

# ATTACHMENT G

## Fair Employment & Housing Council Select Draft Fair Employment and Housing Act Housing Regulations

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 3. Discrimination in Housing

**[The following text is a working draft for the purpose of enabling discussion between all Councilmembers and receiving public feedback. The Council will vote on a revised draft at a future meeting to initiate a formal rulemaking action. Numbering is for discussion purposes only.]**

### TEXT

#### Article 1. General Matters

##### § 11098.1. Statement of Policy and Purpose.

It is the policy of the State of California to provide, within constitutional limitations, for fair housing throughout the state. Nothing in this part shall be construed to afford to the classes protected under this part, fewer rights or remedies than the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and its implementing regulations (24 C.F.R. 100.1 et seq.), or state law relating to fair employment and housing as it existed prior to the effective date of this section. Any state law that purports to require or permit any action that would be an unlawful practice under this part shall to that extent be invalid. This part may be construed to afford greater rights and remedies to an aggrieved person than those afforded by federal law and other state laws.

##### § 11098.2. Authority.

The Fair Employment and Housing Council issues these regulations under the authority vested in the Council by the Fair Employment and Housing Act, specifically Government Code section 12935(a).

##### § 11098.3. Definitions.

As used in this subchapter, the following definitions shall apply unless the context otherwise requires:

(a) “Aggrieved person” includes any person who claims to have been injured by a discriminatory housing practice or believes that the person will be injured by a discriminatory housing practice that is about to occur.

(b) “Blockbusting” means engaging in any practice which encourages property owners to sell their property quickly, and often at a loss, by asserting or giving the impression that actual or prospective purchases by persons in a protected class will change the composition of the community, and cause property values to decline, or result in undesirable consequences to the community.

(c) “Broker” or “Agent” includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including, but not limited to, offers, solicitations, or contracts, and also the administration of matters regarding such offers, solicitations, contracts, mortgages, or any residential real estate-related transactions.

(d) “Discrimination” includes:

(1) refusal to sell, rent, or lease housing accommodations;

(2) refusal to negotiate for the sale, rental, or lease of housing accommodations;

(3) representation that a housing accommodation is not available for inspection, sale, or rental when that housing accommodation is in fact so available;

(4) any other denial or withholding of housing accommodations;

(5) provision of inferior terms, conditions, privileges, facilities, or services in connection with those housing accommodations;

(6) harassment in connection with those housing accommodations;

(7) cancellation or termination of a sale or rental agreement;

(8) provision of segregated or separated housing accommodations;

(9) refusal to permit reasonable modifications of existing premises occupied or to be occupied by a disabled person as specified in section 11098.25 of these regulations;

(10) refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling; or

(11) failure to design and construct a covered multifamily dwelling in a manner that allows access to, and use by, disabled persons as specified in Government Code section 12955.1 and section 11098.30 of these regulations.

(e) “Discriminatory housing practice” means an act that is unlawful under the FEHA.

(f) “Discriminatory intent” means that one’s membership or perceived membership in a protected class is a motivating factor in committing a discriminatory housing practice, even if other factors also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence.

[Note: Subdivision (g) is a placeholder for the other housing subcommittee.]

(g) “Discriminatory effect” means an act or failure to act that is otherwise that has the effect, regardless of intent, of unlawfully discriminating on the basis of a protected classification. A business establishment whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice if the business establishment can establish that the action or inaction is necessary to the operation of the business and effectively carries out the significant business need it is alleged to serve. A person whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the person can establish that the action or inaction is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve.

(h) “Dwelling” or “Housing Accommodation” means any building, structure, or portion thereof which is occupied as, or designed or intended for, occupancy as a residence by one or more individuals or families including without limitation single family homes, apartments, cabins, structures housing migrant farmworkers, floating homes, floating home communities, liveaboard marinas, mobile home parks, residential hotels/motels, and domestic violence shelters. This includes any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(1) This subchapter applies to both permanent and temporary dwellings, including, but not limited to, time-shares, dormitories, transitional housing, homeless shelters, student housing, and assisted living housing.

(i) “Dwelling unit” means a single unit of residence for a family or one or more persons.

(j) “Owner” includes the lessee, sublessee, assignee, managing agent, real estate broker or salesperson, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations, and includes the state and any of its political subdivisions and any agency thereof.

(k) “Person” includes one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy cases, receivers, other fiduciaries, owners, and institutional third parties.

