



# TENANTS' RIGHTS AND FAIR HOUSING TRAINING

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BAY AREA LEGAL AID

# AGENDA

## Tenants' Rights

- Rental Qualifications
- Understanding Leases
- Habitability
- Criminal History Information
- Best Practices

## Fair Housing Protections

- Federal and State Protections
- Reasonable Accommodations
- New Source of Income Discrimination (SB 329)
- Protection for Immigrant Tenants (AB 291)

# WHO WE ARE:

BAY AREA LEGAL AID PROVIDES FREE LEGAL SERVICES TO ELIGIBLE LOW-INCOME RESIDENTS IN THE BAY AREA

## Housing Preservation And Homelessness Prevention

- Landlord-tenant Matters
- Eviction Defense
- Fair Housing and discrimination
- Subsidized Housing Issues

## Domestic Violence And Sexual Assault Prevention

- Restraining Orders
- Family Law
- Domestic Violence Related Immigration

## Immigration

- Services for Immigrant Survivors of Domestic Violence and Sexual Assault

## Economic Justice

- Public Safety Net Programs

## Health Consumer Center

- Health Care Access
- Public Health Insurance Programs
- Health Consumer Issues

## Consumer Law

- Debtor's Rights
- Fair Credit Reporting

## Veterans Project

- Wrap-around services

## Youth Justice Project

- Wrap-around services

# CLIENT ELIGIBILITY

**Live in the counties of:** Alameda, Contra Costa, Napa, Marin, Santa Clara, San Francisco, or San Mateo.

**Citizen or eligible immigrant:**

- U.S. citizen, or certain family members of a citizen, with a pending application for permanent residency
- Permanent resident, refugees, asylees, etc.
- Any immigrant who is a victim of domestic violence, sexual assault, human trafficking, or other violent crime.
- We can represent eligible children in public benefits or domestic violence matters, even if their parents are not eligible

Gross income generally has to be **under 200% of federal poverty line. EXCEPT** for our health work.

# WAYS TO ACCESS OUR SERVICES

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## LEGAL ADVICE LINE (ALL PRACTICE AREAS)

1-800-551-5554

Monday & Thursday 9:30AM - 3:00PM

Tuesday & Wednesday 9:30AM- 1:00PM

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# TENANTS' RIGHTS

# RENTAL QUALIFICATIONS

## Application Screening

- Applications usually ask for names and contact information of current and past landlords, employers, and references
- Landlords may require applicants to provide a screening fee to cover the costs of obtaining a credit report

## Financial Qualifications

- Sometimes, tenants may use proof of rent payment and proof of income to demonstrate their financial qualifications

# CRIMINAL HISTORY

Effective January 1, 2020, new California regulations interpreting anti-discrimination laws prohibit landlords from considering certain types of criminal history including:

- Arrests that did not lead to a conviction
- Participation in a pretrial or post-trial diversion program
- Any record of a conviction that has been sealed by the court, or
- Any conviction that came from the juvenile justice system

Regulations also prohibit landlords from having “blanket bans” on all applications with criminal histories:

- Landlords must look at the individual circumstances involving a conviction to decide whether it is directly related to an applicant’s ability to be a good tenant



# CRIMINAL HISTORY

## Housing Provider may NOT:

- Access criminal or civil records older than 7 years
- Ask for/use information about arrests not leading to convictions
- Have a blanket “No felons” policy or otherwise exclude all individuals with criminal records
- Ask for/use information about juvenile adjudications
- Ask for/use information about convictions that have been “expunged”
- Deny someone whose qualifications are a function of a disability (“Reasonable Accommodation”)
- Deny someone whose qualifications are related to a history of domestic violence (VAWA, if federally subsidized housing, otherwise potentially discriminatory under fair housing laws)

# HABITABILITY

A landlord has a duty to provide a habitable unit.

## What does habitability mean?

- Habitable means that the rental unit is fit for occupation by human beings and that it substantially complies with state and local building and health codes that materially affect tenants' health and safety

