions

**What if I become concerned that my elderly tenants can no longer live alone in their apartment safely? Can I ask them to leave?**

This question touches on both age discrimination and disability discrimination. Though your intentions may be good, it is ultimately not up to you to decide whether your elderly tenants can live alone safely. However, if your elderly tenants do things that jeopardize the health or safety of others, you may raise these problems with your tenants and work with them to stop or change the dangerous behaviors. In some cases, if your tenants ask for it, you may need to make a reasonable accommodation to solve the problem.

**Families with children are a protected group. Does that mean I can prefer to rent to families with children?**

Although you may affirmatively welcome families with children to your property, you can't prefer them over adult-only households or seniors. This would be akin to preferring younger tenants to older tenants, and would be age discrimination under California law.

**An elderly man applied to live in one of my apartments. I'm afraid he is going to die in the unit and then I will have to disclose the death to the next tenant. Can I refuse to rent to him?**

It is true that California law requires you to disclose that a prior tenant died in the unit within the past three years. However, you can't refuse to rent to elderly applicants or evict elderly tenants because you are afraid of having to make this disclosure. This would be age discrimination. It may also be disability discrimination if you believe elderly individuals will die because they have an illness or appear sick.



**California Law Note**

**Arbitrary Discrimination**

The law against arbitrary discrimination is a “catch all” category that is unique to California. The law prohibits discrimination based on personal characteristics that have no relation to a person’s ability to be a good tenant, such as personal appearance or membership in a group. For example, it is illegal to refuse to rent to someone because of tattoos or particular political beliefs. Housing providers also can’t prefer to rent to applicants from a specific geographical region.

The key is to treat all applicants equally and have rental criteria that objectively demonstrate whether applicants have the ability to be financially and personally responsible. Avoid stereotypes or irrelevant characteristics and keep an open mind.