(l) “Protected class” or “protected basis” means a characteristic or trait such as race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status,

national origin, ancestry, familial status, source of income, disability, or genetic information upon which it is illegal to discriminate. The perception that the person has any of these characteristics, or that the person is associated with a person who has or is perceived to have any of these characteristics, constitutes discrimination under the FEHA:

- (1) “Race” refers to the concept of dividing people into populations or groups on the basis of various sets of physical characteristics (which usually result from genetic ancestry). “Race” is construed broadly to include protections which might otherwise appear to be covered only by other protected classes such as “German” race (national origin) or “Hebrew/Jewish” race (religion).
- (2) “Color” is a distinct class from race but often alleged together. Discrimination on account of color refers to when a person is discriminated against, on account of their skin color, even by someone within their own race.
- (3) “Religion” means a person's faith or belief system and includes any traditionally recognized religion as well as beliefs, observances, or practices, which an individual sincerely holds and which occupy in his or her life a place of importance parallel to that of traditionally recognized religions. Religion includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices, as defined by Government Code section 12926.
- (4) “Sex” has the same definition as provided in Government Code section 12926, which includes, but is not limited to; pregnancy; childbirth; breastfeeding; gender; gender identity; and gender expression.
- (5) “Gender” means sex, and includes a person's gender identity and gender expression.
- (6) “Gender identity” means the innate and deeply felt sense of one's self as being male, female, or something other or in-between.

[Note: This is different than forthcoming 2 CCR 11030(b): “Gender identity” means a person's identification as male, female, a gender different from the person's sex at birth, or transgender.”]

- (7) “Gender expression” means a person's outward characteristics, social/cultural expectations, and roles that have typically been associated with either male or female persons whether or not stereotypically associated with the person's assigned sex at birth.

[Note: This is different than forthcoming 2 CCR 11030(a): “Gender expression” means a person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth.”]

- (8) “Sexual Orientation” means the type of sexual, romantic, and/or physical attraction someone feels toward others, often labeled based on the gender identity or gender

expression. Examples include heterosexual, lesbian, gay, bisexual, and pansexual .

(9) “Marital status” means an individual’s state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state.

(10) “National origin” means the native country of an individual or his or her ancestor(s). Discrimination based on a person’s citizenship, primary language, or immigration status or perceived citizenship, primary language, or immigration status can constitute national origin discrimination under the FEHA. Discrimination based on national origin includes unreasonable language use restrictions.

(11) “Ancestry” means a person’s self-identified origin, descent, lineage, nationality group, or country in which the person or person’s parents or ancestors were born.

(12) “Familial status” means

(A) One or more individuals under 18 years of age who reside with:

1. a parent;
2. another person with care and legal custody of that individual;
3. a person who has been given care and custody of that individual by a state or local governmental agency that is responsible for the welfare of children; or
4. the designee of that parent or other person with legal custody of any individual under 18 years of age by written consent of the parent or designated custodian.

(B) The protections afforded by the FEHA against discrimination on the basis of familial status also apply to any individual who is:

1. pregnant;
2. in the process of securing legal custody of any individual under 18 years of age; or
3. in the process of being given care and custody of any individual under 18 years of age by a state or local governmental agency responsible for the welfare of children.

(13) “Source of income” means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant.

(A) For the purposes of this definition, a landlord is not considered a representative of a tenant, and consideration of government housing subsidies

paid to a landlord shall not constitute discrimination under this subchapter; however, in the case of a government subsidy, a landlord still may not discriminate based on the source of the portion of rent paid by the tenant.

(B) It shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

(14) “Disability” includes both physical and mental disabilities as defined in section 11098.23 of these regulations. For the purposes of these regulations, disability shall be interpreted broadly.

(15) “Genetic information” includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual. Genetic information does not include information about the sex or age of any individual.

#### **§ 11098.4. Exemptions.**

(a) This subchapter does not:

(1) prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of any protected classification other than religion;

(2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members unless membership in such a private club is restricted on account of any protected classification;

(3) [Reserved]

(4) [Reserved]

(5) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

(b) Nothing in this subchapter regarding discrimination based on familial status applies with respect to housing for older persons as defined in article 5 of this subchapter.

(c) Discrimination does not include the refusal to rent or lease a portion of an owner-occupied single-family house to a person as a roomer or boarder living within the household, provided that

no more than one roomer or boarder is to live within the household, and the owner complies with subdivision (c) of Section 12955, which prohibits discriminatory notices, statements, and advertisements.