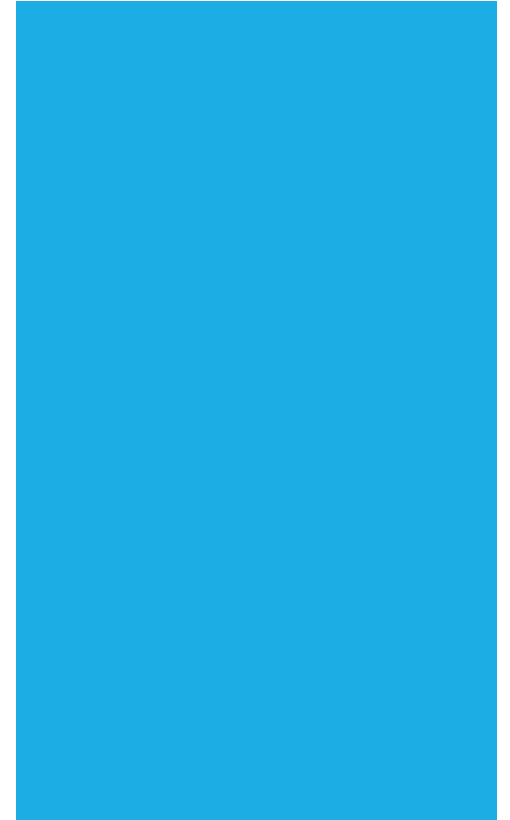
## What must a landlord do before renting a unit?

- Landlord must make the unit fit to live in or habitable

## What must a landlord do during the tenancy?

- Landlord must repair problems that make the rental unit unfit to live in, or uninhabitable

## What makes a unit habitable?



# HABITABILITY

What should a tenant do if repairs are needed or the unit becomes uninhabitable?

- Tenants should give notice to their landlords immediately

What if a tenant substantially cause an unlivable condition?

- Then a tenant may be responsible for the cost of the repairs

Tenants' remedies if landlord does not conduct repairs:

- Contact Code Enforcement
- “Repair and Deduct” remedy (not recommended)
- “Abandonment”
- Withhold rent (not recommended)
- File a lawsuit for breach of implied warranty of habitability and/or constructive eviction

# HYPO

Tammy Tenant has a rental agreement where she agrees to pay \$1000 in rent. A year into her tenancy, she has a roach infestation in her unit. She verbally told her landlord.

Landlord immediately contacted pest control. Pest control came and eradicated the roaches. 6 months later, Tammy notices roaches and ants in her kitchen. She does not tell her landlord and withholds rent for the month.

1. What best practices should Tammy have done?

- a) provided notice in writing
- b) inform landlord after habitability issue started again
- c) take pictures of the habitability issues
- d) all of the above

2. **True or False:** If Tammy's landlord files an eviction action, Tammy can assert habitability as a defense



# FAIR HOUSING LAWS

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## Federal Law

- Fair Housing Act (FHA)
- Fair Housing Amendments Act (FHAA)
- Section 504 of the Rehabilitation Act
- Americans With Disabilities Act (ADA)

## State Law

- Fair Employment and Housing Act (FEHA)
- The Unruh Civil Rights Act

**Purpose of fair housing laws:** to prevent discrimination in housing by making it illegal to disadvantage someone in renting, buying, or occupying a home because of that person's membership in a protected class.

# PROTECTED CLASSES

## Federal Law:

- Race
- Color
- Religion
- Sex
- Familial Status
- National Origin
- Physical/Mental Disability

## California Law includes all protected classes under federal law, plus:

- Marital Status
- Ancestry
- Sexual Orientation/Gender Expression/Identity
- Source of Income
- Medical Condition /Genetic Information
- Veteran Status
- Primary Language /Immigration Status

# WHAT DO THE FAIR HOUSING LAWS COVER?

All aspects of the housing process

**Advertising** (“No Children”, “Married couples only”)

**Application process** (lease/voucher)

**Screening**

**Terms and conditions of a tenancy**

**Eviction/termination**



# PROHIBITED CONDUCT

## Intentional Discrimination

Treating a member of a protected class, or a person associated with them, differently.

## Disparate Impact

Conduct that is neutral on its face but results in a discriminatory impact on a protected class.

## Sexual harassment

Hostile environment

Quid pro quo

Vicarious liability

Discrimination against domestic violence survivors

# HYPO

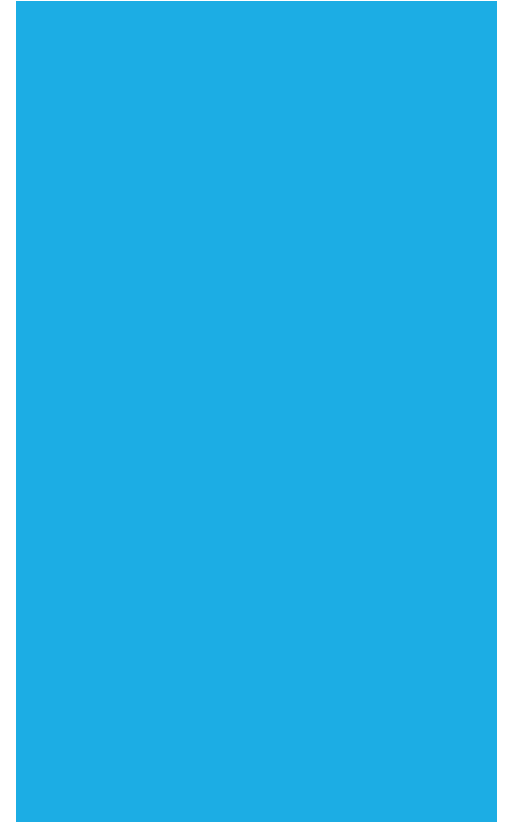
Tom Tenant lives in a large apartment complex in Concord. He lives in his apartment with his three children. The landlord tells him that the children aren't allowed to be outside in the common area at any time.