(d) Nothing in this subchapter limits the ability of persons to state in advertisements, notices, or statements that a rental is available only to persons of a particular sex or gender where living areas are shared in a single dwelling unit.

(e) Nothing in this subchapter relieves persons participating in a State, Federal, or State- or Federally-assisted program or activity from other applicable requirements to buildings and dwellings.

## **Article 2. Discriminatory Housing Practices**

### **§ 11098.5. Prohibited Real Estate Practices.**

(a) It shall be unlawful for any person to:

(1) Refuse to sell or rent a dwelling after a bona fide offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of a person's membership in a protected class;

(2) Discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of a person's membership in a protected class;

(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of a person's membership in a protected class;

(4) Make, print or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of a person's membership in a protected class or an intention to make any such preference, limitation or discrimination;

(5) Represent to any person that a dwelling is not available for sale or rental when such dwelling is in fact available because of a person's membership in a protected class;

(6) Engage in blockbusting practices in connection with the sale or rental of dwellings because of a protected basis; or

(7) Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions or membership or participation, because of a person's membership in a protected class.

(8) Make, or cause to be made, any written or oral inquiry concerning a person's membership in a protected class in connection with the sale or rental of a dwelling.

(A) Written or oral inquiries include, but are not limited to, applications, questionnaires, interview questions, or any other documents or oral questioning used to gather information regarding one's membership in a protected class.

**§ 11098.6. Unlawful Refusal to Sell, Rent, or Negotiate a Sale or Rental.**

(a) It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of that person's membership in a protected class, or to refuse to negotiate with a person for the sale or rental of a dwelling because of that person's membership in a protected class.

(b) Prohibited actions under this section include, but are not limited to:

(1) Failing to accept or consider a bona fide offer because of a person's membership in a protected class.

(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of a person's membership in a protected class.

(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of his or her membership in a protected class.

(4) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of a person's membership in a protected class.

(A) This includes using a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(5) Evicting tenants because of their or a guest's membership in a protected class.

(6) Intentionally misrepresenting the terms of a lease or other real estate-related document to someone who has limited language proficiency in the language in which the document is written.

**§ 11098.7. Discrimination in Terms, Conditions, and Privileges and in Services and Facilities.**

(a) It shall be unlawful to impose different terms, conditions, or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling because of a person's membership in a protected class.

(b) Prohibited actions under this section include, but are not limited to:

(1) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, the terms of a lease, and those relating to down payment and closing requirements, because of a person's membership in a protected class.

(2) Failing or delaying maintenance or repairs of sale or rental dwellings because of a person's membership in a protected class.

(3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of a person's membership in a protected class.

(4) Limiting the use of privileges, services, or facilities associated with a dwelling because of a protected class of an owner, tenant, or a person associated with him or her.

(5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

(6) Intentionally misrepresenting the terms, conditions, and privileges related to the sale or rental of a dwelling to someone who has limited language proficiency in the language in which the document is written.

#### **§ 11098.8. Other Prohibited Sale and Rental Conduct.**

(a) It shall be unlawful, because of a person's membership in a protected class, to restrict or attempt to restrict his or her choices by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development. Such prohibited actions based on membership in a protected class, generally referred to as "steering practices," include, but are not limited to:

(1) Discouraging any person from inspecting, purchasing, or renting a dwelling because of his or her membership in a protected class or any protected classes of persons in a community, neighborhood, or development.

(2) Discouraging the purchase or rental of a dwelling by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development.

(4) Assigning any person to a particular section of a community, neighborhood, or development, or to a particular floor of a building.

(b) It shall be unlawful to engage in any conduct relating to the provision of housing, or of services and facilities in connection therewith, that otherwise makes unavailable or denies dwellings to persons because of their membership in a protected class. Such prohibited conduct based on membership in a protected class includes, but is not limited to:

(1) Discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice.

(2) Employing codes or other devices to segregate or reject applicants, purchasers, or renters, refusing to take or to show listings of dwellings in certain areas, or refusing to deal with certain brokers or agents because they or one or more of their clients are members of a protected class.

(3) Denying or delaying the processing of an application made by a purchaser or renter, or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because they or one or more of their clients are members of a protected class..

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because they or one or more of their clients are members of a protected class..

(5) Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings because they or one or more of their clients are members of a protected class.