1. Can landlord institute this rule?

- a) Yes, the landlord has a right to control the common areas.
- b) No, this qualifies as familial status discrimination.
- c) Yes, because this is not discrimination based on a protected class.

# EXAMPLES OF INTENTIONAL DISCRIMINATION

- Refusing to rent, sell or lend.
- Discouraging applications.
- Requiring different rental terms or rules.
- Enforcing lease terms or house rules differently.
- Segregating through advertisement, steering, or physical separation.
- Responding differently to requests for repairs.
- Treating applications differently.



# DISPARATE IMPACT EXAMPLES

- Policy not to rent to a DV survivor who was evicted for her abuser's violent DV-related activity.
- Rule requiring tenants to come to the management office to do an annual recertification.
- Lease term requiring that rent is paid on the first of the month.
- Rejection for bad credit related to an abusive partner's spending.

# FAIR HOUSING PROTECTIONS FOR SURVIVORS

DV Survivors are not a separately protected class under state or federal fair housing laws, but most are women

Some Statistics:

HUD FHEO DV Memo: “[W]omen are five to eight times more likely than men to be victimized by an intimate partner...” More than 70% of those murdered by their intimate partners are women.

U.S. Bureau of Justice Statistics: 85% of victims of intimate partner violence are women.

U.S. Dept. of Justice: Among people who rent their homes, women are 7.4% times as likely as men to be victims of domestic violence.

# POLICIES THAT CAN VIOLATE FAIR HOUSING LAWS

Evictions or terminations based on violence against a Survivor could violate fair housing laws.

Policies based on gender stereotypes

Ex: An owner evicts women with a history of domestic violence because “they always go back to the men who abuse them.”

Treating women differently because of their status as victims of DV

Ex: A landlord evicts a DV victim because the abuser broke into her unit and she called the police, but does not evict another tenant after a stranger broke into his unit and he called the police

Evictions for property damage caused by the abuser.

# WHAT IS VAWA?

- VAWA is intended to encourage Survivors who receive housing subsidies to report and seek help for the abuse committed against them without being afraid of eviction or losing their subsidy.
- VAWA protects individuals applying for or living in federally subsidized housing from being discriminated against because of acts of domestic violence, sexual assault, stalking and dating violence committed against them.
- Applies to both men and women, regardless of gender, identity, or sexual orientation
- Only applies to federal housing programs

# WHO DOES VAWA COVER?

- **Domestic violence:** Any felony or misdemeanor crimes of violence committed by a current or former spouse, intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim
- **Dating violence:** Violence committed by a person who is/was in a social relationship of intimate nature with victim
- **Sexual assault:** Any nonconsensual sexual act prohibited by law
- **Stalking:** Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress
- **“Affiliated individual” of the victim:** Immediate family or any individual living in the household



# VAWA APPLIES TO:

## **Applications and admissions**

PHAs, landlords and owners shall not deny an applicant housing on the basis that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

## **Terminations and evictions**

PHAs, landlords and owners may not evict a tenant on the basis that she/he/they is or has been a survivor

A crime against a survivor that is directly related to the abuse are not grounds in itself for evicting the survivor or terminating her/his/their rental subsidy.

An incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating her/his/their rental subsidy.

# WHEN CAN HOUSING PROVIDER STILL EVICT?

PHAs and owners can still evict if they can demonstrate an “**actual and imminent threat**” to other tenants or employees at the property if the survivor is not evicted.

“Actual & imminent threat” not defined in VAWA and is fact specific

Current HUD regulations are important guidelines:

“Threat” consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm.

Factors to be considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will occur, and the length of time before the harm would occur. 24 C.F.R. § 5.2005

Eviction should occur only if there is no **other action** to be taken that would reduce or eliminate threat. 24 C.F.R. § 5.2005

# OTHER ACTIONS

A public housing authority or landlord may “bifurcate” or split a lease to evict a DV abuser while allowing the victim to stay

Protection for tenants remaining in housing after lease bifurcation

If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.

The landlord must follow federal, state, and local law in evicting the abuser

# OTHER ACTIONS (CONTINUED)

A PHA can terminate Sec 8 assistance to the abuser while preserving assistance to a survivor

If a Section 8 voucher family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for survivors who must move for safety.

Many PHAs prohibit Sec 8 voucher tenants from moving during the 1st year of their lease, or from moving more than once during a 12-month period. However, these policies do NOT apply when the move is needed for safety. See 24 C.F.R. § 982.314

# EMERGENCY TRANSFERS

Survivors living in federally assisted housing may need to move or “transfer” to another subsidized unit to protect their safety.

VAWA 2013 mandates each federal agency to adopt a model emergency transfer plan to be used by PHAs and owners.

A Transfer Plan must allow survivor tenants to transfer to another available and safe unit assisted under covered housing program if

(1) tenant expressly requests the transfer and

(2) either tenant reasonably believes that she is threatened with imminent harm from further violence if she remains or tenant is a victim of sexual assault that occurred on premises within 90 days of request

Transfer plan must ensure confidentiality so that PHA or owner does not disclose location of new unit to abuser

# HYPO

Tessa Tenant lives in subsidized housing in Antioch. On September 1st, she was attacked by her abusive partner in the front lobby of the apartment complex. On September 3rd, her landlord serves her with an eviction notice or the altercation in the lobby.

1. Can landlord evict Tessa under these circumstances?

- a) Yes, he can evict her because the altercation is considered a lease violation.
- b) No, he cannot evict her for acts against her that constitute domestic violence
- c) It depends on whether her housing is covered by VAWA.

# DISABILITY DISCRIMINATION

- Under the Fair Housing Act, it is against the law for a landlord or property manager to:
  - Ask about a disability (unless a tenant is requesting an accommodation or applying for housing that gives priority to persons with disabilities).
  - Discriminate in housing due to a person's disability.
  - Refuse to reasonably accommodate for disability.
  - Ask a tenant to provide more documentation than is necessary to verify a disability/need for accommodation.
  - Ask a disabled person to prove ability to live independently.

# EXAMPLES OF INTENTIONAL **DISABILITY** DISCRIMINATION

- **Steering** to a certain building or floor based on disability or perceived disability. (“You don’t want that unit by the pool because it is noisy and you won’t use the pool anyway.”)
- **Different terms, conditions, or privileges of tenancy** (e.g. higher deposit for motorized wheelchairs but not manual wheelchairs, walkers or canes; “No wheelchairs in the lobby.”)



# REQUESTING A REASONABLE ACCOMMODATION

## Reasonable Accommodation:

A change in a rule, policy, practice, or service that is necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

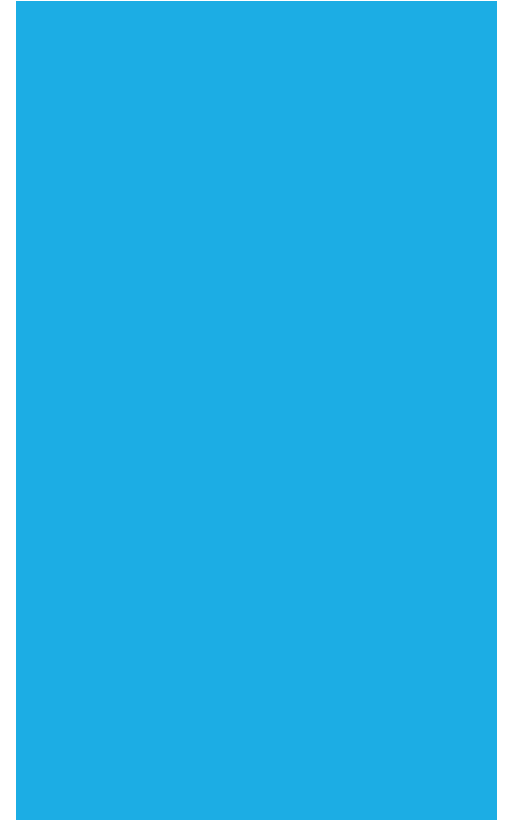
## Disability:

Mental or physical impairment that substantially\* limits one or more life activities; and/or

A history of such impairment; and/or

Regarded as having such impairment.

\* California law does not require a “substantial” limitation.



# HOW TO REQUEST A REASONABLE ACCOMMODATION

A reasonable accommodation may be requested verbally or in writing (preferably)

A reasonable accommodation must have a “nexus” to the disability requested. This means that the accommodation requested must be connected to the disability and be necessary for the person with a disability to use and enjoy their housing.

## Best Practices:

- a) Make request in writing
- b) Provide verification from a knowledgeable professional if asked
  - a) Impairment that substantially limits or limits major life activity
  - b) The need for the accommodation requested

# WHEN CAN AN ACCOMMODATION BE DENIED?

Under state and federal law, a housing provider **must** provide reasonable accommodation **unless**:

1. The requested accommodation has **no relationship** to the person's disability.
2. Providing the requested accommodation would **fundamentally change** the nature of the provider's operations or would impose an **undue financial** or **administrative** burden or **create a direct threat**.

# LET'S TALK

If the housing provider believes that the requested accommodation is not reasonable, then the provider is required to engage in an “**interactive dialogue**” to get more information about the disability-related need and to find a reasonable **alternative** accommodation.



# ACCOMMODATIONS AND OTHER RIGHTS

An RA request does not have to be in writing - knowledge of need for accommodation may be enough to trigger responsibility under FHA.

Verification of disability does not have to come from a doctor & medical privacy rights are still protected by HIPAA (Health Insurance Portability & Accountability Act)

A failure to respond to a request for reasonable accommodation is a denial.

# REASONABLE MODIFICATIONS

Request for a **physical change** to the unit

Must be requested

Landlord is not required to pay for the modification

Tenant does not have to pay if it is a HUD subsidized tenancy.

What happens after tenancy ends: Property returned to original condition at tenant expense (private)

# REQUESTING A REASONABLE ACCOMMODATION HYPOS

## True or False

1. Someone with a mobility impairment can request a parking spot closer to their unit as a reasonable accommodation
2. Someone who has a hearing impairment can request a parking spot closer to their unit as a reasonable accommodation
3. A person with a mental health impairment received a notice of lease violation due to symptoms of his or her disability. This person can request that the notice be withdrawn as a reasonable accommodation.

# OTHER COMMON EXAMPLES

Client needs a ramp to access entryway of home. Reasonable modification to install ramp.

Client needs an emotional support animal, but “pets” are not allowed in the unit. Reasonable accommodation to allow emotional support animal.

Client’s source of income is SSI. SSI check comes in on the 6th of every month, but rent is late on the 5th. Reasonable accommodation to change rent due date.

Client’s disabilities make it difficult for them to move within the Eviction Notice period. Reasonable accommodation for more time to move.



# HOW IS FAIR HOUSING ENFORCED?

Administrative complaint (HUD , DFEH, Department of Justice)

Defense in unlawful detainer (evictions)

Civil lawsuit (damages and injunctions)





# OTHER TENANT PROTECTIONS

# SOURCE OF INCOME

- As of January 1, 2020, all landlords in California are required to accept Section 8 and VASH vouchers and other forms of rental assistance and to consider them as part of an applicant's income.

# HYPO

Tina Tenant is looking for a place to rent on Craigslist. She finds a listing she is interested in, but the listing states “No Section 8 Vouchers.” She also has poor credit. Regardless, she applied for the housing but is denied when they learn she has a Section 8 Voucher.

1. Can the landlord deny her housing based on this reason?
  - a) Yes, because source of income is not a federally protected status.
  - b) Yes, the landlord can deny based on her poor credit.
  - c) No, because source of income is a protected status in California.

# AB 291

## IMMIGRANT TENANT PROTECTION ACT

Landlords are prohibited from

- Asking a tenant about their immigration or citizenship status (unless to comply with federal government program, or other legal obligation)
- Requiring a tenant or prospective tenant to make a statement, representation, or certification about their immigration or citizenship status
- Disclosing any information relating to the immigration or citizenship status for purposes of
  - Harassment
  - Intimidation
  - Retaliation
  - Influencing a tenant to vacate
  - Recovering possession of the dwelling

# HYPO

Tammy Tenant rents a studio from Landlord. She has a green card. During her tenancy, Tammy's studio required several repairs. She provided written notice to her landlord, but her landlord did not respond immediately. After three weeks, her landlord stated that he would get a repair person out to her unit. After reminding her landlord, no one came to Tammy's unit for over a month. Tammy contacted Code Enforcement. Code Enforcement investigated and ordered Tammy's landlord to make repairs. Tammy's landlord gets upset and accuses Tammy of being undocumented and tells her that she needs to vacate immediately and "go back to her country". Landlord sends Tammy a text message threatening to contact ICE.

**True or False:** Landlord engaged in unlawful retaliation

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THANK  
YOU/Q & A

